

The complaint

Mr G's complaint is that he was mis-sold a mortgage endowment policy and a level term assurance (LTA) policy when he applied for a mortgage in 1994. Barclays Bank UK PLC is responsible for this complaint.

In settlement of the complaint, Mr G wants to be paid £55,000 – the full amount of the mortgage the policies were associated with.

What happened

In 1994 Mr G and a relative jointly applied for a mortgage to purchase a property owned by older relatives, which was going to be arranged on an interest-only basis. The mortgage was to be for £55,000 and appears to have been applied for over a term of 25 years. They were each sold an endowment policy for half the amount of the mortgage to repay their share of the capital and to protect half of the mortgage in the event of death. To protect the other half of the mortgage in the event of death, Mr G and his relative were each sold LTA policies.

There is a dispute from the parties about how this mortgage was arranged. Barclays established from its records in the early 2000s that the mortgage Mr G had in place at that time had been on a repayment basis from the outset. However, Mr G provided a copy of the mortgage offer from 1994 which showed it was intended to be on an interest-only basis. Mr G also mentioned that the mortgage had been changed to repayment when the relative he bought the property with was removed from the title and mortgage. As neither party provided any documentation from the early period of the mortgage, we looked at Land Registry information about the property title.

The information contained within the property title detailed that older relatives of Mr G bought the property in 1984. It appeared that the purchase of the property by Mr G and his relative didn't happen in 1994. Rather, Mr G bought the property on his own three years later in 1997. It appears that he used a mortgage with Barclays to complete the purchase and that the property was re-mortgaged to another lender in 2010.

However, subsequent information provided by Land Registry has confirmed that the 1994 purchase by Mr G and his relative did go ahead. This would indicate that the 1994 interest-only mortgage likely went ahead and then Mr G re-mortgaged into his sole name in 1997.

Mr G initially complained about the sale of the policies in 2002. The first final response letter was issued by Barclays in 2004. There was continued correspondence about the matter over the following 15 years.

In 2004 Barclays upheld the complaint about the LTA policy as it was not suitable for a repayment mortgage. It offered a refund of premiums, less the equivalent cost of life cover for the repayment mortgage, plus interest. It doesn't appear that it responded to the complaint about the mortgage endowment policy. Mr G didn't accept the offer and continued to pursue the complaint. In the autumn of 2005 Barclays issued a new offer. This consisted of an updated calculation for the LTA refund plus a sum to compensate him for the extra

costs an endowment mortgage would have involved when compared to a repayment mortgage. Mr G didn't accept this offer either.

In 2007 Barclays wrote to Mr G and explained that its offer in respect of the endowment policy in 2005 had been wrong. While Mr G had paid more for the endowment mortgage than he would have for an equivalent repayment mortgage, he'd actually gained in respect to the capital position. As such, he hadn't suffered a loss from having an endowment mortgage. It offered Mr G £150 compensation for having made this mistake and any confusion it may have caused him. Mr G didn't accept the offer.

In 2012 Mr G raised his complaint again. Barclays declined to investigate. However, as a gesture of good will, it reinstated its offer in relation to the LTA and compensation. Mr G was also offered the opportunity to send Barclays evidence that the second endowment policy, which it believed had been sold to his relative, was actually his policy. Mr G accepted the offer, but attempted to place conditions on it. Barclays was not willing to allow this and gave him another opportunity to decide if he wanted to accept the offer as it stood. He accepted the offer as it stood, however, he also informed Barclays that the mortgage hadn't been arranged on a repayment basis, rather he'd converted it to repayment some years after it had started.

In early 2014 Barclays changed its offer for the endowment policy. This was because the mortgage had been arranged on a repayment basis, rather than an interest-only one. As such, the endowment policy had not been needed as a repayment vehicle. So Barclays offered Mr G a refund of the endowment premiums paid, plus interest on each premium to a date one month beyond the calculation date. From that sum, Barclays deducted the then current surrender value of the endowment policy. Income tax was also deducted from the interest payment. Mr G didn't accept the offer.

Mr G raised his complaint again in 2016. In early 2017 Barclays responded by confirming that it had investigated the complaint thoroughly and had made offers of redress in 2012 and 2014. It highlighted that Mr G had accepted the earlier offer and then confirmed that the offer relating to the mortgage endowment made in 2014 was still available if he wanted to accept it.

The policy matured for around £8,000 in 2019. The maturity value was so low because premiums hadn't been paid since 2004.

Shortly thereafter, Mr G complained about the sale of the endowment and LTA again. This time he complained to the life office to which the endowment had been transferred and which had paid out the maturity value. The life office set out the history of the complaint, but it didn't consider it afresh. It said that the offer for the endowment mis-sale was still open to Mr G to accept if he wanted to.

Following the complaint being referred to this service, there were questions about whether it fell within our jurisdiction to consider. One of my ombudsman colleagues considered whether we had the jurisdiction to consider the complaint; she concluded we did. As such, one of our investigators considered the merits of the complaint. He confirmed that he wouldn't be considering the sale of the second mortgage endowment policy Mr G had mentioned, because that policy hadn't been sold to Mr G, but rather to the relative with whom he had been planning to buy the property. In relation to the redress Barclays had offered Mr G, the investigator was satisfied it was fair.

Mr G didn't accept the investigator's findings and asked that the complaint be referred to an ombudsman. He said there were several errors in the investigation; this was because he didn't think the investigator had understood that the policy had been mis-sold because he'd

been told the mortgage would be paid off and he would receive an additional £16,000. Mr G maintained that the mortgage had been arranged on an interest-only basis, not repayment. In addition, as he wasn't liable to pay tax, Barclays shouldn't be deducting tax from the interest payment.

I issued provisional decisions on 16 November 2021 and 1 December 2021, the second of which superseded the first due to further information becoming available. Below is an excerpt of the 1 December 2021 provisional decision, setting out my conclusions and reasons for reaching them.

'As I explained in my previous provisional decision, I won't be commenting on the sale of the endowment and LTA that were sold to Mr G's relative in 1994. That is because those policies were set up in the relative's name and so Mr G doesn't have the right to complain about them.

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

Again, as I explained in my previous provisional decision, the mortgage endowment and LTA arrangement that was proposed in 1994 was quite a common arrangement where two unmarried people were buying a property together on an interest-only basis. In principle the arrangement was fine for the mortgage that was proposed in 1994, as long as Mr G and his relative were willing to accept some risk associated with their mortgage repayment.

Barclays accepted many years ago that the policies Mr G was sold in 1994 weren't appropriate. It offered to compensate Mr G. In relation to the LTA, it compared the amount Mr G would have paid for an appropriate policy for the repayment mortgage he actually took out and refunded the difference plus interest. This was reasonable in the circumstances of the property being his relatives' home. Mr G accepted that offer when it was renewed in 2012. I have noted that he has said he felt pressured to accept the offer at that time, but the evidence available to me doesn't indicate Barclays acted inappropriately in relation to the renewal of that offer.

In regard to the endowment policy, Barclays initially calculated redress on the basis of a comparison between an endowment mortgage running to 2004 and an equivalent repayment mortgage. This resulted in no loss being established. Later Barclays offered a refund of premiums plus interest, less the surrender value of the policy.

Based on what it now appears likely happened with the mortgage arrangements, neither of these offers was entirely correct. Rather redress should have been calculated by a combination of the two methods. The initial part of the calculation should compare the position Mr G would have been in with that which he would have been in, had he and his relative taken their joint mortgage on a repayment basis.

However, as Mr G kept his policy after he re-mortgaged the property on a repayment basis, Barclays would usually have calculated the loss as D minus E where:

A = the loss identified by carrying out a loss calculation in accordance with the regulator's guidance 'Handling Mortgage Endowment Complaints' (known as RU89), using a nil surrender value. This calculation should be completed for the period from 1994 to 1997 when the policy was used for Mr G's mortgage.

B = a refund of the premiums paid to the policy from the date the policy ceased to be used for the mortgage until 2004 when Mr G stopped paying premiums (the calculation date).

C = interest at 8% simple per year on the premium in B from the date of payment to the calculation date.*

D = A + B + C

E = the surrender value of the policy in 2004 when Mr G stopped paying premiums to the policy.

**If Barclays considers it is required by HMRC to deduct income tax from any interest paid, it should provide Mr and Mrs A with evidence of the deduction, which they can use for HMRC purposes if required.*

I would make Mr G aware at this stage that this redress calculation may result in a lower amount being owed to him than the current offer by Barclays of a full refund of premiums plus interest. As Barclays will likely have to make further enquiries of the product provider to complete the new calculation and this may take a period of time, Mr G may wish to consider whether to approach Barclays to accept the existing offer.

Mr G has mentioned that he doesn't pay tax and so Barclays shouldn't be taxing the interest on the offer it has made. Barclays is not in a position to determine the tax status of consumers. It will follow the guidance it has received from HMRC as to the taxation of interest and if Barclays considers it is required by HMRC to deduct tax from any interest payments, that is not something we would interfere with. That said, if Mr G decides to accept its offer, Barclays will provide him with the necessary information and documentation he would need if he wished to reclaim the tax from HMRC.'

Mr G didn't respond to my provisional decision, but I am satisfied that he received it and had the opportunity to respond.

Barclays didn't accept my second provisional decision. It provided a further copy of the file note from early in its complaint file in which it was stated that Mr G's mortgage had always been on a repayment basis. It was unable to provide any evidence to support this statement from its systems or mortgage records. It also provided information from the life assurance company that now owns the portfolio of endowment policies that had been recommended in 1994. This was a client record for Mr G's relative with whom he had taken his mortgage in 1994. It didn't show any policies on that client record. Barclays put forward that this evidenced that the relative hadn't taken out the endowment recommended and supported that the mortgage had been arranged on a repayment basis.

Following receipt of this information, we asked some questions of the life assurance company. It was clear that at some point Mr G's relative had at least applied for a policy with the life assurance provider, as it had a record of him as a client. So we asked whether the client record being blank meant that no policies had ever existed, or whether it just meant that none existed at the time of the enquiry. It was confirmed that the latter was the case and the individual had held endowment policies in the past.

This information was provided to Barclays as it supported that the joint mortgage had most likely been on an interest-only basis and that it was the mortgage in Mr G's sole name that had been on a repayment basis. Barclays asked that it be given some time to make further enquiries and confirmed that it would make any further response it wanted to by 7 March 2022 at the latest. No further response was received, and the complaint was passed back to me to consider for a final decision.

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.

Having considered all of the additional information, I haven't changed my conclusions about the likely mortgage arrangements and what the appropriate redress is in this case.

Putting things right

The initial part of the calculation should compare the position Mr G would have been in with that which he would have been in, had he and his relative taken their joint mortgage on a repayment basis. As Mr G kept his policy after he re-mortgaged the property on a repayment basis, Barclays would usually have calculated the loss as D minus E where:

A = the loss identified by carrying out a loss calculation in accordance with the regulator's guidance 'Handling Mortgage Endowment Complaints' (known as RU89), using a nil surrender value. This calculation should be completed for the period from 1994 to 1997 when the policy was used for Mr G's mortgage.

B = a refund of the premiums paid to the policy from the date the policy ceased to be used for the mortgage until 2004 when Mr G stopped paying premiums (the calculation date).

C = interest* at 8% simple per year on the premium in B from the date of payment to the calculation date.

$D = A + B + C$

E = the surrender value of the policy in 2004 when Mr G stopped paying premiums to the policy.

*If Barclays considers it is required by HMRC to deduct income tax from any interest paid, it should provide Mr and Mrs A with evidence of the deduction, which they can use for HMRC purposes if required.

I would again make Mr G aware that this redress calculation may result in a lower amount being owed to him than the current offer by Barclays of a full refund of premiums plus interest. As Barclays will likely have to make further enquiries of the product provider to complete the new calculation and this may take a period of time, Mr G may wish to consider whether to approach Barclays to accept the existing offer.

My final decision

My decision is that I uphold this complaint. Unless Mr G chooses to accept the existing offer made by Barclays Bank UK PLC, I require it to calculate redress as detailed in 'putting things right' above. If the calculation identifies that Mr G suffered a loss, Barclays Bank UK PLC should pay that sum to Mr G.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 5 April 2022.

Derry Baxter
Ombudsman