

The complaint

Mrs M's complaint is about a mortgage account and related mortgage current account (MCA) she used to hold with Barclays Bank UK PLC. Mrs M says that the MCA was mis-sold and that it was irresponsible of Barclays to increase the limit on the MCA reserve, as this left her in financial difficulty. To settle the complaint, Mrs M wants Barclays to reimburse her for all the interest she paid on the MCA from the date she started using it until the account was closed.

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, 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 Mrs M being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mrs M took out a mortgage with Barclays (through its residential mortgage lending division, Woolwich) in September 2006, borrowing £57,000 on a capital repayment basis over a term of 15 years. Just over £42,000 of the mortgage was used to repay unsecured debts. The mortgage came with a related MCA.

The MCA is an overdraft facility, which works like this: as capital is repaid off the mortgage, the overdraft limit on the MCA increases by the same amount, due to what Barclays calls 'rebalancing', building up a reserve. The reserve can be spent by the borrower, through the MCA. But it's not intended to be an additional regular income stream for the borrower; nor should it be used to make the mortgage repayments.

Borrowers are free to repay the overdraft, in part or in full, if they wish to do so, at any time. Customers can pay money into the MCA if they want to, and operate it in credit. If there is a credit balance, interest accruing on that balance can, if the customer requests it, be offset against the mortgage interest. But the MCA in this case wasn't in credit and so it operated as an overdraft facility with debit interest accruing on the outstanding balance.

The overdraft becomes immediately repayable in full when the related mortgage account is repaid – either when the mortgage reaches the end of its term or if the mortgage is repaid sooner (for example, on sale or remortgage of the property).

The MCA operates on an interest-only basis. Interest is currently charged on the overdraft balance at Bank of England Base Rate + 4.49%, except where the mortgage is a specific offset mortgages, where interest is charged at the offset mortgage rate. (This was not that type of mortgage and so the interest rate was Bank of England Base Rate + 4.49%.)

In 2016 Barclays wrote to Mrs M to confirm the mortgage term would be ending in 2021 and reminding her that the MCA balance would need to be repaid in full at that time.

On 8 July 2021, shortly before the mortgage term was due to end, Mrs M complained to Barclays that the MCA had been mis-sold and that there had been irresponsible lending by the bank in relation to the MCA. Mrs M said that when she had experienced financial difficulties, the overdraft had been instantly accessible and had been impossible for her to ignore. Mrs M said that, in using the MCA, she had not been fully able to grasp the consequences of her actions.

Barclays, in its final response letter, said that it thought the complaint that the MCA had been mis-sold was time-barred, as the account had been taken out 15 years earlier. Barclays also said that the operation of the MCA was within its limits, as a result of which it was not flagged on its system. Barclays denied it had acted irresponsibly.

In September 2021 Mrs M sold her property and paid off the remaining mortgage balance and the outstanding MCA, which was at that point about £50,000.

Mrs M brought her complaint to the Financial Ombudsman Service. Barclays didn't agree to us looking at the complaint, saying it was out of time under our rules. An investigator looked at the time limits and was satisfied that the complaint that the MCA had been mis-sold was out of time. He was satisfied that we could look at the complaint about irresponsible lending from 8 July 2015 onwards, which was six years before Mrs M had first raised her complaint with Barclays.

Both Mrs M and Barclays accepted this and so the investigator went on to look at the merits of the complaint. He didn't think the complaint should be upheld. This was because the MCA had operated within its limits and so there was nothing that would have alerted Barclays that Mrs M might have been in financial difficulty.

Mrs M disagreed with the investigator's findings. She said Barclays had been aware she'd been in difficulty. This is because in July 2015 she'd paid in a £10,000 cheque from a loan into the account. Mrs M also said that the MCA reserve limit had been decreased in November 2015 by almost £7,000, but later began to increase with every £2,000 paid off the mortgage. In addition, Mrs M said she was sent a letter (which she has not provided to us) because she'd been paying the mortgage from the MCA and that Barclays would need to review the use of the account. Mrs M says that all this shows that Barclays was aware she was struggling financially.

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.

I will begin by confirming that I agree with the investigator's conclusions relating to our jurisdiction to consider this complaint. I'm satisfied the mis-sale complaint has been brought more than six years after the event (which was in 2006), and that it wasn't only in the three years before the complaint was first raised on 8 July 2021 that Mrs M first knew, or ought reasonably to have known she had cause to complain about this.

I'm also satisfied that we can only consider the complaint about irresponsible lending after 8 July 2015, which is six years before the complaint was first raised. There are no exceptional circumstances that would allow the time limit to be waived.

The crux of Mrs M's complaint is that she says it was irresponsible of Barclays to increase the MCA reserve limit by £2,000 every time the mortgage balance had decreased by this amount. Mrs M says she wasn't able to resist using this and that Barclays should have monitored her use of the account, particularly as she was in financial difficulty.

I think it's important to mention here that banking is largely an automated process managed by computer systems. Where the MCA is operating within its agreed limit, there would be nothing that would be flagged up on Barclays' system. The same applies with direct debits. If a customer provides a business with a direct debit mandate to take payments from a current account, and the direct debit is paid when it is called for by the business, there would be no reason for this to be flagged up, unless the direct debit was returned unpaid.

It's also not the role of Barclays to police or monitor customer spending; Barclays is required to administer the account in accordance with Mrs M's instructions, not to manage her spending for her. At some point, it appears Mrs M changed her direct debit mandate from her main current account so that the mortgage payments were being taken from the MCA instead. In other words, she was using money she'd already paid off the mortgage to make the mortgage repayments, which resulted in no actual debt reduction.

A change in the account from which the direct debit was being taken could only have been instigated by Mrs M, and so I'm satisfied this was a conscious decision of hers. Mrs M says that Barclays contacted her in 2019 about this, but even after that, Mrs M didn't change her direct debit back to her main current account.

By changing her direct debit mandate from her main current account, Mrs M would from then on have had additional funds in that account for her personal use – money that she would otherwise have had to use to pay the mortgage. And as I said above, because banking is an automated process, a change in the account number from which the direct debit was taken would not be flagged up unless there was a problem with the payment. I'm satisfied, therefore, that Mrs M knew that using the MCA for her mortgage repayment wasn't resulting in her mortgage balance decreasing. The MCA and annual mortgage statements reflected this.

I'm satisfied Barclays made Mrs M aware – from the annual mortgage statements and from correspondence sent to her for at least five years before the end of the term – that she would need to repay what she'd spent on the MCA by the end of the mortgage term. Yet despite being told about this, Mrs M didn't change her use of the MCA or put in place any repayment strategy.

There is nothing in the bank's records to show Mrs M ever contacted Barclays to say she was in financial difficulties. In addition, the MCA operated within its limits, and so was not flagged up on Barclays' system. I've not seen Mrs M's statements for her main current account, so I don't know how she was using that account, but it's not relevant for the purposes of this decision.

Mrs M wasn't obliged to use the MCA and I'm not persuaded that Barclays is responsible for her decision to do so. It's arguable whether Barclays should have noticed sooner that the mortgage direct debit was being taken from the MCA. Because accounts aren't monitored on an individual basis, this wasn't noted on Barclays' system until 2019.

However, even if Mrs M had switched her direct debit back to her main current account, the net position would have been the same because that account would have been reduced each month by the mortgage repayment, and I think it's more likely than not that Mrs M would have made up the deficit in what she wanted or needed to spend each month from the MCA.

As Mrs M said, she wasn't able to resist using the MCA. As a result, when the mortgage term came to an end, Mrs M sold her property in order to pay off the outstanding balance.

But I can't hold Barclays responsible for this. In all the circumstances, I'm unable to find Barclays to be at fault here.

My final decision

My final decision is that I don't uphold this complaint.

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 Mrs M to accept or reject my decision before 9 May 2023.

Jan O'Leary
Ombudsman