

The complaint

Mr and Mrs B have complained about the following matters in relation to their mortgage account with Barclays Bank UK PLC:

- that they have been overcharged interest by being kept on Standard Variable Rate (SVR);
- Barclays failed to offer them a new interest rate product;
- that Barclays has treated them unfairly and harshly in relation to arrears-handling.

Following a jurisdiction decision dated 26 February 2024, I have decided we can only consider the above issues from 11 November 2016 onwards.

Mr B has dealt with the complaint throughout, with the consent of Mrs B.

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 and Mrs B being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by 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 and Mrs B's mortgage is made up of four sub-accounts taken out in 2001 and 2002. The mortgages were initially on fixed rate products, two of which reverted to Standard Variable Rate (SVR) after September 2004. The other two accounts have been on SVR since January 2008.

The mortgage was originally on a capital repayment basis, but in November 2005, at the request of Mr and Mrs B, it was switched to interest-only. The term is due to end in December 2025.

Barclays' records show that Mr B was made bankrupt in 2006. Mrs B was made bankrupt in 2009. On 21 August 2012 Barclays removed the note on its records that Mr B was bankrupt, as he had since been discharged. On 22 October 2012 the Trustee in Bankruptcy (TiB) wrote to Barclays to say that the property had been taken out of the bankruptcy and no further action was needed by the bank.

In November 2022 Mr and Mrs B raised their complaint with Barclays. The bank issued two final responses dated 23 February 2023 and 1 March 2023. Barclays didn't uphold the complaint but offered a total of £450 for delay and poor customer service.

Mr and Mrs B didn't accept this and the complaint was raised with our service. At this point, Barclays offered an additional £200 for poor customer service.

The crux of the complaint is that Mr and Mrs B say that Barclays failed to offer them a new interest rate product, and that its SVR is too high. Mr and Mrs B are also unhappy about the contact from Barclays and its agents in relation to mortgage arrears.

An investigator looked at the complaint but didn't think it should be upheld. He was satisfied that Barclays had fairly applied its SVR to the mortgage account. The investigator was also satisfied that Barclays had treated Mr and Mrs B fairly in relation to mortgage arrears. He didn't think Barclays was under any obligation to consolidate mortgage arrears.

Mr B didn't agree and asked for an ombudsman to review the complaint. He considers it unfair that Barclays has provided information in confidence about how the bank sets its interest rates. Mr B says that he doesn't see how the complaint can be finalised until his rights under the Freedom of Information Act have been considered by the Ombudsman.

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.

Fairness of SVR: Mr B says that Barclays has unfairly applied SVR to the mortgage account. I note that each year Mr and Mrs B received annual statements for the mortgage which set out the interest rate that was applied.

Barclays has provided the Financial Ombudsman Service with detailed information about the reasons why it varied its SVR in the way that it did. The information Barclays has given us is commercially sensitive, so can be treated as confidential. But it's also relevant to the outcome of this complaint, so I'm satisfied that I can fairly rely on it when deciding the complaint. It's something that our rules specifically allow me to do. The information has been reviewed in line with Barclays's mortgage documentation, relevant law and regulations.

I've considered whether Barclays acted fairly overall. Having done so, I'm satisfied Barclays varied the SVR in line with the mortgage terms and conditions and that Barclays exercised those terms fairly. This means that I'm satisfied Barclays has not overcharged interest on the mortgage since 11 November 2016.

One of the considerations that I am required to take into account is relevant law. I consider that the application of the Unfair Terms in Consumer Contract Regulations to the relevant terms in this case falls into that category of relevant law. The way the UTCCRs apply to the relevant terms of Mr and Mrs B's mortgage contract is ultimately a matter for the courts. But they are a relevant consideration I must take into account when determining what is fair and reasonable in all of the circumstances of this case.

The crux of this is whether any of the terms, contrary to the requirements of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. As part of this, relevant considerations are:

- the extent to which the terms are sufficiently clear and transparent;
- the extent to which there were any barriers to Mr and Mrs B being unable to exit the contract.

At a general level, interest variation clauses such as those that applied to Mr and Mrs B's mortgage have a legitimate purpose and are common in financial services consumer contracts, particularly those of long or indeterminate duration, such as mortgage agreements.

A fair variation term can benefit both consumers and lenders, by providing flexibility and a wider choice to consumers and enabling firms to provide competitively priced products, knowing they can vary the interest rates they charge to reflect changes in circumstances, particularly in their own cost of funding.

A reversionary rate also permits lenders to provide for future changes that justify increases in the rate, and a lender's own costs of funds are by nature difficult to foresee.

When considering whether there was a significant barrier to exit, it is important to note that there was no ERC applicable to Mr and Mrs B's mortgage at the point it reverted to the SVR. So, if Barclays had exercised its rights as set by the variation terms, and Mr and Mrs B were unhappy with that decision, they were free under the contract to re-mortgage to another lender.

Overall I am not persuaded there is any basis to say that the variations Barclays made to its SVR resulted in Mr and Mrs B being charged an unfairly high rate of interest on the mortgage during the period I can consider. Nor does the evidence lead me to conclude that the interest rate applied during that period was unfair for any other reason.

In the circumstances, I'm satisfied that Barclays could reasonably apply SVR to the account and has done so fairly. I don't uphold this part of the complaint.

Failure to offer a new interest rate product: The mortgage reverted to SVR in 2008. Thereafter Mr and Mrs B could, if they had wanted to, have asked Barclays for a new mortgage interest rate product. The Financial Conduct Authority (FCA) sets out what a lender is required to do when administering a mortgage. Proactively contacting borrowers to invite them to take out a new interest rate product isn't one of those things. Barclays is under no obligation to offer a new rate unless it is specifically asked to do so.

Mr and Mrs B's mortgage has been in arrears for several years, and certainly throughout the period I am able to look at – from 11 November 2016. Where a mortgage account is in arrears, it's not usually appropriate for a lender to put the mortgage onto a new interest rate product. That's because any new product will come with an early repayment charge (ERC). So if borrowers are already in financial difficulty and in danger of potential repossession or having to sell the property of their own volition, an ERC will increase the amount they owe to the lender on redemption.

I note payment plans were agreed and sometimes broken, and legal action was taken by Barclays in 2019, which was later put on hold. Mr B also told Barclays several times that he was awaiting a large settlement of several millions of pounds from a court case, on receipt of which he would pay the mortgage off in full.

In the circumstances, even if the bank had been obliged to offer Mr and Mrs B a new interest rate product (and for the reasons given above, there was no such obligation) it would have been irresponsible of Barclays to have done so, tying Mr and Mrs B into an ERC. This is because the ERC would have increased their indebtedness to the bank, which would not, given their financial circumstances, have been in their best interests.

I therefore don't uphold this part of the complaint.

Arrears-handling: In order to preserve Mr and Mrs B's privacy, I won't go into detail about their personal circumstances from 11 November 2016 onwards. However, Mr B has provided details of what's happened with him and Mrs B, and the bank's contact notes also provide further details. However, the arrears on the mortgage are around £18,000.

Suffice it to say that in recent years Mr and Mrs B have gone through a lot, not just in terms of their financial and business situation, but in relation to their health. I have no doubt that the legal action Mr and Mrs B were involved in relating to their former business was also extremely stressful for them, as well as them having to deal with their separate bankruptcies.

Against this background, I can see that from 11 November 2016 onwards Barclays put in place a number of measures to help Mr and Mrs B. Payment arrangements were made, but not always kept to. Barclays also noted Mr B's assurances that he would be repaying the mortgage in full when the legal proceedings he was involved with were settled.

Barclays also allowed a payment holiday for seven months in 2020, one more month than Barclays was obliged to provide under Government guidelines put in place during the pandemic. Once that period of support ended, Barclays wrote to Mr and Mrs B confirming that the bank now needed them to resume payments. Unfortunately no payments were received to the account for more than a year, and there had been no contact since December 2020.

In March 2022 Barclays decided that it would request contact from Mr and Mrs B, call them at least once a week and progress to litigation if there was no response. Barclays also needed medical evidence of any illness/disabilities. Barclays also instructed a field agent to visit in early 2022, but Mr and Mrs B weren't prepared to meet with the agent, although they said they were willing to discuss proposals. Barclays noted that, despite this, Mr and Mrs B hadn't been in touch with any proposals.

The matter was escalated to solicitors. I understand Mr and Mrs B sent some information to the solicitors in November 2022 about their income and expenditure and payment proposals, which was forwarded to the bank. However, it wasn't sent to the correct section and wasn't scanned. Barclays therefore didn't respond to it.

I've thought about whether Barclays has done enough to help Mr and Mrs B. Overall, I'm satisfied the bank has done what it could to help them.

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.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) also has its own guidelines about what it expects lenders to do to comply with MCOB, 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. This would include, for example, temporary unemployment, or where a borrower is recovering from an accident, or has been on maternity leave, and is due to return to work.

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. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

Mr and Mrs B's financial difficulties are long-term and are likely to be continuing for the foreseeable future. The mortgage is already interest-only, and there have been payment deferrals and payment arrangements in place. Capitalisation of arrears would not help in this situation, as doing so would increase Mr and Mrs B's monthly repayments.

In all the circumstances, taking into account all the financial difficulties and personal and business hardships Mr and Mrs B have been through, I'm not persuaded that Barclays could have more to assist.

I do agree, however, that the bank's customer service could have been better, and that some compensation is due for this.

Putting things right

Barclays has accepted that it took too long to respond to Mr and Mrs B's concerns. In its final response letter issued in February 2023, Barclays offered compensation of £150. The bank offered another £300 in its final response dated 1 March 2023. Because Barclays didn't review Mr and Mrs B's income and expenditure details and proposals in late 2022, the bank has offered an additional £200 compensation. Overall, I think this is fair and reasonable in all the circumstances, and proportionate to the poor customer service given to Mr and Mrs B.

Other matters

Barclays has told us that it is willing to work with Mr and Mrs B to try to find a solution to their financial difficulties. The bank would only look at repossession as a last resort. Barclays' notes show that Mr and Mrs B have contacted the Department for Work & Pensions to claim Support for Mortgage Interest, which will, if the claim is accepted, provide some payment towards the mortgage interest.

Barclays has also explained it would encourage Mr and Mrs B to contact the bank to see what options, if any, might be available to them, subject to them meeting affordability criteria.

It might also help Mr and Mrs B to speak to an independent financial adviser to discuss their options. They may be eligible for a lifetime equity release mortgage, or even to re-mortgage to another lender. Mr and Mrs B can find details of financial advisers on the FCA website at: <https://www.fca.org.uk/consumers>.

My final decision

My decision is that, in addition to the £450 already paid, Barclays Bank UK PLC must pay £200 compensation to Mr and Mrs B for poor customer service. 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 discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 26 March 2024.

Jan O'Leary
Ombudsman