

## **The complaint**

Mr L has complained that Barclays Bank UK PLC wouldn't allow his mortgage application to complete in November 2022 as it said the mortgage offer expired in September 2022.

## **What happened**

Mr L was a first time buyer and he applied for a mortgage with Barclays through a mortgage broker.

Barclays issued a mortgage offer on 2 March 2022 for a loan of £152,499 (including a £999 product fee) over a 35-year term on a repayment basis. The mortgage product was to be fixed at 2.18% until 31 May 2027, and the offer said it was valid until 1 September 2022.

Unfortunately, there were delays in the conveyancing as the sellers were extending the term of the property's lease.

On 25 August Mr L's solicitor discussed with Barclays the possibility of an extension to the mortgage offer. Barclays said it could agree to a two-week extension as long as there was a certificate of title on file to show that the mortgage would complete within the two weeks (giving until 15 September) and once it had that on file the broker could contact Barclays for the extension to be put in place. The solicitor was told that if completion couldn't take place by 15 September then the application would need to be rekeyed by the broker.

On that basis the solicitor submitted the certificate of title on 31 August for completion on 15 September, and asked that the funds be released on 14 September so they would be received in time.

Barclays issued a new mortgage offer on 7 September. Everything remained the same from the March offer other than the fact there was a new account number, and it said the offer was valid until 6 March 2023.

On 14 September the solicitor emailed Barclays to ask that the certificate of title be cancelled as completion wouldn't be taking place on 15 September. Barclays said that as the funds had already been released the solicitor would need to return them, which the solicitor did.

On 18 November the solicitor submitted a certificate of title for the second mortgage offer for a completion date of 21 November, and Barclays said the case had been marked as gone off and the broker would need to submit a new application.

A complaint was immediately raised with Barclays and, as a response hadn't been received, Mr L referred that complaint to us on 21 January 2023.

Barclays responded to the complaint on 23 February. It apologised for the delay in responding to the complaint, and that a mistake was made in the second mortgage offer giving a deadline of 6 March 2023, rather than 15 September 2022. However it said the error didn't change anything, with the reasoning being given as (I quote verbatim):

*“Please be advised that, delayed completions process is the application would close if the case does not complete within 28 days when the funds were released. This is In the Lenders Handbook solicitors have access to. The process is also confirmed in the letters sent to the solicitor from delayed completions.*

*The investigation given by Pre and Post offer review found that the underwriter was at fault for not adding adhoc condition, however this did not result in the decline. Further agent incorrectly accepted solicitors’ email and failed to inform broker to re-submit the case as case already rekeyed once. Also funds were released and returned from solicitors due to completion delayed however feedback to be provided as correct action has been taken on the same day by another agent.*

*Errors by the underwriter for not applying adhoc conditions to the offer for two weeks rekey extension meant that offer was sent with date of the 6 March 2023. Barclays had confirmed this secondary and current offer was sent in error and was not valid and that you were required to submit a new application. New application was submitted the 29 November 2022 and it has been declined due to policy not being met for affordability and this is internal policy due to changes in inflation/ current economy.*

*Once the funds have been sent, the bank’s offer has completed as per policy. As the extension was requested after the funds had been released by the bank, the solicitors had to return the funds and were made aware of the 28 days time period to re-request. Although offer condition was not added to the rekey extension, the solicitors were aware of the time period to re-request the funds as per our policy. The new Certificate of Title (COT) was sent on the 18 November 2022 for 21 November 2022 completion, which had passed the 28 days.*

*Your latest application has been declined due to affordability policy – the bank cannot override this as the internal scoring has failed. Although you stated that there has been no changes in income or circumstances, the status of inflation since first applying would impact any affordability assessment. The bank would not be able to honour the original rate applied for as the offer has now expired and cannot be sanctioned on a new application.”*

Our Investigator upheld the complaint. He said the new offer superseded the solicitor being told the extension was for two weeks, and there was no reason to question its validity. He felt Mr L had relied on the September offer to his detriment, and had that offer not been issued (or had it contained the correct deadline of 15 September) then Mr L would have applied for a replacement mortgage at the time, rather than waiting until the end of November by which time economic conditions had changed substantially.

To put things right our Investigator said Barclays should pay £500 compensation. In addition he said Barclays should refund the difference (until 28 February 2025) between the rate Mr L got elsewhere and the rate Barclays had available on 7 September 2022.

Barclays didn’t agree with our Investigator’s assessment and so the case was passed to me to decide.

### **What I’ve decided – and why**

I issued a provisional decision in January 2024, the findings of which said:

*“Barclays has accepted it made a mistake with the September mortgage offer, saying the underwriter should have amended the completion deadline from 6 March 2023 to 15 September 2022 before it was issued. It’s not in dispute that Barclays didn’t intend to give a further six months for this mortgage application to complete. But I can’t decide this*

complaint based on what it intended.

The offer issued in September says the following:

*“We can withdraw the offer or change its terms (whether or not you have agreed to buy the property), but only before the advance is made under the mortgage, in the following circumstances: a) where we become aware or suspect that any information you have provided to enable us to make our lending decision is incorrect or misleading; b) where any information that we have obtained materially changes and such change affects our decision to lend; c) where you request and we agree to a variation in the amount of the loan; d) following internal investigations and/or advice from our solicitor, valuer or other professional adviser which would directly affect our decision to lend as the Bank's security might not offer adequate security or the security the Bank would have expected; e) where it appears that the mortgage will be in breach of the law; f) to change the offer so as to correct an error in it (such as inconsistent or inaccurate particulars of you, the property or the terms of the mortgage).”*

A mortgage application should be considered fairly and in line with relevant law and regulations. Of particular relevance to this complaint is the part of the mortgage rules that says that when a lender issues a mortgage offer it is a binding offer – which means that (subject to any lawful conditions included in the offer) the lender is bound by the offer and cannot withdraw it.

In this case, Barclays issued a binding offer in September 2022 which had a completion deadline of March 2023. It could be argued that Barclays withdrew the offer to correct an error in it, but it didn't notify anyone of that until the solicitor tried to obtain the funds so the property purchase could complete, two months after the offer had been issued. And that also wasn't the explanation Barclays gave in its response to the complaint. Instead it said:

*“Once the funds have been sent, the bank's offer has completed as per policy. As the extension was requested after the funds had been released by the bank, the solicitors had to return the funds and were made aware of the 28 days time period to re-request.”*

But the second mortgage offer didn't complete. The certificate of title the solicitor submitted at the end of August 2022 contained the first mortgage offer's account number, so those were the funds the solicitor requested. It couldn't have requested the funds under the second mortgage offer as that offer wasn't issued until two weeks after the certificate of title had been submitted. The second mortgage offer contained an entirely new account number, and the funds weren't requested on that account.

Barclays made what was a small typographical error – but that error had far-reaching consequences for Mr L, and I find that Barclays is responsible for putting things right.

However, I don't think I can fairly say that Barclays should be bound to that incorrect offer. As I've said, the mortgage offer was allowed to be withdrawn to correct an error in it, and the expiry date of March 2023 was an error. The mistake Barclays made here was issuing an offer with an incorrect expiry date. Had that mistake not been made, I think it is more likely than not that Mr L would have applied for a new mortgage product in September when it became apparent he wouldn't be able to complete before 15 September.

It follows that it wouldn't be fair for me to require Barclays to refund the difference between the interest rate Mr L actually took in December 2022 with the other lender and the rate in the Barclays' offer. Had things gone as they should, that rate would never have been available to Mr L for a completion date after 15 September and therefore this is not a loss that flows from Barclays' mistake.

Instead his loss is that he was denied the opportunity to apply for a new rate in September 2022 as he was under the mistaken belief that he didn't need to. For that reason I agree with our Investigator that the fair way to put things right is for a comparison to be made between the rate Mr L obtained elsewhere, and the rate he could have obtained with Barclays at the point I think a new application would have been made.

I don't agree with our Investigator that would have been as early as 7 September. That's because the broker's contact history shows that on 7 September Mr L thought the two-week extension would be enough, with the broker only confirming it wouldn't be on 8 September. The broker messaged Mr L about a new application that afternoon, with nothing progressed at that time.

That all then fell away when it became apparent the following week that a new mortgage offer had been issued on 7 September, with Mr L saying on 13 September that a new rate wouldn't be needed as "*...they have given me a new mortgage offer for 6months, with the same terms.*" That was in reply to the broker saying they would send a fresh recommendation in the morning (meaning 14 September).

Having considered the contact history I think it is more likely than not that any new application would have been made on 14 September in line with the above had the September mortgage offer not contained the incorrect expiry date. For that reason I'm minded to tell Barclays that it should use the rates it had available on 14 September for redress purposes, rather than 7 September as our Investigator said. Barclays hasn't given us any reason to believe that Mr L wouldn't have been able to make a successful new application on 14 September and so I'm minded to say that would have been the most likely outcome had Mr L known he needed to reapply.

Mr L borrowed £151,500 on a repayment basis over a 35-year term, against a mortgage of £152,499 that he applied for with Barclays with the extra £999 being a product fee that he intended to add to his loan.

Barclays hasn't provided us with the details of what products it had available on 14 September 2022, but it will need to calculate the difference between the payments for the mortgage he would have been able to obtain on that date with Barclays and the mortgage he obtained elsewhere. I think it is fair to say the alternative Barclays mortgage would have completed on the same date as the mortgage Mr L obtained elsewhere so the calculation should run from 22 December 2022 (when Mr L's mortgage completed) until 28 February 2025 which is the end date of his mortgage product. If any new rate with Barclays would have included a product fee then that should be factored into the calculation as it is a cost Mr L would have incurred with Barclays that he didn't incur with the new lender. The outcome of that calculation should be paid to Mr L as a lump sum.

The date of 28 February 2025 is to be used as that is when his interest rate product will end, and no additional interest needs to be paid on that lump sum because whilst Mr L has already paid out a year of higher payments, that will be offset by the fact he will be getting the remainder of the higher payments as a lump sum before he needs to pay them.

I realise this must have been very upsetting for Mr L, causing further upset, at what would already have been a very stressful time. Mr L was buying his first home and a few days before he was due to complete, he was told he didn't have a valid mortgage offer so had no way to fund the purchase. He was under pressure to arrange a new mortgage at a time of increasing interest rates so the property purchase could complete.

For that, I agree with our Investigator that Barclays should pay £500 compensation rather than the £200 it offered in its response to the complaint."

Both sides accepted my provisional decision and Barclays provided details of the rates that were available on 14 September 2022.

Having reviewed those rates I thought it likely Mr L would have taken a rate fixed at 4.02% until 30 November 2024 had he reapplied to Barclays on 14 September 2022. To that end our Investigator contacted both sides to put forward my recommended redress which said:

“I’m provisionally minded to uphold this complaint and order Barclays Bank UK PLC to:

- Pay Mr L a lump sum equivalent to the difference in mortgage payments from 22 December 2022 until 30 November 2024. That calculation should be based on a mortgage amount of £151,500 on a repayment basis over a 35-year term, comparing the Barclays fixed rate of 4.02% Mr L could have got had he applied on 14 September 2022, with the 5.79% that he has with the other lender. As neither product had an arrangement fee then nothing further needs to be considered, and no additional interest needs to be paid on the lump sum for the reason I explained in my provisional decision.
- Pay Mr L £500 (less any amounts already paid, if any) in recognition of the distress and inconvenience caused.”

Both sides accepted my proposed redress.

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, and in the absence of any further submissions from the parties, I see no reason to depart from my provisional findings and subsequent confirmation of my proposed redress.

### **My final decision**

I uphold this complaint and order Barclays Bank UK PLC to:

- Pay Mr L a lump sum equivalent to the difference in mortgage payments from 22 December 2022 until 30 November 2024. That calculation should be based on a mortgage amount of £151,500 on a repayment basis over a 35-year term, comparing the Barclays fixed rate of 4.02% Mr L could have got had he applied on 14 September 2022, with the 5.79% that he has with the other lender. As neither product had an arrangement fee then nothing further needs to be considered, and no additional interest needs to be paid on the lump sum for the reason I explained.
- Pay Mr L £500 (less any amounts already paid, if any) in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 March 2024.

Julia Meadows

**Ombudsman**