

The complaint

Mr B and Mrs G have complained that delay by Barclays Bank UK PLC in removing a legal charge from their property title caused delays in completion of their new lifetime equity release mortgage taken out through a different lender.

As a result of the delay, Mr B and Mrs G had two mortgage offers at interest rates of 4.99% and 5.28% respectively withdrawn. By the time Barclays had removed the charge and the equity release mortgage completed, the interest rate on the equity release mortgage had increased to 5.5%.

Mr B and Mrs G would like Barclays to compensate them for its error. The bank has accepted it made a mistake and has agreed to pay compensation.

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.

Secondly, Barclays has accepted it made an error, and that the consequence of that error is that Mr B and Mrs G have a mortgage at a higher rate of interest than if the error hadn't been made. Therefore the only issue I need to decide is what Barclays needs to do to put things right.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr B and Mrs G being identified. So for these reasons, I will instead concentrate on giving the reasons for my 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.

If Barclays had removed the charge in 2016 when Mr B settled his liability to the bank that had been secured by the charge, Mr B and Mrs G would have had no impediment to completing on their new equity release mortgage in 2022 at the initial rate of 4.99%. Their property was, I understand, otherwise unencumbered and so taking out the equity release mortgage should have been a very straightforward process.

Barclays has acknowledged that, because of its delays, Mr B and Mrs G had to take out a mortgage at a higher interest rate of 5.5% instead of the 4.99% they should have had. The bank has agreed to compensate them for the additional interest over the lifetime of the mortgage.

The mortgage offers show that the difference in interest charged over a 25-year period at 5.5% is almost £56,000 more than at 4.9%, so a significant amount over the term of the mortgage.

Initially our investigator asked Barclays to pay the interest differential as a lump sum, up to the point where the younger of Mr B or Mrs G passed away, went into long term care or reached the age of 88, or to the point where any early repayment charge ceased to apply. He also asked Barclays to increase an offer of compensation it had made for distress and inconvenience (£40) to £250.

However, the bank wasn't prepared to do this, saying that if it paid, say, 21 years' interest in a lump sum up front, there would be nothing to prevent Mr B and Mrs G from redeeming the mortgage much sooner than that, and thus they would have had a windfall to which they wouldn't otherwise have been entitled.

Instead Barclays said that, upon receipt of the annual statement sent each year, it would refund the interest. Barclays also said it would increase the offer of compensation, initially to £500, but the bank later revised this to £1,000. The investigator agreed that this would be a fairer way of resolving the matter, but Mr B and Mrs G did not.

Mr B, who has dealt with the complaint throughout, put forward an alternative proposal. He said that he and Mrs G would agree to either of the following resolutions:

- Barclays pay the £1,000 compensation, but then pay the difference in the interest annually, directly to his bank without any need for contact from him, until the mortgage is redeemed;
- or
- pay as a lump sum 50% of the interest differential calculated until his 88th birthday in 2053.

Barclays didn't agree to this, and reiterated that its offer to refund interest annually was a fairer outcome, and that the £1,000 offered for distress and inconvenience reflected the additional effort this would cause to Mr B and Mrs G.

Putting things right

I've thought about what both parties have said, and I can see the merit in both side's arguments. However, on balance, I am persuaded that Barclays' offer to reimburse the interest annually is the more fair and reasonable outcome.

We have to be fair to both parties, and I think that a lump sum payment of any amount (whether in full or 50% as Mr B proposed) has the potential to cause detriment to the bank and lead to what is known in legal terminology as 'unjust enrichment' for Mr B and Mrs G. That's because there is no guarantee they would keep the mortgage, and if they were to receive a lump sum of interest but then redeemed the mortgage they would have received a benefit to which they were not entitled. On the other hand, an annual refund will ensure that Mr B and Mrs G as well as Barclays are not financially disadvantaged.

I appreciate that this will result in some inconvenience to Mr B and Mrs G, as they will need to send their annual statements to Barclays. But it's reasonable for Barclays to be sent the annual statements, so that it knows that the mortgage is still running. The bank has provided an email address for this. However, I think it might also be helpful for Barclays to appoint a named staff member for Mr B and Mrs G to contact too, in order to ensure continuity and to reduce the need for Mr B and Mrs G to have to explain each year why they are contacting the bank. Barclays would need to ensure that there is continuity here and if the nominated staff member moves to a new role or leaves the bank, another is appointed.

I therefore direct Barclays Bank UK PLC, upon receipt of Mr B and Mrs G's annual mortgage statement each year, to calculate the difference in interest between a mortgage of £191,025 at 4.99% and the same amount at 5.5% and refund this to Mr B and Mrs G.

(To this end, if Mr B and Mrs G accept my decision, we can provide Barclays with copies of the mortgage offers for the 4.99% and 5.5% mortgages, both of which contain a table showing the annual accumulation of interest, which should assist the bank in its calculations.)

I am satisfied that an enhanced award of compensation of £1,000 for distress and (primarily future) inconvenience is fair and reasonable, and I direct Barclays Bank UK PLC to pay this to Mr B and Mrs G.

My final decision

My final decision is that I uphold this complaint. I direct Barclays Bank UK PLC to settle the complaint as set out above.

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 B and Mrs G to accept or reject my decision before 25 October 2023.

Jan O'Leary
Ombudsman