

The complaint

Mr and Mrs D complain that they booked a fixed interest mortgage rate with Barclays Bank UK PLC that they understood was valid for 180 days. But Barclays then said it was only valid for 90 days, and the new rate had been applied already, so they couldn't change.

What happened

Whilst this complaint is brought by both Mr and Mrs D, as the mortgage is in both their names, our dealings have been with Mrs D. So I'll mainly refer to her in this decision.

Mrs D said she has three parts to her mortgage. Two of these were interest only, on a tracker rate, and Mrs D wanted to reserve a fixed rate for those parts of her mortgage.

Mrs D said on 5 October 2022, she reserved a rate of 4.65% fixed for 5 years, with a fee of £999. Mrs D said she understood she had 180 days from then to decide whether she actually wanted that rate to be applied to the two parts of her mortgage which were on a tracker rate. She said this was clearly and explicitly confirmed by Barclays afterwards, on a number of occasions.

The first time Barclays told her this was on 20 October. Barclays said she could postpone implementation of the rate until 27 March 2023, or cancel it entirely before then, and opt for something else.

Mrs D said she tried, on this call, to postpone implementation of the rate until 31 December 2022, but that wasn't done. The new rate (which increased her monthly mortgage costs) was implemented at the start of November. She complained, but she said it took Barclays a considerable time to take this rate off her two tracker mortgage accounts again, and in the meantime, she was being overcharged.

Mrs D said in mid-December, she asked to postpone implementation of the rate again, this time to 14 February 2023. The next day Barclays emailed her back, and said it would only hold this rate for her for 90 days, not 180. The latest date she could implement this rate was 3 January 2023. But Mrs D said that after this, she was again told the limit was 180 days.

Barclays finally responded to Mrs D's complaint on 3 January 2023. It upheld her complaint, because she'd been misadvised on the phone. Barclays said it would return the money she'd been overcharged for her mortgage in November and December, as the rate was applied earlier than she'd wanted. Barclays offered her £400 in compensation for this. But Barclays also told her that the rate of 4.65% which she had booked in October, had been applied to her two tracker mortgage accounts that day, and she was tied into it.

Mrs D has told us since that if Barclays had honoured the 180 days that her offer should have been valid for, then on 10 March 2023, she would have cancelled the fixed rate she'd previously reserved, and taken a five year fixed rate at 4.0% (with a £999 product fee).

Barclays said when Mrs D reserved her rate, she was able to book a rate 90 days before the expiry of her existing product. This changed shortly after, so customers could then book a rate 180 days before a product expired. But that extended period didn't apply to Mrs D.

Barclays said it was sorry that Mrs D had been wrongly informed. But it wouldn't remove the rate from her mortgages and allow her to hold the rate for a 180 day period. It said she was now tied into this rate, and would need to pay an early repayment charge ("ERC") if she wanted to change it.

Our investigator didn't think this complaint should be upheld. She said when Mr and Mrs D applied for the mortgage rate, it could only be held open for them for 90 days. She said Barclays had refunded the money it wrongly charged because it had applied the rate before this 90 day period was up, and she'd asked Barclays to provide its calculations for that. But she didn't think Barclays made a mistake by applying the rate at 90 days after it was reserved. She accepted Barclays had given Mrs D incorrect information, but she thought its payment of £400 did provide a fair and reasonable outcome to this complaint.

Mrs D didn't agree. She said she'd repeatedly been given incorrect information by Barclays, and its mistake would cost her over £9,000. Mrs D queried how we'd decided she had only a 90 day window for her mortgage offer, when she applied. She said Barclays told her this 90 days policy was never communicated to its customers. And she said because she passed the deadline without knowing it would be applied, she was locked into this mortgage.

Mrs D thought Barclays only responded to her complaint in early January, when she was already locked into the mortgage rate, on purpose. And Mrs D said what Barclays had done flew in the face of the Mortgage Code of Conduct.

Mrs D wanted Barclays to either put her on the 4% product she said she would have chosen, in March, or to leave her on the existing product and pay the difference. Because no agreement was reached, this case then came to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Mrs D said she would like to speak to me before I reached my decision. However, I do think her appeal document sets out her case very clearly. And, as I've reached my view on a different basis to that of our investigator, I think I should set that view out, and allow both Barclays and Mrs D to consider this before responding.

The mistake Barclays made in applying Mrs D's mortgage reserved rate in November 2022, has since been rectified. So, although I've taken into account the inconvenience this caused Mr and Mrs D in considering the appropriate level of compensation in this case, my decision focuses on the issue still in contention – how long Mrs D should have been allowed to hold her reserved mortgage rate for.

Barclays told us that in October 2022, shortly after Mrs D booked her rate, it changed the underlying position, so that instead of being able to remortgage 90 days before the old rate expired, customers could then remortgage 180 days before the old rate expired.

But Mrs D wasn't on a fixed interest rate. The two parts of her mortgage she wanted to change were both on tracker rates. So she had no expiry date for an existing deal. Mrs D had understood that what she could do, in her circumstances, was to book a new rate

for the two parts of her mortgage which were then on a tracker rate, and hold that for a while. She could postpone the implementation of this rate. That effectively meant she had a mortgage rate locked in, but she wasn't committed to taking it.

Barclays hasn't suggested Mrs D was wrong about that. It's just said that the period the rate was locked in for, in Mrs D's case, was only 90 days, not 180. It said she reserved her rate just before the change it was making, was implemented.

Barclays hasn't shown our service that it had told Mrs D the rate she secured would only be valid for 90 days, when she applied. All it appears to have promised then, is that Mrs D could defer this rate by around a month, to the start of November 2022.

But Barclays accepted it then wrongly told Mrs D she could extend this offer, deferring implementation of the rate, for 180 days, a number of times after this. Disappointingly, Barclays also appears to have got this wrong again, after it had attempted to correct the mistake it made.

Mrs D sent us a partial screenshot from Barclays' website saying rates can be reserved up to 180 days beforehand. But her letter to our service suggests this screenshot was taken much later. And Barclays has now been clear that when Mrs D reserved the rate, it was only valid for 90 days. It explained the mistakes in advising Mrs D on this by saying this position changed not long after she'd secured her offer. I think the position at the time is likely to have been that Mrs D's rate was only actually valid for 90 days.

Because Barclays' messages on this were inconsistent, I think it's likely that Mrs D didn't realise before it was applied that her mortgage offer was only valid for 90 days, not 180 days, so she would need to decide whether to accept or lose the offer by early January 2023. And I also think it's likely that she didn't realise Barclays would simply apply the offer, when she'd already asked it to reschedule this.

I don't think the conflicting information Barclays gave on this, means it does have to offer 180 days now. That's because the mistake Barclays made wasn't the times that it told Mrs D her rate was only valid for 90 days. It's the times when it told Mrs D that her rate would be valid for 180 days. (I know Barclays did make this mistake repeatedly, and almost from the outset, as Mrs D was advised of this as early as late October, but I've seen a number of internal messages which confirm Ms D was wrongly advised on this.)

So what I have to think about is what would Mrs D have done, if she'd been properly advised, and told the rate would only be valid for 90 days? I know that rates dropped again after the rate Mrs D had secured was applied to her account. But I have to decide what it's most likely Mrs D would have done at the time, without the benefit of hindsight.

I've thought about whether, if Mrs D had been properly advised on her first call with Barclays, on 20 October, she would have simply applied again, for a new fixed rate, which could then have been valid for 180 days. But Barclays' fixed interest rates rose in early October to 5.45%, almost straight away after Mrs D fixed her rate, and then didn't drop back below this until later in January. So I think if Mrs D had been correctly advised, on her first call to Barclays on 20 October, and subsequently, then what she would have done was to keep her rate of 4.65%, reserved for 90 days.

So in late December or very early January, Mrs D would have had to decide whether to apply the reserved, soon to expire, rate of 4.65% to her two tracker mortgage accounts.

Mrs D said she was keeping a close eye on the rates Barclays was offering. So she may know that, at the time when her reserved rate was going to expire in early January,

Barclays' five year fixed rate hadn't yet dropped from 5.45%. And in December, shortly before Mrs D would have needed to make a decision on whether to take the reserved rate, the underlying Bank of England base rate had risen again, this time by 0.5%.

I know Barclays did then start to reduce its interest rates again later in January, but Mrs D couldn't have been sure this would be the case, on 3 January 2023. And the decision she had to take then, was whether to take up the offered rate of 4.65%, or whether to allow that offer to lapse, knowing that Barclays would then only have offered a five year fix at the significantly higher rate of 5.45%.

I think if Mrs D had been properly advised by Barclays, and told the rate she'd booked really was only valid for 90 days, then she would have been likely to take up this offered rate on 3 January, and ask Barclays to apply the reserved rate to the two tracker parts of her mortgage then. And because of that, I do think the payment Barclays has made of £400, for the repeated mistakes it made about how long her reserved rate was valid for, and for wrongly applying that rate in November 2022, does provide a fair and reasonable outcome to this complaint. But this decision is provisional, I will consider any further argument or evidence either side may offer, before I finalise my decision.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

Barclays said it agreed with my provisional decision, and had nothing to add.

Mrs D has provided a number of responses to my provisional decision, commenting in detail. I'm aware that here, as elsewhere, I've summarised those arguments in less detail. No discourtesy is intended by that, it simply reflects the informal nature of this service. I have read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues.

Mrs D's first response set out that she didn't agree with my overall conclusion, that if she had been properly advised, she would have opted around the end of 2022 or start of 2023 to take out the fixed rate at 4.65% which had been reserved for her. She did agree that she would have been unlikely to reserve a fixed rate again a few days later, to get a rate reserved for 180 days, because the best fixed rate she could then have obtained was higher.

Mrs D said she may well have taken a tracker product. She'd used those extensively in the past, she felt they saved money overall, and had allowed her to make occasional overpayments. She said she would likely have reserved a tracker, and as evidence of her general preference for trackers, she pointed to the remaining part of her three-part mortgage, which is still on a tracker rate, and the fact she didn't immediately change to the fixed rate when her existing trackers became more expensive. Mrs D also argued she would have maintained an overview of the whole mortgage market, not just Barclays' products.

Mrs D took issue with my presuming her choice, in hindsight. She said even she couldn't do that now. She thought she would have secured a better rate, probably a tracker, within the first 90 days after she reserved her rate with Barclays, and that would have given her more time to make a choice.

But Mrs D thought the important thing wasn't what she would have done, if she'd been told her offer only lasted for 90 days. She thought I'd quite wrongly dismissed the advice she was given that her offer would last for 180 days. Mrs D said this was a verbal agreement, which she said was legally binding in UK law. She also said communications from Barclays ought to be "*clear, fair and not misleading*" under the relevant FCA rules. She said I must enforce this, and the only fair conclusion was for Barclays to honour this legally binding verbal contract, allow her the 180 days, and give her the 4% fixed rate which was available later.

Mrs D then wrote again, to say that although I'd referred to conflicting information, she had only been told she had 90 days once, on 16 December 2022, by email. She said she rang about that right away, and Barclays told her on the phone that this 90 day validity for her offer was wrong. She also queried whether Barclays had internal notes supporting what I'd said, about the window for her offer being only 90 days.

Mrs D also asked again to speak to me, so I could hear how very genuine her case is.

Because Mrs D asked to see evidence in this case, our service arranged for this to be sent to her. Mrs D then commented again. She said that she could now see there was a more attractive tracker, at 0.75% over the Bank of England base rate, which she qualified for.

Mrs D said some of the evidence wasn't easy to decipher, but the events started too late, as they didn't cover the first, and most important contact with Barclays, on 20 October 2022.

Mrs D said there was also clear and deliberate evidence of tampering with the paper trail, by Barclays, because she could see that all relevant information to her case had been pulled and re-entered in one lump, in late December 2022. Mrs D said she could still find no evidence that she was ever told she had 90 days until 16 December 2022, then only by email, and this was corrected. And she said evidence had been tampered with, to remove the times when she was told she had 180 days. Mrs D wanted me to listen to the call recordings, so I could hear that she'd repeatedly been told this.

Mrs D said the evidence Barclays had provided of a change of policy after she'd secured her fixed rate, was also evidence that Barclays had purposefully withheld this knowledge from her, and behaved fraudulently.

Mrs D concluded by saying she now felt I should throw out all the evidence Barclays had supplied, and find against Barclays.

Firstly, I'd like to deal with Mrs D's request to talk to me. I don't think it would be consistent with the independent role of our service, for me to talk to one of the parties alone, at this point in proceedings. Nor do I think that's necessary here. Mrs D's comments are clear. And I have no doubt that they are indeed sincerely argued.

I will respond to Mrs D's arguments in reverse order, starting with the reliability of evidence from Barclays, including whether it's fair to rely on this evidence, and whether Barclays has shown that Mrs D was told about a 90 day deadline on more than one occasion.

Firstly, I should say that the format in which Barclays supplied its information about Mrs D's complaint, isn't meant to be a strict timeline of events. Rather, it is a history of Barclays' own review of the complaint. So the series of events pulled together on one date, which Mrs D perceives as a clear indication of fraudulent behaviour, is only evidence of Barclays' consideration of these matters, on that date.

The accusation that Barclays has behaved fraudulently here, either in tampering with evidence, or in deliberately withholding information from Mrs D, is a serious one. I haven't seen anything to make me think that is likely to be the case.

Mrs D says the evidence Barclays sent us doesn't show she was told about the deadline of 90 days to make a decision until 16 December 2022. I note Mrs D received confirmation of the position in writing then. And I think she was also then told about this on the date of the deadline itself, 3 January 2023.

I should also note that in Mrs D's own complaint to Barclays about this, she herself only refers to one instance of being told that she had 180 days, which was on the date that Barclays accepts Mrs D was misadvised, 20 October 2022.

I don't think it would help to listen to the numerous calls Mrs D says she had with Barclays, when she says the deadline of 180 days was confirmed. That's because I think it's clear from the complaint she made at the time, that Mrs D was relying on one instance of substantive advice, given on 20 October 2022. I don't think it would change the outcome of this case, if other agents agreed with the previous advice either between 20 October and 16 December, or indeed after this.

Mrs D was then given very clear, and written, advice about the expiry date for her reserved mortgage rate, on 16 December. This advice was stated to come from Barclays' specialist Rate Switch team. I understand this position was also then confirmed verbally in response to her complaint on 3 January 2023.

I continue to think Mrs D was misadvised during the course of her mortgage offer. I don't think Barclays' communications met the standard of "*clear, fair and not misleading*". But that doesn't mean I can just adopt the outcome Mrs D would like.

I'd like to turn to Mrs D's argument that the advice she was given forms a binding contract between her and Barclays, and is enforceable. I should note two points here, one is that our service provides an informal dispute resolution service, and the second is that although I have regard to the underlying law, my obligation is to determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

I think, therefore that it would be appropriate here just to say that I haven't reached the same conclusion as Mrs D, as to the effect of any mistaken reassurance Barclays may have given her, that it would hold this rate for her for 180 days. I don't agree that this is the basis on which I should conclude this case. However, it is of course open to Mrs D, if she wishes, to reject my conclusions and to air her concerns in court.

That brings me to Mrs D's third point, that our service cannot, and must not, presume the decisions she would have taken at the time, if she'd been properly advised. I'm sorry to have to tell Mrs D that I do still think we need to consider what her steps would have been, if she had been properly advised throughout, because I still consider that this is the basis on which this case should be resolved.

Mrs D said we should look at the actions she took at the time. I do think those are relevant.

Mrs D says she may well have taken up a tracker mortgage. She said she'd previously had this mortgage type, and felt it was a better deal overall. However, most of the period Mrs D has referred to, when she held tracker mortgages, was a lengthy period of relative interest rate stability, and from the end of 2008 until the end of 2021, historic lows. The mortgage market in late 2022 was very different, and the news coverage about future uncertainty in the market was significant.

I don't think we can assume Mrs D would, in this very different situation, have preferred a tracker mortgage, because of her previous preference for a tracker mortgage, or from the fact that she left one part of her mortgage (by far the smallest part and the only part of the mortgage on a repayment loan) on a tracker arrangement. I think this is more likely to be because leaving this part of her loan on a tracker meant she could still make overpayments, as she said she'd done previously, without incurring an ERC. I still think Mrs D was likely to have opted, if she was properly advised in late 2022, for the certainty of a fixed rate.

Mrs D also says she would, if she'd realised she only had 90 days, have definitely consulted a broker during this time, so she said it wouldn't be fair now to act without considering the whole of the market. But Mrs D wasn't prevented from talking to a broker anyway, to see if she could do better elsewhere. And there's no evidence at all that Mrs D did talk to a broker after 5 October, when she booked a rate with Barclays. It seems more likely that Mrs D had decided that she could not do significantly better, by moving away from Barclays, and had decided to opt for the convenience of staying with her current provider.

I understand the doubts Mrs D has set out about recreating what she would have done if she'd been properly advised. I accept that this is a difficult task, and particularly in this case. However, I'm sorry to tell Mrs D that I've not found her further arguments on this point as persuasive as she may have hoped. I do still think that if Mrs D had been properly advised by Barclays throughout, she would have opted to implement the rate of 4.65% which she had booked, either at the end of December 2022 or the start of January 2023.

For those reasons, I haven't changed my mind about the appropriate outcome in this complaint. I still think it provides a fair and reasonable outcome to this case, for Barclays to have paid £400 in compensation. So I'm sorry to have to tell Mrs D that I still don't think this complaint should be upheld. I'll now make the decision I originally proposed.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 11 March 2024.

Esther Absalom-Gough

Ombudsman