

The complaint

Mr and Mrs R have complained that Barclays Bank UK Plc declined their request to port (transfer) their mortgage interest rate product onto a new mortgage on a different property. To settle the complaint, they have asked Barclays to compensate them for their losses.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 17 May 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs R being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr and Mrs R had an interest-only mortgage of £316,000 taken out in 2013, the majority of which (£285,000) which was on a lifetime tracker interest rate of 1.25% above Barclays Bank Base Rate (BBBR). This rate generally tracked Bank of England Base Rate (BoEBR) and so BBBR would fluctuate in line with movement in BoEBR. The end date of the mortgage was March 2023. The early repayment charge expired in 2014.

In March 2021 Mr and Mrs R wanted to move to another property, downsizing, and to port their mortgage interest rate onto another mortgage on their new property. However, Barclays declined the request, on the basis of affordability. Mr and Mrs R complained, but Barclays didn't uphold the complaint, so Mr and Mrs R referred it to our service.

In the meantime, Mr and Mrs R took out another mortgage with a different lender, over the minimum term allowed for a mortgage of five years. They had to borrow slightly less than their Barclays' mortgage, but were able to fix the interest rate at 1.24% for the five-year term.

An investigator looked at what had happened and thought the complaint should be upheld. She was satisfied that Barclays should have allowed the interest rate to be ported. This is because the transitional arrangements put in place by the Financial Conduct Authority (FCA) in relation to porting meant that Barclays didn't need to carry out an affordability assessment if the port was in Mr and Mrs R's best interests.

However, the investigator noted that Mr and Mrs R were actually better off by having taken out their new mortgage because the interest rate was fixed, and was lower than the rate on the Barclays mortgage. Mr and Mrs R had, however, lost out by having to withdraw savings to complete their purchase, due to their new mortgage being lower than the Barclays mortgage, which they wouldn't have done if they'd been able to port their mortgage in full.

The investigator asked Barclays to refund the product fee of £999 and broker fee of £250 that Mr and Mrs R had paid, and pay £300 compensation for distress and inconvenience.

Mr and Mrs R accepted the investigator's findings, but Barclays did not, reiterating that the application didn't pass its affordability criteria. The investigator reiterated her reasons for upholding the complaint, but no response was received from Barclays. As the matter is unresolved, it falls to me to issue 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.

There are regulations in place that have flowed from the Financial Conduct Authority's Mortgage Market Review (MMR) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed to protect consumers and encourage mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they passed tests under the old rules but not under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, there was an increase in the loan-to-value ratio, which is considered a material change to the mortgage contract. In the circumstances, taking into account the transitional

arrangements set out in MCOB, Barclays had the option of foregoing an affordability assessment if the transaction was in Mr and Mrs R's best interests.

From the available evidence, I can't see that Barclays properly considered the transitional arrangements as they applied to Mr and Mrs R's circumstances. I think that if Barclays had done so, and applied the 'best interests' test, the application should have been approved. Although I've noted Barclays' concerns about affordability, after taking into account Mr and Mrs R's overall financial circumstances, I'm satisfied that this was a low risk transaction and so should have been allowed in Mr and Mrs R's best interests.

Mr and Mrs R had to arrange a mortgage with another lender, incurring fees to do so. Their new mortgage, however, is at a fixed rate for five years which is lower than the rate on their Barclays mortgage. In the circumstances, Mr and Mrs R haven't suffered any financial loss in relation to their mortgage repayments – in fact they have gained a benefit.

Their new mortgage is at a lower interest rate (1.24%) than the margin over BBBR (1.25%) on their previous mortgage. Due to recent movement in BoEBR, if they'd kept their Barclays mortgage, the interest rate on it would be substantially higher than the fixed rate Mr and Mrs R were able to secure. I would imagine that, with hindsight, they are probably happy with the choice they made to re-mortgage elsewhere.

Mr and Mrs R needed to 'top up' their purchase from their savings, and that was their decision. They will benefit from the use of those savings towards their purchase in any increase in value of the property, so I'm not ordering Barclays to compensate them for this.

Putting things right

I agree with the investigator that Barclays should reimburse Mr and Mrs R for the broker fee of £250 and the product fee of £999 they incurred, as these are fees they would not otherwise have had to pay if the port had gone ahead. I'm also satisfied Barclays should make a payment for distress and inconvenience, and that a payment of £300 would be appropriate.

My final decision

My final decision is that I uphold this complaint. I direct Barclays Bank UK Plc to settle the complaint as detailed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 3 November 2022.

Jan O'Leary
Ombudsman