

The complaint

Mr and Mrs B complain that Barclays Bank UK Plc mis-sold their mortgage and the accompanying mortgage current account reserve (MCA). They also complain that Barclays ought to have recognised that Mr B had a gambling problem.

What happened

In 2007 Barclays recommended that Mr and Mrs B should take out a mortgage and an MCA. The MCA is a facility that allows borrowers to borrow additional money, secured against their home, up to an agreed limit.

In 2011, Mr and Mrs B moved home. Barclays recommended another mortgage also with an MCA.

In 2017, Barclays recommended that Mr and Mrs B should take out a new interest rate product on their mortgage.

Mr and Mrs B complain that:

- Barclays didn't tell them that the MCA was optional.
- Barclays didn't explain how the MCA operated or consider how they would repay any balance that accrued on the MCA at the end of the term when they had retired.
- No fact find was completed.
- Barclays shouldn't have recommended that they consolidate unsecured debt.
- In 2018, Mr B asked Barclays if he could borrow additional money to pay gambling debts and to use for gambling. He said that Barclays said it couldn't offer additional lending, but Mr B could drawdown money from the MCA and there was around £11,000 available for him to use. Mr B said that Barclays didn't explain how the MCA operated at this point or give him any advice.

Mr B said that he was suffering from depression and pathological gambling. He said that he used the full available balance of the MCA for gambling – and that the MCA limit was increased. Mr B had lost his job and entered an individual voluntary arrangement (IVA for his unsecured debts.

Mr and Mrs B consider that Barclays gave poor advice at the outset and in 2018 when Mr B was encouraged to use the MCA. They also consider that Barclays ought to have had concerns in view of the spending patterns, the fact Mr B's income had stopped and knew he had entered an IVA (as one of the accounts included was with Barclays).

I issued a provisional decision upholding the complaint in part. I didn't think there was any evidence to show that the mortgages taken out in 2007 or 2011 were mis-sold. And the

2017 sale was merely a product switch. The MCA was compulsory – and Barclays set out in a clear, fair and not misleading way how it operated.

I didn't think that Barclays had treated Mr and Mrs B fairly in respect of some of the increases to the limit of the MCA. I found that based on the information available to it, Barclays ought reasonably to have known:

- That Mr B had a problem with gambling – the transactions on his current account clearly supported that.
- There was a significant change in expenditure from September to November 2017.
- Money was being transferred from the MCA to the current account and then to other accounts in Mr B's name. While Barclays would not know for certain what the money used for, it should know that it isn't unusual for compulsive gamblers to behave in this way.
- By increasing the MCA reserve limit it gave Mr B access to money and any resulting debt would be secured against Mr and Mrs B's home.

I said that Barclays should have been on notice that that Mr B had a problem with gambling by the end of November 2017 at the latest. If Barclays had offered Mr B support, it was likely that he would have told it that he was already receiving treatment for depression and pathological gambling.

Based on all of the information available to Barclays I didn't consider it was fair and reasonable to automatically increase the MCA reserve limit. A mortgage lender acting reasonably would have taken steps to limit the amounts of new debt that Mr and Mrs B could obtain. If Barclays had done so, it wouldn't have increased the MCA reserve limit. So I proposed that Barclays should:

- Refund any interest it charged on the MCA where the balance was over £10,500.
- Reduce the balance of Mr and Mrs B's mortgage by the difference between the end balance of the MCA (£20,808.56) and £10,500. I make this to be £10,308.56 but Barclays should confirm.
- Refund the interest it has applied on the £10,308.56 from the inception of the mortgage until date of settlement.
- Allow Mr and Mrs B to repay the £10,308.56 interest free over the remaining term of the mortgage.
- Pay Mr and Mrs B £450 for any distress and inconvenience.

Mr and Mrs B accepted what I said. Barclays did not respond.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

sale

Mr and Mrs B have accepted what I said in my provisional decision. While Barclays hasn't given us a very clear explanation about what happened in respect of the various sales, the evidence I have does not support that the advice given by Barclays to take the mortgages was unsuitable.

The MCA was not optional. So it wasn't wrong for Barclays to tell Mr and Mrs B that. And the terms and conditions set out how the MCA operated in a clear, fair and not misleading way.

MCA

I can see that Mr and Mrs B used the MCA before the 2011 mortgage. But it operated within its limit and Mr and Mrs B made regular payments in excess of the interest that was being applied to the MCA. I don't consider that Barclays had any reason to consider there was a problem at that point.

Mr B said that he moved money from the MCA to a joint Barclays bank account he held with Mrs B to use for gambling, rather than using the MCA directly. He said he also transferred money to accounts with other banks. Obviously, Barclays could not know what he was spending on the accounts with other banks. But it could see what Mr B was spending on the joint accounts with Barclays.

Barclays has told me that of the accounts that Mr and Mrs B held with it, they only made gambling transactions on their joint current account.

Looking at Mr and Mrs B's joint bank account with Barclays, there were gambling transactions from in 2014 to September 2016. But the frequency and amounts do not on the face of it look like a problem. The highest overdrawn balance I can see at that time is just under £3,000.

Looking at that the information we have, the spending on gambling between September and November 2017 does indicate that there is problem spending. Mr B spent a total of £47,271 during that period on gambling transactions. Barclays has pointed out that Mr B also received winnings of £36,678.38 during the same period. So while there was a net loss, it wasn't as much as first appeared.

I can also see that Mr and Mrs B exceeded the agreed overdraft limit on the current account on a number of occasions in September, October and November 2017. The current account was being supplemented by funds from the MCA. Around £80,000 was withdrawn during that period, - although a similar amount recredited. So at the end of November 2017, the MCA was overdrawn by £2,000.

I accept that the current account statements show that spending on gambling was limited from December 2017 until October 2018. But we can see that money was being transferred from the MCA to the current account and then on to other accounts held by Mr B. We have evidence to show that those funds were being used for gambling. I accept that Barclays would not have known that. But it ought reasonably to have known:

- That Mr B had a problem with gambling – the transactions on his current account clearly supported that.
- There was a significant change in expenditure from September to November 2017.

- Money was being transferred from the MCA to the current account and then to other accounts in Mr B's name. While Barclays would not know for certain what the money used for, it should know that it isn't unusual for compulsive gamblers to behave in this way.
- By increasing the MCA reserve limit it gave Mr B access to money and any resulting debt would be secured against Mr and Mrs B's home.

I consider that Barclays ought to have been on notice that Mr B had a problem with gambling by the end of November 2017.

In February 2019, Mr B obtained the Money Advice Liaison Group's "Debt and Mental Health Evidence Form" from his doctor. It said that he suffered with depression and pathological gambling, that he had been diagnosed in March 2017 and that he suffered an episode until May 2018. It said his mental health problems affected his ability to manage money and in particular his memory, concentration and compulsion to spend money. It said that Mr B was receiving support from a problem gambling clinic.

If Barclays identified the problem spending it would have been good practice to offer Mr B support. It is likely that had it discussed the matter with Mr B that he would have told it that he had been diagnosed with pathological gambling. I say that as Mr B later disclosed that information to Barclays.

I accept that the increase to the MCA reserve limit might be automatic. That is Barclays' choice. But it doesn't follow that it is always going to be fair and reasonable for it to automatically increase the limit.

I don't consider it was fair or reasonable for Barclays to do so in this case. I think that a lender acting reasonably ought to have reviewed the facilities it offered Mr and Mrs B and taken steps to limit the amount of debt they could incur, particularly as in this case the debt was secured. If it had done so at the end of November 2017, I don't consider it would have increased the MCA reserve limit from £10,500. So it should refund the interest it charged on the MCA on any amount over £10,500 from 1 December 2017 until the MCA was repaid in January 2019.

Mr and Mrs B repaid the MCA when they remortgaged with Barclays. I consider that Barclays should reduce the balance of their mortgage by the difference between the end balance of the MCA and £10,500. It should also refund the interest that Mr and B. The difference can remain secured against Mr and Mrs B's home. Barclays should come to an arrangement for them to repay it interest free over the remaining term of the mortgage.

I've thought carefully about what fair redress in this case is. I'm not persuaded that writing off the increased balance is fair in this case. Mr and Mrs B had some benefit from the funds. Some of it was used for day to day expenditure and we can see that Mr B did have some winnings. But in the circumstances, I don't think it would be fair for Barclays to apply interest to that amount.

I accept that Mr and Mrs B have been caused distress and inconvenience by what happened. A lot of that is due to the problems with Mr B's health. Barclays isn't responsible for that. But I think it has added to his upset by allowing his secured debt to increase in the way it has. It has also caused delay in the resolution of this complaint. It took it over eight months to substantively reply to the investigator's views, I consider it would be fair for Barclays to pay Mr and Mrs B £450.

My final decision

My final decision is that Barclays Bank UK PLC should:

- Refund any interest it charged after 1 December 2017 where the balance of the MCA was over £10,500.
- Reduce the balance of Mr and Mrs B's mortgage by the difference between the end balance of the MCA and £10,500. I make the difference to be £10,308.56 (£20,808.56-£10,500). Barclays has not confirmed if that is correct, but it should check the correct figures when settling this complaint.
- Refund the interest it has applied on the £10,308.56 (or whatever is the correct figure) from the inception of the mortgage until date of settlement. The refund can be used to reduce the interest free balance.
- Allow Mr and Mrs B to repay the £10,308.56 (or whatever is the correct figure – less the refunded interest) interest free over the remaining term of the mortgage.
- Pay Mr and Mrs B £450 for any distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 January 2022.

Ken Rose
Ombudsman