

The complaint

This complaint is about an offset mortgage Mr B holds with Barclays Bank UK PLC. Mr B is unhappy that despite there always being more money on deposit with Barclays than the mortgage balance, interest wasn't fully offset in some months.

What happened

In what follows, I have set out events in rather less detail than they have 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.

Our decisions are published and it's important that I don't include any information that might result in Mr B being identified. Instead I'll give a summary in my own words (and rounding the figures where appropriate) and then focus on giving the reasons for my decision.

Mr B took the mortgages out in February 2021; it was a joint mortgage, the other borrower being Mr B's mother. They borrowed a little over £201,000, on the advice and recommendation of a third party mortgage broker. Mr B has told us that the reason for the borrowing was to provide money to fund long-term care for his mother, should that become necessary. In the meantime, the borrowed money was placed on deposit in an account with a number ending 4318.

Additionally, Mr B and Mrs B held more than a dozen other savings and current accounts, which I'll refer to in this decision as the "Offset Accounts". When the mortgage began, the cumulative balances of the Offset Accounts exceeded the mortgage balance; plus now the mortgage funds themselves were on deposit in account 4318. All of this meant that no interest was charged on the mortgage. However, interest was charged on the mortgage between March and June 2022, and then again from September 2022.

Mr B complained, on the basis that at all times, the mortgage balance had been, and continued to be, fully offset. Barclays explained this wasn't the case, chiefly because account 4318, which Barclays referred to in its final response as the "Mortgage Offer Account", wasn't eligible for offsetting. So, when movements of funds from the Offset Accounts reduced their aggregate balance below the mortgage balance, mortgage interest became chargeable.

Barclays accepted that Mr B had been misinformed, albeit without saying what the misinformation was, and credited £200 to his current account by way of an apology. Mr B moved money from account 4318 to restore full offsetting, and referred the complaint to this service.

Our investigator initially said Barclays' settlement was fair. Mr B countered by referencing a dialogue he'd held with senior managers at Barclays who had conceded that he'd been misled into believing account 4318 was eligible for offsetting. Although unable to obtain any further information from Barclays about this dialogue, the investigator found Mr B's testimony persuasive.

He concluded that Mr B had deposited the mortgage funds into account 4318 at the outset because Barclays had mistakenly caused him to think it was eligible to be an Offset Account. At the same time, however, he noted that Barclays had sent a statement every month listing all of the Offset Accounts – and their respective balances – and account 4318 was not amongst them.

These statements, the investigator concluded, should have put Mr B on notice that account 4318 wasn't an Offset Account after all, and that he might need to move funds out of it if the aggregate balance of the Offset Accounts fell below the mortgage balance, as happened in 2022. His overall view of the complaint, that Barclays' payment of £200 for misinformation was fair, remained unchanged.

Mr B has asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

Whilst the complaint has been with us, Mr B's mother has sadly died. Under survivorship laws, the joint mortgage and any of the Offset Accounts that were jointly held, became Mr B's accounts, and under our rules, the complaint vests solely in him.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

Barclays hasn't corroborated, either by verifying or contradicting, Mr B's testimony of a senior management concession that he had been misled about the offset status of account 4318. However, nothing turns on that. That's because as a result other evidence obtained from the bank, I am satisfied that Mr B and his mother *were* misled, right at the outset, about the eligibility of account 4318 for offsetting, even before the mortgage completed. I say that because Barclays wrote to Mr B in July 2020, when the mortgage application was just starting, to confirm the opening of account 4318.

However, that letter described account 4318 as a Mortgage Current Account, not a Mortgage Offer Account. As far as I have been able to tell, the latter term was only ever used in Barclays' final response to the complaint. The July 2020 letter also includes a narrative indicating that this account could be used for offsetting.

Overall then, I find there to be little doubt that Mr B and his mother deposited the mortgage funds into account 4318 after having been led to believe by Barclays that it could be an Offset Account. That might suggest Barclays should, as Mr B is claiming, be required to reimburse the mortgage interest that was charged after March 2022. However, as the investigator rightly pointed out, there's more to consider.

I mentioned a moment ago that the July 2020 letter announcing the opening of account 4318 included a narrative indicating that this account could be used for offsetting. That narrative also said that a monthly Offset statement would be issued. Barclays has sent us copies of all the monthly Offset statements issued from February 2021, when the mortgage started. Each statement lists all of the offset account by number and title, and on none of them does account 4318 appear.

By the time the aggregate balance in the Offset Accounts fell below the mortgage balance, the mortgage had been in operation a full year, so twelve monthly Offset statements would have been issued. So it seems to me Mr B had opportunities to mitigate the position much sooner than he did.

The general position is that mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. In my view, that's relevant and appropriate here. I consider that Mr B should reasonably have noticed, and questioned, the absence of account 4318 from the Offset Accounts list well before March 2022 when interest first began being charged on the mortgage.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr B feels. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done.

My final decision

My final decision is that Barclays Bank UK Plc has already provided a fair settlement for having misinformed Mr B. Accordingly, I don't uphold this complaint or make any order or award against Barclays Bank UK Plc.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

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

Jeff Parrington

Ombudsman