

The complaint

Mr H and Mrs H complain that Barclays Bank UK PLC:

- broke a payment agreement they had made in May 2023;
- has said it may take legal action to recover the outstanding mortgage debt; and
- left sensitive personal and financial information outside their property.

They have also queried the validity of their mortgage with Barclays and have raised a number of points in relation to the documentation that was produced when the mortgage was arranged.

What happened

Mr H and Mrs H hold an interest only mortgage with Barclays. They took out the mortgage in 2007. The mortgage was arranged by a mortgage broker. The records available indicate that when the mortgage was arranged they received advice from their mortgage broker on the suitability of the mortgage.

In May 2023, Mr H and Mrs H made a payment agreement with Barclays to pay £1,437 per month. The direct debit Mr H and Mrs H had in place for their mortgage payments was returned unpaid on 31 July 2023, due to insufficient funds. It appears that Barclays had tried to take a higher payment of £1,497 as the Bank of England Base Rate had increased since the payment agreement had been made in May 2023. As Mr H and Mrs H's mortgage was linked to Barclays' standard variable rate the contractual monthly payment increased when the Bank of England Base Rate increased.

As Mr H and Mrs H had not made the payments due and the mortgage was in arrears, Barclays then instructed solicitors to act on its behalf to seek repayment of the mortgage balance.

Mr H complained to Barclays. He said he felt it had broken the payment agreement they had made by trying to take more than £1,437. He also complained about the letters they had subsequently received from the firm of solicitors Barclays had instructed. In addition, Mr H also complained that information Barclays had sent following a Data Subject Access Request (DSAR) had been left in an unsecure location outside their home. In a subsequent conversation with Barclays Mr H also raised concerns about the validity of the mortgage they had taken out in 2007 and raised a number of points in relation to the documentation that was produced when the mortgage was arranged.

Barclays did not uphold the complaint. It said, in summary, that it had notified Mr H and Mrs H on 30 June 2023 that their July payment would be £1,497.28. It said that as there were insufficient funds available to pay the direct debit it had been returned unpaid and the payment plan had been broken.

Regarding the validity of the mortgage and the documentation that was produced when the mortgage was arranged, it said it couldn't investigate this point as it didn't have the '*relevant documents on our systems from that time to investigate*'.

With regard to the DSAR information, it apologised for any worry or upset this matter had caused Mr H and Mrs H. However, it said it had used a third party to deliver the documents and it couldn't reasonably be held responsible for any failures by the third party to leave the documents in a secure location, or ensure the delivery was correctly signed for.

Mr H was not satisfied with Barclays response and referred the complaint to this service.

Our investigator explained that this service does not have a free hand to consider every complaint referred to us and we cannot usually consider a complaint referred to us more than six years after the event complained about, or three years after the complainant ought reasonably to have become aware that they might have cause for complaint, if later.

However, he said he was of the view that the points Mr H had raised about the validity of the mortgage and the documentation that had been produced when the mortgage was arranged in 2007, could be considered by this service. He said he had reached this view as he didn't think Mr H and Mrs H ought reasonably to have been aware that there might be a problem until Mr H started looking into this matter in October 2022.

Having carefully considered the points Mr H had raised our investigator said that he didn't think Barclays had acted incorrectly and he didn't think the complaint should be upheld.

Mr H didn't accept our investigator's view. In summary he said he felt:

'The issues surrounding the sale and creation of the mortgage clearly show lack of due diligence and manipulation of documents within the offices of The Woolwich, Barclays, Land Registry and [name of solicitor acting for Barclays in 2007 when the mortgage was arranged], their notification of these issues has not been fully answered other than they have no documents, I do have the documents some of which they also sent me copies of.'

Mr H also said he felt the mortgage had been mis-sold and would not have taken out an interest-only mortgage if he was 'given the time again'. He said '*...the fact we have only one option, that's to sell our home stated in their documents proves the product was and is unworthy, also the lack of regulation during the time we took the mortgage out along with self certificated mortgages being banned by the FCA only gives credence of bad products and bad advice*'.

Barclays also responded to say that it did not consent to this service considering Mr H and Mrs H's complaint regarding the validity of their mortgage as it felt they had brought this part of their complaint too late for this service to be able to consider it.

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.

Why I can look into this complaint

Jurisdiction - mortgage documentation from 2007

As our investigator explained, this service does not have a free hand to consider every complaint referred to us. In particular, the Financial Conduct Authority's (FCA) Dispute Resolution Rules set out that this service cannot consider a complaint if it is referred to us:

- more than six years after the event complained of, or, if later,

- three years from the date on which the complainant became aware or ought reasonably to have become aware that they had cause for complaint.

Unless exceptional circumstances prevented the complainant from bringing their complaint any sooner, or unless the business complained about consents to us considering the complaint.

As Barclays said it does not consent to this service considering this aspect of Mr H and Mrs H's complaint, I must determine whether it has been brought too late for this service to be able to consider it.

The mortgage documentation Mr H has referred to in his complaint was issued in 2007, when the mortgage was arranged. It is not in dispute that it is more than six years since these documents were produced, so Mr H's complaint about this has been brought too late under the first branch of the rules I must apply.

I have also considered whether Mr H brought his complaint about the mortgage documentation within three years of the date he became aware that there might be a problem. Mr H says he started investigating the validity of this mortgage in October 2022 and I understand that Mr H and Mrs H received copies of some of the documentation they have concerns about in the DSAR they received in September 2023.

Mr H has said he thinks some of the documentation was amended after the mortgage had been arranged. I therefore can't safely find that Mr H ought reasonably to have known about these issues in 2007, as they wouldn't have been present in the original paperwork Mr H and Mrs H received at that time. I haven't seen anything that shows or suggests that Mr H and Mrs H ought to have been aware of these issues before Mr H started investigating the set up of the mortgage in October 2022.

Mr H complained to Barclays about the validity of the documentation and what he thought were inconsistencies and discrepancies in January 2024. As Mr H brought a complaint about the documentation within three years of October 2022, when he first became aware that there might be a problem, I am satisfied that this service can consider this aspect of Mr H and Mrs H's complaint.

Mortgage documentation and validity

As our investigator explained, this service doesn't have the power to determine whether or not a mortgage is valid – only a court can do so. That said, I haven't seen anything in the evidence and information Mr H has provided that would suggest that Barclays isn't entitled to claim the outstanding mortgage balance from Mr H and Mrs H.

I appreciate that Mr H has referred to a number of concerns he has about the way the mortgage application was handled in 2007 and the way the charge against the property was registered. But I am mindful that there is no dispute that Mr H and Mrs H applied for a mortgage with Barclays in 2007, the funds were received, and the borrowing was secured against their property. As our investigator explained, in view of this Mr H may wish to seek independent legal advice before pursuing any action regarding the validity of the mortgage contract.

With regard to the advice they received on the mortgage, the records available from 2007, when the mortgage was arranged, show that Mr H and Mrs H received advice on the suitability of the mortgage from their mortgage broker. If they feel the advice to take out an interest only mortgage was unsuitable, they will need to pursue this matter with the mortgage broker in the first instance. I cannot consider a complaint about the suitability of the

mortgage as part of this complaint against Barclays as it did not provide advice to them on this mortgage. I asked our investigator to let Mr H and Mrs H know that any concerns they have about the suitability of the advice they received in 2007 would need to be raised with their mortgage broker.

Payment agreement in May 2023

Mr H says he feels Barclays broke the payment arrangement as it had agreed to take £1,437, however, it attempted to take £1,497 in July 2023.

Barclays has provided evidence to show that on 9 July 2023, it told Mr H that the contractual monthly payment due for July 2023 would be £1,317.46. The contractual monthly payment due, plus the amount Mr H and Mrs H had agreed to pay towards the arrears on their mortgage account took the monthly payment due for July 2023 to £1,497.28. As there were not sufficient funds in Mr H and Mrs H's account to cover the payment the payment arrangement was broken.

I appreciate that Mr H feels Barclays should not have increased the payment due as they had reached an agreement to pay £1,437 per month. I am sympathetic to his position. But I must take into account that their mortgage is linked to Barclays' standard variable rate and the contractual monthly mortgage payment due increased in-line with increases in the Bank of England Base Rate.

It is very unfortunate that the contractual monthly payment due increased shortly after the payment arrangement had been made. I do understand that Mr H and Mrs H may not have realised that the amount they had agreed to pay, when they agreed the payment plan, would increase if the contractual monthly payment on their mortgage increased. But I must take into account that in the letter Barclays sent dated 22 May 2023, setting out the terms of the payment plan it said:

These amounts include your contractual monthly payment and a payment towards the overdue amount. Paying off the overdue amount over the term of this payment plan means you'll pay more interest on your mortgage than you would if you cleared the overdue amount immediately.

We'll write to you to let you know if your contractual monthly payment changes for any reason while this plan is in place. If it does, you'll need to amend the payments under this plan to reflect the change.

(Bold is my emphasis)

In view of this, and the letter Barclays subsequently sent to Mr H and Mrs H on 9 July 2023, advising them of the increase in the contractual monthly payment, in-line with the increase in the Bank of England Base Rate, I cannot reasonably say that Barclays broke the terms of the payment agreement. I am also mindful that Barclays explained to Mr H in July 2023, when he phoned it to query why it had tried to take a higher payment, that the amount due to maintain the payment agreement had increased as the contractual monthly payment due had increased.

I do understand that my decision will be a disappointment to Mr H and Mrs H, but I cannot reasonably say that Barclays acted incorrectly when it tried to take the higher payment in July 2023 or that it broke the payment agreement it had made.

Mr H has also said he is concerned that Barclays has said it may take legal action to recover the outstanding mortgage debt. The information that has been provided to this service

indicates that Mr H and Mrs H haven't made a payment towards the account since the payment in June 2023. Mr H has said that as he feels Barclays broke the payment arrangement, they haven't been making any payments towards the mortgage. As I explained above, I can't reasonably agree that Barclays broke the payment arrangement.

As Mr H and Mrs H haven't maintained the payments due, Barclays is entitled to take legal action to recover the mortgage debt. As our investigator explained, even when there is an ongoing dispute, borrowers are still expected to engage with their lender about their circumstances and what they can afford to pay each month.

I would encourage Mr H and Mrs H to get in touch with Barclays to discuss their situation and whether it might be possible to make another payment arrangement. However, I am mindful that their mortgage is an interest only mortgage and they will need to repay the mortgage balance at the end of the term in 2027. I understand that their property is currently on the market, so they may decide that selling the property and using the proceeds to repay the mortgage is their preferred course of action. Whatever Mr H and Mrs H decide, I would encourage them to keep Barclays informed as it may be willing to defer legal action if it is satisfied that they are taking adequate steps to ensure they will be able to repay the mortgage debt.

DSAR

Mr H has also raised concerns about Barclays' handling of the DSAR request he made. He says sensitive personal and financial information was left in an unsecure location and he believes the delivery agent falsified the receipt signature.

I do understand this would have caused Mr H worry and concern, but as our investigator explained, I can't reasonably hold Barclays responsible for the actions or any failings on the part of the delivery driver. I understand that the documents were received by Mr H, despite having not been left securely.

Summary

Having carefully considered this matter I have not seen anything that would suggest that the mortgage Mr H and Mrs H took out with Barclays in 2007 is not valid – but as I explained above, this is a matter that can only be determined by a court.

Likewise based on the information I have been provided with I can't reasonably find that Barclays broke the payment agreement when the contractual monthly payment due increased in-line with increases in the Bank of England Base Rate. I would encourage Mr H and Mrs H to engage with Barclays to keep it informed about their circumstances and any progress they have made in selling their property.

My final decision

My decision is that, for the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 28 October 2024.

Suzannah Stuart
Ombudsman