

The complaint

Mr R has complained that Barclays Bank UK PLC has unreasonably and unfairly refused to agree to his proposals to repay mortgage arrears.

To settle the complaint, Mr R wants Barclays to offer him a new interest rate product, backdated to January 2022, and give him a further advance to clear his arrears and a second charge to another lender. Because of the stress Barclays has caused him by being told to pay the arrears, Mr R would like Barclays to reduce the arrears substantially, or write them off.

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, our decisions are published, so it's important I don't include any information that might lead to Mr R being identified.

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

This complaint arises out of unhappy circumstances – the breakdown of Mr R's marriage in 2020. The former matrimonial home is in the sole name of Mr R, with a mortgage Mr R took out in 2014 with Woolwich, the residential lending division of Barclays. The original mortgage was for £570,000 over a term of 23 years on a capital repayment basis. In February 2019 Mr R took out a second charge on the property with a different lender. In December 2019 Mr R took out a further advance of £146,000 with Barclays.

At the time these events began (2020) there was about £623,000 outstanding on the Barclays mortgage. However, no payments have been made since January 2022, as a result of which substantial arrears have accrued, which are now well in excess of £100,000.

I don't know the exact amount outstanding on the second charge, or whether it is in arrears or not, but in the papers Mr R has sent us, there is reference to a secured loan which had £310,000 outstanding as at October 2020.

Mr R and his wife, Mrs R, separated in early 2020. Mrs R remained in the mortgaged property, because she was running several businesses from the property. Mr R rented accommodation elsewhere. Mrs R agreed to pay the mortgage until the property was sold, but it appears she didn't do so. I understand Mrs R has since vacated the property and Mr R has resumed occupation.

When the pandemic hit, Mr R's income was affected, and took some time to recover. Barclays' notes show that there were concessions granted – some in line with Government requirements to offer payment holidays during the pandemic, and others in line with Barclays' obligations under the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) to help borrowers in financial difficulty. The arrangements were as follows:

Coronavirus payment deferral – May, June, July 2020

Second Coronavirus payment deferral – August, September, October 2020

Interest only arrangement – November, December 2020, January 2021

Payment plan arrangement – February, March, April 2021

Interest only arrangement – May, June, July 2021

Payment plan arrangement – August, September, October, November, December 2021

Payment plan arrangement – January, February, March 2022

The mortgage interest rate product taken out in December 2019 expired in January 2022. In the spring of 2022 Mr R approached Barclays for an interest rate switch, but at that time, due to arrears on the mortgage (at that time, about £40,000) Barclays wasn't able to agree this.

In October 2022, when the arrears were around £70,000, Mr R raised a complaint with Barclays. He was unhappy that Barclays hadn't done enough to help him. Mr R wanted to re-mortgage to pay off the arrears and the second charge, but Barclays had refused to help him.

In its final response letter, Barclays explained that the Customer Home Assistance Team (CHA) had attempted to assist Mr R, that he had gone through the bank's process with them to see if a forbearance interest rate reduction would be possible. However, as Mr R was still paying £1,745 to unsecured creditors, that situation would need to be addressed first. As a result, Barclays wasn't able to provide the assistance Mr R wanted.

Dissatisfied with Barclays' response, Mr R brought his complaint to us in April 2023. An Investigator looked at what had happened. In a very detailed letter dated 13 October 2023, he explained why he didn't think the complaint should be upheld.

The Investigator noted that Mr R only mentioned for the first time in May 2023 that he thought his ex-wife was making the mortgage repayments. However, this was inconsistent with the contact notes, which showed that Mr R was aware of the arrears from the outset.

Overall, the Investigator was satisfied that Barclays had given consideration to Mr R's proposals, but given the level of arrears and the payment history, he didn't think Barclays had acted unfairly.

Barclays accepted the Investigator's findings, but Mr R did not. He asked for an Ombudsman to review the complaint. Mr R has provided a very detailed response to the Investigator's findings, setting out a chronology of every contact he's had with Barclays. I confirm I've read it, but I won't be responding to each and every point, as I'm not required to. In summary:

- Mr R has reiterated all the reasons he's previously given about why he believes Barclays hasn't treated him fairly;

- he believes Barclays failed to advise him or provide him with options, which were available;
- instead Barclays refused to consider the options in context, exercise its discretion or take into account his individual circumstances;
- he has been advised that, where a first charge holder is contacted to give its consent to a second charge, the first charge holder (in this case, Barclays), would normally contact the borrower to see if they could instead offer a product, but Barclays failed to do this in 2019 when he took out the second charge, showing a lack of interest or “*commerciality*” from Barclays;
- although he had an explanation for how the arrears had arisen, Barclays refused to agree a further advance to pay them off;
- the reporting of the arrears on his credit file means that he has been denied the right of redemption to pay Barclays in full or to raise further finance to clear the arrears;
- other than Barclays, he’s been told by various Independent Financial Advisers (IFAs) that his credit profile is unblemished;
- if he had followed Barclays’ advice to stop paying his other creditors, it would have been “*financial suicide*”;
- he kept being passed to the CHA team, but they weren’t able to help him;
- after being sent documents in December 2022 for a meeting with a mortgage adviser, the meeting was cancelled and Mr R was told that the mortgage was with another department;
- he offered to pay £1,000 in April 2023;
- in May 2023 he was told he had to deal with the litigation team, when he went through the same things as before about being told to cancel his direct debit and not make any payment until an arrangement was agreed; and
- he has never heard back about his proposals put to Barclays in May 2023.

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 I said at the outset, the root of this complaint is the breakdown of Mr R’s marriage; this, combined with the pandemic, has had a serious impact on Mr R’s finances. I also have no doubt these events have also caused him considerable personal anguish. However, I have to put aside my natural feelings of empathy when reaching my decision, and consider it on the basis of the evidence.

I’m not required to reply to each and every point Mr R has made. My role is to review the matter, not re-investigate the complaint from the outset.

The crux of Mr R’s complaint is that he doesn’t think Barclays has treated him fairly. Mr R says that the solution to his financial difficulties is for Barclays to offer him a further advance to pay off his arrears and second charge, and to backdate a new interest rate product to January 2022. Mr R also thinks that Barclays should write off the arrears, either wholly or partially.

However, I disagree with Mr R that Barclays has treated him unfairly.

I will begin by addressing a point Mr R raised in response to the Investigator’s findings. Mr R says he has been advised that when Barclays was asked to consent to the second charge loan in early 2019 the bank should, unprompted, have contacted him to discuss a further advance instead, rather than letting him go ahead with the second charge loan at a much higher rate of interest. Barclays does not provide unsolicited advice or lending, as this would

be against its obligations as a responsible lender under MCOB. I am sorry Mr R was misled by whoever told him this.

In relation to financial difficulties, the starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

MCOB 13 sets out what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) and UK Finance also have their own guidelines about what they expects lenders to do to help borrowers, which mirror closely the requirements of MCOB.

A lender is required to explore ways to resolve an arrears 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 transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

Here I can see that, after the Covid payment deferrals, Barclays put in place various arrangements – short-term interest-only concessions and payment plans. However, by March 2022 there were substantial arrears on the account. I acknowledge that Mr R had agreed with his ex-wife that she would pay the mortgage while she was living in the property and running her businesses from it. The agreement reached between Mr R and Mrs R, however, was that the property would be sold, but this has not yet happened.

Barclays wasn't a party to that agreement and ultimately responsibility for ensuring the mortgage was paid lay with Mr R, notwithstanding any third party arrangement. I don't know if Mr R has any remedy through the courts for Mrs R to indemnify or compensate him, but that's not something that involves either Barclays or this service.

I don't think Barclays acted wrongly in cancelling the direct debit on the account. Where an account is substantially in arrears and a customer is in financial difficulty, unpaid direct debit fees will make the situation worse, not better.

Mr R thinks Barclays should have agreed to a product switch in March 2022. However, I'm not persuaded that the bank acted unreasonably in declining this. Barclays' criteria are that a borrower in arrears isn't eligible for a new fixed rate. There are good reasons for that – a borrower in arrears is more likely to end up selling the property or even have it repossessed, which would add an early repayment charge (ERC) to the outstanding debt.

However, notwithstanding the eligibility criteria, there are circumstances in which it might be fair to expect a lender to offer a new fixed rate – for example, where the borrower's circumstances are such that a reduction in the interest rate is enough to make the mortgage affordable and bring it back on track.

That's not the case here, given the level of overall debt, the cost of the second charge and the amount Mr R is paying to unsecured creditors. Balancing those considerations then, a new fixed rate tying Mr R into an ERC wouldn't have resolved the situation for Mr R, and risked making it worse. So I don't think it was unfair that Barclays wouldn't offer Mr R a new rate in 2022.

Capitalisation of arrears is one option open to a lender. What this means is that the outstanding arrears are added to the mortgage balance, and the monthly repayment calculated – so that the missed payments are made up over the rest of the term. So while

capitalisation makes arrears go away, it's not a solution in a case where the borrower currently finds the mortgage unaffordable. Because it increases the repayment, it just means the arrears will go up more quickly in the future. Because Mr R wasn't able to afford the mortgage as it stood, capitalising arrears would only have made his situation worse.

Mr R's solution to the unaffordability of the mortgage and second charge, and repayment of the arrears, is that Barclays should refinance the entirety of his borrowing, including the arrears *and* the second charge, onto a new mortgage at a fixed rate. On his complaint form, Mr R said he also wants Barclays to write off some or all of the arrears.

I'm satisfied there is no basis on which it would be fair or reasonable for Barclays to write off any part of the arrears; they represent missed mortgage payments over a long period of time, and are monies legitimately owed to the bank under the mortgage contract.

As far as re-mortgaging is concerned, Barclays is under no obligation to offer Mr R additional borrowing to pay off the arrears and second charge (which I understand is likely to be a total of about £500,000) when the mortgage has not been paid at all for about two years, and has been in arrears since April 2020. Barclays has explained that, on the information provided by Mr R there is a negative disposable income, and so the bank cannot agree to any further arrangements. I don't think it's unreasonable for Barclays to have no appetite to increase its exposure or risk, given the mortgage payment history and the prioritising of unsecured creditors. In addition, where affordability is an issue, Barclays is unable to lend.

I've given careful consideration to everything Mr R has said about what's happened in recent years. I do understand how difficult and frustrating Mr R's situation has been for him. His marriage broke down and his ex-wife didn't keep to her promise to pay the mortgage while she was living in the property. In addition, Mr R's income was affected by the pandemic. But I do think that Barclays treated him fairly throughout this period, putting in place appropriate arrangements in line with its obligations under both the Government pandemic approach and MCOB.

But the purpose of forbearance in situations like this is to give the borrower some respite to get things back on track. I'm satisfied that Barclays has done that, and it's done what it could to assist Mr R. Barclays isn't responsible for the underlying cause of Mr R's situation. Furthermore, whilst I understand Mr R's reasoning for prioritising unsecured creditors ahead of Barclays, his decision to put those creditors first has impacted Barclays' options in relation to how it has been able to assist, because Mr R has increased his indebtedness to the bank rather than making inroads into payment of the arrears.

Mr R has not been denied the right of redemption; I appreciate that he has been unable to find an alternative source of funding. Mr R says that, other than Barclays, his credit score is "*unblemished*". But Barclays is required to provide credit reference agencies with accurate information about the account. If Mr R disputes the accuracy of any of the data Barclays has recorded on his credit file, he'll need to take this up with the credit reference agencies or the Information Commissioner.

Ultimately the point is reached where all reasonable options open to Barclays have been exhausted. Whilst repossession is a last resort, that last resort is sometimes reached. Since March 2022 I'm satisfied Barclays has tried to work with Mr R to find a solution to his financial difficulties. However, Mr R's proposal is for Barclays to lend him more money to pay off other creditors, and to write off some or all of his arrears. For the reasons given above, I don't think that's reasonable, taking into account all the circumstances of this case.

I think it is also important to explain here that lenders will sometimes agree to put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them

to. We also don't have any power to adjourn court proceedings. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers using (or mis-using) our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them.

I do not wish to alarm Mr R, but I would not want him to be under any misunderstanding that we would tell Barclays that it must suspend any recovery action in the event of a new complaint being raised. Any decision to adjourn or suspend court action is a matter for Barclays's discretion, or for the Judge to decide. If the bank issues legal proceedings, it then falls within the remit of the court, not the Financial Ombudsman Service.

I'm aware Mr R has spoken to various IFAs and StepChange about his situation. I can only suggest he takes advice again to see what, if any, options remain open to him. I know this is not the outcome Mr R was hoping for, and I am truly sorry if my decision adds to his distress. But after considering everything Mr R and Barclays have said, I'm unable to find Barclays has treated Mr R unfairly or unreasonably in its approach to, and consideration of, his financial difficulties.

My final decision

My 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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 March 2024.

Jan O'Leary
Ombudsman