DRN-4436356

The complaint

Mr C's complaint arises from his mortgage accounts with Barclays Bank UK Plc.

Mr C, who has dealt with the complaint throughout, says that Barclays has incorrectly and unfairly failed to apply a term extension to the mortgage after he applied for, and was offered, a ten-year fixed interest rate product.

To settle the complaint Mr C wants Barclays to honour the terms of the mortgage offer and extend his mortgage terms to match the end date of the ten-year fixed interest rate product.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, Barclays has acknowledged it made a mistake, so I don't need to analyse the events in depth in order to decide whether or not the bank is at fault; all I need to determine is whether the redress already offered by Barclays is fair, reasonable and sufficient, or if there are any other errors for which the bank should be required to offer redress.

Finally, our decisions are published, so it's important I don't include any information that might lead to Mr C being identified. So for these reasons, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr C has a mortgage with Barclays originally taken out in 2009, which is split into three sub-accounts with total borrowing of about £1.4 million. The mortgage term is for 15 years.

In September 2022, when there was about two years remaining on the mortgage term, Mr C went online to complete an interest rate switch for one part of his mortgage. In error, a ten-year fixed rate of 3.05% was offered. Mr C, however, selected a two-year fixed rate of 3.13%.

Mr C then attempted to apply for a new rate for another part of the mortgage, and again the ten-year fixed rate of 3.05% was offered. Mr C applied for this and this was accepted. Mr C then called to cancel the two-year rate he'd chosen for the other part of the mortgage, as he wanted the ten-year rate to be applied to that part of the mortgage too. Barclays explained that if Mr C wanted a term extension, he'd need to have an appointment with a mortgage adviser and go through an affordability check.

However Barclays also later said (in error) that the mortgage would be extended to match the interest rate product.

Mr C complained. He wanted the ten-year rate on all three parts of the mortgage, and believed that this meant the terms were also extended by ten years.

Barclays acknowledged an error had been made. The bank paid Mr C £150 compensation, but wouldn't agree to extend the mortgage term or apply the ten-year interest rate product to the entire mortgage. The bank agreed to apply the 3.05% rate to the part of the mortgage for which the rate had been accepted, but wouldn't extend the term or apply the rate to the rest of the mortgage.

Mr C brought his complaint to our service. An investigator looked at what had happened. Although she initially thought Barclays should offer the rate for the whole of the mortgage, after further consideration, the investigator changed her view.

She was satisfied that Barclays' offer to apply the 3.05% interest rate for the remainder of the existing mortgage term on one part of the mortgage (account ending 3685, approximately £439,000)) was fair. However, the investigator didn't think Barclays was required to apply the ten-year rate to the rest of the mortgage, or extend the term on any part of the mortgage.

The investigator noted that when the mortgage term came to an end in January 2025, Barclays should not charge any early repayment charge (ERC) on account 3685, but the capital balance would be due to be paid at that date. The investigator also asked Barclays to pay an additional £150 compensation.

The investigator also clarified that this outcome only covered this one particular mortgage, and not another mortgage held by Mr C with Barclays, where he had also wanted to apply for a ten-year fixed rate product.

Barclays accepted the investigator's findings, but Mr C did not and asked for an ombudsman to review the matter. He does not understand why, when he received a mortgage offer for a ten-year fixed rate, and was told by Barclays that his mortgage was extended to 2033, that this doesn't constitute a binding offer to extend the mortgage term.

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.

First of all, I note that although the investigator referred in her findings to Mr and Mrs C, the mortgage account in question is in the sole name of Mr C, and so he is the only party eligible to complain about this mortgage account. I intend no discourtesy to Mrs C, but as she is not the account holder, she cannot be on this complaint.

Barclays doesn't dispute that it made an error in this case. Where a mistake has been made, I have to look at the consequences of that error, and to think about what would have happened and what Mr C would have done if the error hadn't been made.

I don't know why, when he applied online, Mr C was able to apply for a ten-year fixed rate when the mortgage term had only two years left to run; that shouldn't have happened, and was probably down to a software glitch or error in the bank's system.

If things had gone right, Mr C would only have been shown interest rate products that were actually available to him based on the length of the mortgage term and the loan-to-value ratio (LTV) of the property.

The crux of this complaint is that Mr C believes, having been offered a ten-year fixed interest rate product, this meant that Barclays agreed to extend his mortgage term by ten years, to end in 2033. However, that's not the case, and I'll explain why.

It's important to note that a mortgage loan and a mortgage interest rate product are two different things. A loan is the underlying transaction in which money is lent; the interest rate product is a separate set of terms that sit on top, and which can be renewed from time to time. For example, an agreement to borrow a specified amount repayable over a specified repayment period at the lender's standard interest rate is a mortgage loan; an agreement that for a certain period a fixed interest rate rather than the standard rate will apply is a product that sits on top of the loan.

In this case, the mortgage offer dated 3 December 2009 shows that the loan (in three parts) was granted over a 15-year term. The interest rate product for which Mr C applied in September 2022 shows that the interest rate product (notwithstanding it is a ten-year fixed rate) applied to the mortgage for the remainder of its term – not for the duration of the interest rate product.

I can appreciate Mr C's position – particularly after he was told by Barclays that the mortgage term would extend to match the end date of the interest rate product; this was, in fact, incorrect. But, in line with its regulatory obligations, Barclays cannot extend a mortgage term on an *ad hoc* basis, and I'm not going to direct the bank to do this, for the reasons given below.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) 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 at protecting consumers and encouraging 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 had passed tests under the old rules but wouldn't 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.

A variation of the mortgage term is a material change to the original loan. Mr C wants to extend the mortgage term by ten years, which is a two-thirds increase on its original term. Barclays is therefore entitled to carry out an affordability assessment as stated above, but shouldn't use this to decline the application if it is otherwise in Mr C's best interests.

The original mortgage term is due to end when Mr C reaches the age of 70, and Barclays' criteria provide that the maximum age at the end of the mortgage term is 70 or retirement age. It would therefore be reasonable for Barclays to investigate and consider whether or not Mr C would meet the bank's affordability criteria where he is asking for an extension of the mortgage term past the age of 70, subject to sustainability and plausibility of any potential employment or source of income.

In addition, this is an interest-only mortgage. I don't know what the intended repayment vehicle is intended to be (and I don't need to know for the purpose of this decision), but for any term extension it is reasonable for Barclays to want to consider the repayment strategy and ensure it both meets its current lending criteria and is likely to pay off the mortgage at the end of the term. Where the intended repayment strategy is the intended sale of the property, the bank's lending criteria include limitations on the LTV it will permit for this.

In the circumstances, if Mr C wants Barclays to extend the term, he will need to make an application in order that Barclays can give it due and proper consideration, in line with the requirements of MCOB and MMR, as set out above.

Putting things right

Barclays has agreed, having in error offered Mr C the ten-year 3.05% fixed rate for one part of his mortgage (ending 3685) that it will honour this for the remainder of the existing mortgage term (which is due to end in January 2025). I think this is fair in all the circumstances, given that, without the error which allowed the application to proceed, Mr C would not have been able to have that rate in any event.

I'm not persuaded that Barclays is under any obligation to offer the 3.05% ten-year fixed rate on any other part of the mortgage, as Mr C doesn't qualify for that rate.

For the reasons given above relating to MMR, I do not require Barclays to extend the mortgage term to match the expiry of the ten-year fixed interest rate product. If Mr C wants to extend the mortgage term, he will need to make an application to Barclays.

If Mr C repays account 3685 in January 2025 when the term comes to an end, Barclays should waive the ERC that applies on the ten-year fixed rate product. Likewise, if Mr C makes a successful application for a term extension which ends before the expiry of the ten-year fixed rate product, on repayment of account 3685 no ERC should be applied to that part of the mortgage.

I agree with the investigator's recommendation that Barclays should pay an additional £150 compensation for distress and inconvenience, on top of the £75 already paid, making £225 in total.

My final decision

My final decision is that I partly uphold this complaint. In full and final settlement I direct Barclays Bank UK Plc to settle the complaint as set out 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 C to accept or reject my decision before 2 January 2024.

Jan O'Leary
Ombudsman