

The complaint

Mrs H's complaint is about a mortgage current account (MCA) linked to her mortgage with Barclays Bank UK Plc. She has said that she had no knowledge of the existence of the MCA and doesn't think that Barclays should have allowed her late husband (Mr H) to use the MCA reserve when they were both unemployed, and go over the reserve limit. Following Mr H's death she has found it difficult to pay the mortgage, has been unable to pay anything to the MCA balance, and doesn't think she has been treated fairly. In addition, Mrs H has questioned whether she is liable for the MCA debt.

Mrs H is represented in her complaint, but for ease, I will refer to all comments and submissions as hers.

What happened

The mortgage application confirmed that both Mr and Mrs H were both working in 2007 and they had a joint income of slightly over £26,000. They had an existing mortgage with another lender for just over £51,300 and wanted to re-mortgage to Barclays. The new mortgage was arranged on repayment basis with an advance of £80,000 over a term of 16 years and 6 months. Linked to the mortgage was a MCA.

The MCA had a reserve, or overdraft, facility attached to it. When setting up the arrangement, Barclays determined a total amount of borrowing it would allow Mr and Mrs H, and the initial MCA reserve amount was the difference between the mortgage amount and the total borrowing figure. There was a rebalancing functionality on the MCA reserve, whereby the reserve limit increased to reflect any decrease in the mortgage balance, thereby maintaining the total amount of borrowing available. There was no requirement for the reserve to be used by the accountholders.

When the mortgage application was submitted Mr and Mrs H had to sign documentation including the application form, a direct debit mandate for the mortgage and a '*Mortgage Reserve Authorised Signature*' document. The latter document was needed so that Barclays had a record of their signatures for use with the MCA. Both Mr and Mrs H signed this document.

In November 2009 the MCA reserve started to be used by a transfer of £3,000 into a joint account in Mr and Mrs H's names. Further amounts were taken from the reserve during 2010, including transfers into a savings scheme with Barclays. Monthly payments were made in most months in the following year, which covered the interest charged. Following that, more money was taken out of the account until the middle of 2016 and the MCA reached the reserve limit around that time because of the addition of interest.

In 2015 Barclays wrote to Mr and Mrs H about the MCA reserve limit and proposed that it be reduced to £30,000. Mr H called Barclays to discuss the account and asked that the limit not be reduced. It was recorded at that time that Mr H understood the rebalancing feature and didn't want it turned off.

Mr H told Barclays at the end of August 2016 that he had been out of work for a long time. However, a few weeks earlier he had returned to work and suffered a heart attack. This meant that he'd had to stop work and wouldn't be able to manage to make the payments needed for the mortgage. From that point onward only small, sporadic payments were made into the MCA. The overdraft amounted to just under £44,000 with approximately £37,500 having been withdrawn from the account, the difference being accumulated interest.

There were numerous conversations between Mr H and Barclays about the mortgage and MCA balance. Some short-term forbearance arrangements were made at times. Some of the arrangements were maintained, but not all.

In 2018 Mr H informed Barclays that the MCA reserve would be repaid from Mrs H's pension funds. In August 2019 Barclays decided to start repossession action due to the amount the MCA balance was in excess of the reserve limit – approximately £5,000. Mr H again told Barclays that Mrs H's pensions would be used to clear the MCA balance in 2020.

A couple of months later Mr H informed Barclays that he was out of work due to a cancer diagnosis. He said he expected the situation to improve within the next six months as he'd be back to work. An income and expenditure exercise was completed, which showed that Mr and Mrs H's income (including a contribution from a relative living with them) was approximately £1,1560 and their outgoings including the mortgage was £1,348. A payment arrangement was agreed to assist with the situation. Mr H also said that they were planning to arrange an equity release mortgage in August 2020.

In December 2019 Barclays spoke to Mrs H for the first time. She explained that Mr H was going in for surgery in Jan 2020. He normally dealt with their finances, but due to the situation, Barclays was to call her. Barclays suggested that they take independent advice and Mrs H said she would try to contact the Citizen's Advice Bureau (CAB) and a debt management charity in the next month and address their unsecured debts. She also confirmed that their priority bills up to date. Mrs H went on to explained that in July 2020 she would be 55 and would take her pension. She would then clear the mortgage and MCA balance from the pension lump sum.

Payments to the mortgage began being intermittently missed in January 2020 and from March 2020 Barclays agreed a payment arrangement for three months where Mr and Mrs H could make payments significantly lower than the contractual monthly payments. They were also to pay the amount of the debit interest on the MCA. No payments were made between August 2020 and March 2021.

Mr H died in June 2020 and Barclays was provided with the necessary documentation in August 2020. Barclays didn't contact Mrs H following that and it was not until October 2020, when there was further contact. Initially, this was for Barclays to acknowledge having received the documentation Mrs H had sent it.

Mrs H called Barclays to discuss the mortgage at the end of October 2020. She was told what the outstanding debt was, including the MCA balance. She explained that Mr H had used the money from the MCA and she didn't think she was liable for the amount owed. She said she had a solicitor looking into the issue. In light of this, Barclays sent Mrs H a copy of the relevant terms and conditions. As she was in financial difficulties, Barclays explained that it would need to review her income and expenditure. This didn't happen at that time as Mrs H was concerned about Barclays approach to the situation.

It was January 2021 when Mrs H next contacted Barclays. She was looking into the idea of the property being mortgaged into a family member's name for enough to clear both the Barclays mortgage balance and the MCA. An income and expenditure exercise was

completed and it was established that Mrs H's outgoings (not including the mortgage payment) were nearly £350 higher than her income. A hold was placed on the account and Mrs H was recommended to seek independent financial advice. A complaint was raised about Mrs H not having been kept informed about the arrears situation.

Later that month the CAB became involved and it requested that the mortgage payments be temporarily put on hold. It doesn't appear that Barclays dealt with this letter. When the CAB wrote again in March and April 2021, the letters were again not dealt with.

Over the next few months Mrs H told Barclays that she was concerned about the situation she was in. She asked to be allowed to consolidate the MCA and mortgage balances into a new mortgage with a longer term, but it's not clear what Barclays' response to this was, because the relevant department doesn't keep notes of its discussions with customers. However, nothing happened about this request, so it can be assumed that Barclays either said no to the question or Mrs H decided not to pursue the possibility.

In the middle of March 2021 an income and expenditure exercise was again undertaken. Mrs H appears to have included the income of the relative living with her in the assessment, which meant it showed her normal outgoings were affordable and a surplus was available to deal with the arrears and MCA balance. Mrs H explained that she wasn't sure that the relative would be able to put as much into the arrangement as would be needed, and she would check. She explained that her main concern was the interest accruing on the MCA and it was explained that Barclays wouldn't stop the interest. Mrs H also said that the relative was looking into re-mortgaging the property into their name, at which point the full mortgage and MCA balances would be cleared, but it was unlikely to happen in the next six months. Barclays advised that if Mrs H established how much her relative would commit to, it would restart the assessment of whether it could do anything to help. Mrs H didn't do so.

Over the following months Barclays attempted to speak to Mrs H about the situation, but she was unwilling to have discussions with it. Initially because she said the CAB was dealing with the situation and later because her complaint hadn't been dealt with, which she said was the reason for the arrears having accrued.

Mrs H complained about the situation she found herself in and again questioned whether she was liable for the MCA reserve debt, as Mr H had borrowed the money without her knowledge, and she was being charged interest on that debt. She also questioned whether Mr H should have been allowed the borrowing, given that he was unemployed. By this point the MCA balance had increased due to the accrual of interest to approximately £51,000.

Barclays responded to Mrs H's complaint in its letter of 26 May 2021. It provided a copy of the mortgage application, which set out that the mortgage came with a MCA and the reserve facility. In addition, it had sent MCA statements to Mr and Mrs H throughout which detailed the overdraft limit and the interest rate that would be charged on it. Barclays highlighted that the statements were addressed to both Mr and Mrs H. As such, it was satisfied that it hadn't made an error and it rejected the complaint.

Mrs H wasn't happy with Barclays' response and referred it to us. One of our investigators looked into our jurisdiction to consider the complaint. He concluded that we couldn't look into the sale of the MCA account as the complaint had been raised too late. However, we could look into the issue of the interest that had been charged on the MCA since 2015 and how Barclays had behaved since Mr H's death and she asked for help due to financial difficulties.

Mrs H didn't accept the investigator's conclusions regarding the arrangement of the MCA. She said that she didn't deal with any letters or documentation and had not been aware of

the MCA reserve. She highlighted that the documentation she had provided from 2007 didn't include her signature. She asked that we consider the entire complaint.

The investigator provided Mrs H with a copy of the MCA declaration she had signed. Mrs H maintained that she had no knowledge that she signed for the MCA or what it entailed. She then questioned if the MCA was signed for in 2007 when they were employed that was all well and good; however, she asked how Barclays had allowed Mr H to take £43,000 from the MCA reserve when he became unemployed. She suggested that this was gross misconduct and went against the regulator's rules for the sale of loans. Mrs H also said that she considered the MCA should have been capped at £43,000, but Barclays allowed him to spend in excess of that amount, which was the reason for the amount of interest that was being charged on the debt.

Our investigator considered what Mrs H had said, but it didn't change his conclusions that we couldn't consider any concerns she has about the sale of the MCA. Mrs H accepted the investigator's conclusion and asked that he consider the merits of the other elements of the complaint.

The investigator did so and concluded that Barclays had behaved fairly in relation to the financial difficulties before Mr H's death, as it had engaged with him and set up arrangements to deal with the overdraft limit having been exceeded. He also confirmed to Mrs H that there was a cap on the borrowing on the MCA, but that the debt had increased above that limit due to interest accruing. As the interest was charged in line with the account terms and conditions, he couldn't find Barclays at fault.

However, the investigator didn't think that Barclays had done enough to assist Mrs H following Mr H's death. He highlighted that Mrs H had enlisted the help of the CAB in January and April 2021, but it doesn't appear anything was done in response. In addition, in February and March 2021 Mrs H had asked for changes to be made to the mortgage/MCA arrangements, which would have required an income and expenditure exercise, but the importance of providing that information didn't seem to have been highlighted to her.

In addition, the investigator considered that as Mrs H had said she had no income and was unable to make any payments to the mortgage, she should have been referred to a specialist team and told to seek independent financial advice. The former didn't happen at all, and the latter didn't happen until November 2021. He concluded that this meant that interest continued to be charged on the MCA without Mrs H having the ability to address the balance above the reserve limit. As such, he recommended that the complaint be upheld and redress awarded.

Mrs H accepted the investigator's conclusions. Barclays did not. It set out a timeline of the conversations it'd had with Mrs H and it considered it had tried to help her. Our investigator pointed out that many of the events Barclays was relying on were not corroborated by the evidence it had provided. As such, he didn't change his opinion.

Barclays requested that the complaint be referred to an ombudsman. Following it doing so, I asked for more information. It provided the contact notes from its collections/arrears department, which evidenced more of the contact Barclays had said it had with Mrs H from June 2020.

I issued a provisional decision on 23 November 2022, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'I have set out some basic details of how the MCA account came into existence and how it works. Mrs H has said that Barclays shouldn't have allowed Mr H to continue to use the

MCA reserve after he became unemployed. Having reviewed the notes on Barclays systems, and it doesn't appear that Mr H told Barclays that he wasn't working prior to the end of August 2016, by which time the MCA reserve limit had been reached. I am not aware of exactly when Mr H ceased working prior to this, but as Barclays doesn't appear to have been told, I can't find it at fault for not having attempted to review Mr and Mrs H's situation in order to attempt to help them manage their finances.

Following that, Mr H and Barclays discussed the MCA and mortgage account regularly until his death in 2020. Due to the circumstances of Mr H's health, Barclays agreed forbearance measures to assist the situation. I am satisfied that it acted appropriately during this period. The question is, therefore, whether Barclays acted appropriately with Mrs H thereafter.

When our investigator reviewed the complaint Barclays hadn't provided the notes from its collections department, which is the department Mrs H was passed to because of the arrears on the mortgage and the MCA being over its limit. These notes show that Barclays left it to Mrs H to contact it after she informed it of Mr H's death. Given the circumstances, I don't think this was necessarily inappropriate for Barclays to allow Mrs H some time before it started talking to her about the mortgage and MCA.

When Mrs H contacted it in October 2020, she disputed that she was liable for the MCA debt. She said she was seeking legal advice and Barclays sent her a copy of the mortgage terms and conditions to assist with this process. It also told her that as she was in financial difficulties it would need to review her income and expenditure to see what it could do to assist her.

A lender is required to explore ways to assist a consumer in financial difficulties and to attempt to resolve the situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved. For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. However, balanced against that is the lender's obligation to ensure that any arrangement is affordable, sustainable and will actually help in the long term, not just delay the inevitable. The requirement to try to assist a customer doesn't mean that a lender should give a consumer what they want, if it would not be affordable or realistically help to resolve the situation.

So it was entirely reasonable that Barclays wanted to assess the situation to see what it could do. It did this on two occasions, although it suggested it be done several more times. It was established that on Mrs H's income alone, there was a very significant deficit between her income and outgoings, such that there was nothing it could suggest that would help with the situation as nothing was affordable. If the income of the relative living with Mrs H was taken into consideration, the mortgage was affordable and Barclays may have been able to help with arrangements for the arrears and MCA. However, Mrs H didn't get back to Barclays to confirm how much the relative would be willing to commit to such an arrangement and so it couldn't do anything to assist her. Barclays also recommended on numerous occasions that Mrs H seek independent financial advice, as I would expect it to do. I am satisfied that Barclays followed an appropriate process to attempt to assist Mrs H, but that it was either unable to because of her circumstances or because it was waiting for Mrs H to provide information.

That said, it is clear that Mrs H followed Barclays' suggestion that she seek assistance with her situation from an independent source, in that the CAB wrote to Barclays on her behalf. Several letters were received, but they don't appear to have been acknowledged or dealt with. They seem to have been referred to the complaints department due to the complaint Mrs H had raised, and nothing happened with them thereafter. I can only conclude this was

a service failing as it would have deprived Mrs H of the help and support that she had sought out following Barclays recommendation that she do so. I am minded to award £300 compensation for this failing.

I am not proposing to uphold the majority of Mrs H's complaint, but I would encourage her to enter into discussions with Barclays to see if a way forward can be agreed. This will require her to give it details of her financial situation and, if her relative remains willing to contribute, details of that too. I would also remind Barclays that it needs to look at Mrs H's situation in a sympathetic light and do what it can, if anything is possible, to help with the situation.'

Barclays accepted my provisional decision.

Mrs H confirmed receipt of the provisional decision, but didn't make any comment on my conclusions or provide further evidence.

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.

As neither party has reached any further evidence or comments, I see no reason to alter my conclusions.

My final decision

My decision is that I uphold this complaint in part and require Barclays Bank UK PLC to pay Mrs H £300 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 10 January 2023.

Derry Baxter
Ombudsman