

The complaint

Miss C complains about how Barclays Bank UK PLC has treated her and administered the mortgage she holds jointly with her ex-partner, Mr M, during a period of financial difficulty. Mr M has joined this complaint.

What happened

Miss C and Mr M have a joint mortgage with Barclays, which they took out in 2014. They separated a number of years ago. Miss C and their children live in the mortgaged property and Miss C pays the mortgage. Mr M lives elsewhere and wants to be removed from the mortgage.

In 2018 Miss C became ill and was unable to work, and soon afterwards she was made redundant. As a result, the mortgage fell into arrears. Miss C was able to return to work around a year later, in 2019. By that time Barclays had taken legal action because of the mortgage arrears. A suspended possession order was granted in July 2019, when the arrears were around £17,000. Miss C and Mr M were required to make the contractual mortgage payments plus £345.05 each month until the arrears were cleared. At the time, that meant a total monthly payment of just over £1,700. The mortgage was on a variable rate of interest, so that was subject to change.

In 2020 a six-month payment deferral was applied to the mortgage due to the coronavirus pandemic. In 2021 and 2022 Miss C had some discussions with Barclays about capitalising the mortgage arrears, but Barclays said it didn't think doing so would be affordable or sustainable. The arrears in September 2021 were just over £16,000.

In October 2022 Barclays did agree to capitalisation. Mr M agreed to this as well. Miss C then had an appointment with a Barclays mortgage adviser to discuss switching the mortgage onto a fixed interest rate product, but no rate switch was completed.

In April 2023 Barclays put in place a new tracker rate on the mortgage: the interest rate tracked Bank of England base rate +0.86% until 29 April 2025, giving an initial rate of 5.11% and monthly payments of £1,684.36. No early repayment charges applied to the new arrangement.

Miss C made several complaints to Barclays during this period. Barclays sent her final response letters on 4 March 2021, 26 October 2021, 25 April 2023, and 4 October 2023. On 30 January 2024 Miss C referred the complaint to the Financial Ombudsman Service.

Miss C complained that she had been asking Barclays to capitalise the arrears since early 2019, before the possession hearing, but Barclays had refused to consider capitalisation. Now it had capitalised the arrears, but it still hadn't put in place a fixed interest rate as she had asked. She wanted a fixed rate applied and backdated and her credit file amended. She also complained that Barclays had failed to support her appropriately despite knowing about her poor health and her very challenging family circumstances.

Our Investigator found that part of this complaint is time-barred, because Barclays' final response letter of 26 October 2021 was in response to Miss C's complaint about its refusal to capitalise the mortgage arrears, as well as some other matters. He concluded that he couldn't therefore look into Miss C's complaint about how Barclays responded to her requests for capitalisation before 26 October 2021.

The Investigator went on to look into Miss C's complaint about what happened after 26 October 2021. He recommended that Barclays should backdate an interest rate product to October 2022, when the mortgage arrears were capitalised and when Miss C had discussed new interest rate products with Barclays.

Miss C accepted that conclusion. Mr M accepted it as well, subject to the mortgage being transferred into Miss C's sole name and payment to him of his share of the equity in the property. Barclays didn't accept that conclusion. It said it would consider an application to transfer the mortgage into Miss C's sole name, but it wouldn't backdate a new fixed interest rate product. It said it would however backdate a tracker rate product which didn't come with early repayment charges (ERCs), subject to payment of the relevant product fee.

The complaint was referred to me to decide. I came to a different conclusion to our Investigator, so I issued a provisional decision.

My provisional decision

I said:

First of all, I was very sorry to read about Miss C's illness and difficult family circumstances. I can see that she has had a very challenging time in recent years, and I've taken account of everything she has told us in making my decision.

I agree with the overall conclusion the Investigator reached about the Financial Ombudsman Service's power to consider this complaint. Barclays sent Miss C final response letters on 4 March and 26 October 2021. Both letters said that she needed to refer the complaints to us within six months, and if she didn't do so Barclays wouldn't consent to our consideration of the complaints. Miss C didn't refer those complaints to us within six months and, given that she was in regular contact with Barclays after the letters were sent, I can't reasonably conclude that there were exceptional circumstances which meant she couldn't refer the complaints to us sooner. So I can't consider those complaints.

I can consider the complaints Barclays responded to in its final response letters dated 25 April and 4 October 2023. While Miss C didn't contact us within six months of the April 2023 letter, I'm satisfied that letter was superseded by the October 2023 final response letter. The October 2023 final response included an apology that Barclays hadn't done what it had said it would do in the April 2023 final response and a new offer of compensation. So I can consider Miss C's complaint about Barclays' treatment of her and its administration of the mortgage from 26 October 2021 onwards.

It's clear that Miss C was in a difficult situation, struggling to maintain the payments to the mortgage. She was in regular contact with Barclays to try to find a solution. She felt that capitalising the mortgage arrears and taking a new fixed interest rate product would give her the fresh start she needed.

Barclays' records say that it considered Miss C's financial situation a number of times in order to explore what support it could offer. It put in place various short-term arrangements, but it didn't think that Miss C would be in a position to afford to pay the

mortgage in the long term if the arrears were capitalised. In the circumstances, I don't think that was an unreasonable view for Barclays to have taken. The mortgage arrears in October 2021 hadn't reduced significantly since the suspended possession order was issued more than two years earlier (around £16,000 in October 2021, £17,000 in July 2019). So while Miss C had made some inroads into the arrears, she hadn't been able to maintain payments in line with the court order, even allowing for the 2020 payment deferral.

By October 2022 Miss C had reduced the arrears further, to just under £15,000. Barclays then agreed to capitalise them. Its records show that it did so as an exception, because of Miss C's particularly difficult circumstances and the efforts she had made to reduce the arrears. Capitalising the arrears meant that they were added to the main mortgage balance so that they will be repaid over the course of the remainder of the mortgage term.

The impact of that was that the arrears were cleared, Miss C and Mr M could apply for new interest rate products, and their credit files no longer showed the mortgage as being in arrears. It also meant however that the contractual monthly mortgage payments increased over the remainder of the mortgage term. For this reason, capitalisation is only helpful in some circumstances, where a lender is reasonably satisfied that a borrower can afford the higher monthly payments in the longer term.

In the circumstances, I don't think I can fairly conclude that Barclays should have capitalised the arrears any earlier than it did (bearing in mind that I can only look at the period since October 2021). Barclays and Miss C discussed her situation a number of times in that year, but Barclays wasn't satisfied that Miss C would be able to afford the mortgage in the long term given her financial and other circumstances. I think Barclays was reasonable in taking that view, and that it was reasonable in offering alternative payment arrangements by way of forbearance.

Miss C also wanted a fixed interest rate on the mortgage. Barclays wouldn't agree to that while the mortgage was in arrears, and I don't think that was unreasonable. While fixed rates are generally lower than lenders' standard variable rates and can make an unaffordable mortgage affordable, they usually come with ERCs. An ERC is charged if the mortgage needs to be brought to an end early, during the period of the fixed rate – and it can be substantial, running into several thousands of pounds. There was a risk that Miss C and Mr M would incur an ERC if Miss C couldn't maintain the mortgage payments sustainably and Barclays had to resume repossession action.

If a fixed rate had been applied to the mortgage there was also a risk of an ERC being charged because of Miss C's and Mr M's separation. It's clear that Mr M wants to be removed from the mortgage. But as well as being responsible for the mortgage, he has an interest in the property, and he has said that he expects to receive his share of the equity. How that is resolved is a matter between Miss C and Mr M.

Barclays' records show that it tried a number of times to contact Mr M in November 2022 following discussions with Miss C about taking a fixed interest rate, because it needed both Miss C and Mr M to agree to the fixed rate. It was however unable to reach him. I've seen copies of several emails it sent to Miss C at the time letting her know about this and that without Mr M's agreement it was "unable to proceed with a rate switch" (Barclays' email to Miss C of 16 November 2022). The same thing happened in June 2023.

Barclays has provided details of the fixed interest rate products it had available at the relevant times. All of them came with ERCs if the mortgage were repaid within the fixed rate period. I consider it reasonable in the circumstances of this case for Barclays to want both borrowers' consent before applying one of these rates to the mortgage and in so

doing potentially increasing both borrowers' liability if the mortgage needs to be repaid early.

For these reasons, I don't intend to require Barclays to apply a fixed interest rate to the mortgage or to backdate it. That option was simply never available without both Miss C's and Mr M's agreement, which Barclays didn't have despite being clear that this was what it needed in order to go ahead.

I don't intend to require Barclays to backdate the tracker rate which it put in place in April 2023 either. Barclays says this is when Mr M first agreed to the new tracker rate, which doesn't come with an ERC. I haven't seen details of Mr M's agreement to this, but Mr M hasn't complained about the implementation of the tracker rate. The tracker rate came with a product fee of £99, which was added to the mortgage, so I would expect Barclays to have obtained agreement from both borrowers before putting this in place. However, I find nothing in Barclays' records or in anything Miss C and Mr M have provided to show that he agreed to a tracker rate any earlier than this.

I've looked carefully at the rates Barclays had available in October 2022. All of its fixed interest rate products came with ERCs. It had two tracker rates available without ERCs and which Miss C and Mr M would have been eligible for. Only one of those is at a rate lower than the rate that has applied to the mortgage since April 2023. The rate available in October 2022 was Bank of England base rate +0.75% for two years. The rate that has applied since April 2023 is Bank of England base rate +0.86% for two years.

The October 2022 base rate +0.75% two-year rate was however subject to a higher product fee, of £999. Barclays has said that it would be prepared to apply that rate to Miss C's and Mr M's mortgage and backdate it to October 2022, if Miss C and/or Mr M pay the £999 fee for the rate separately. I think that's reasonable, since the fee would always have been payable and couldn't have been added to the mortgage – thereby increasing the mortgage debt and subject to additional interest – without the agreement of both borrowers. This is an option which Barclays should reasonably have offered Miss C at the time, given that the arrears had recently been capitalised and it was in discussions with her about arranging a lower interest rate on the mortgage.

It's for Miss C and Mr M to decide whether they wish to accept this offer to backdate this particular interest rate product and pay the fee for it – bearing in mind that the two years on that rate will come to an end sooner than the two-year rate the mortgage is currently on, and it may not work out cheaper overall given the cost of the product fee.

Barclays has said it will consider an application from Miss C to take the mortgage into her sole name, with Mr M's agreement. That will be subject to an assessment of the affordability of the mortgage – and Barclays may require ownership of the property to change at the same time as a change of borrowers. I would expect a lender to assess whether a borrower can reasonably afford to take on sole responsibility for a debt before agreeing to a change of borrowers, since it wouldn't be in either the remaining borrower's or the lender's own interests to agree to an unaffordable arrangement. I think it's reasonable for Barclays to want to assess Miss C's current situation before making a decision, although in doing so it should keep in mind that she has been paying the mortgage on her own for some time, and also keep in mind relevant rules in the Financial Conduct Authority's Mortgage Conduct of Business rules at MCOB 11.7¹ if applicable and if the mortgage was taken out before 26 April 2014.

¹ <https://www.handbook.fca.org.uk/handbook/MCOB/11/7.html>.

In all the circumstances however, I don't consider that I can fairly require Barclays to apply and backdate a fixed rate, capitalise the arrears any earlier, or amend Miss C's credit file as she would like.

I do think that Barclays has made mistakes and has at times treated Miss C poorly, and some of its communication has been unclear and contradictory. Its April 2023 final response letter in particular caused considerable avoidable upset to Miss C, saying as it did that the April 2023 tracker rate had been backdated when this wasn't the case. Miss C subsequently made multiple phone calls to try to find out why the resolution in that letter hadn't been implemented, and had to complain again before getting an answer. Barclays knew her situation and that she was vulnerable, and it should have provided much better service and clear communication. Barclays has paid Miss C £850 by way of compensation for the impact of its shortcomings on her, and I think that represents a fair award.

I provisionally concluded that Barclays had made a fair offer to put things right, so I said I intended to require it to apply and backdate the two-year tracker interest rate product of Bank of England base rate +0.75% to 3 October 2022, subject either to separate payment of the product fee or both Miss C and Mr M agreeing for the fee to be added to the mortgage and also backdated to 3 October 2022 – in either case minus the £99 fee paid for the later tracker rate.

Responses to my provisional decision

I invited Miss C and Mr M and Barclays to let me have any further evidence or arguments they want me to consider before I make my final decision.

Miss C didn't accept my provisional decision, and said she was uncertain about whether the backdated tracker rate would benefit her and what it would mean in practice.

Barclays didn't respond, despite reminders.

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.

Having done so, I've reached the same conclusion I set out in my provisional decision, for the same reasons. The parties haven't added anything to cause me to change my view about how this complaint should fairly be resolved.

I would expect Barclays to be able to provide Miss C with information about the impact on the mortgage of applying and backdating the two-year tracker interest rate product if she requires it in order for her to decide whether she wants, or she and Mr M want, that rate to be put in place, subject to payment of the product fee.

Putting things right

Barclays Bank UK PLC should apply and backdate the two-year tracker interest rate product of Bank of England base rate +0.75% to 3 October 2022, subject either to separate payment of the product fee or both Miss C and Mr M agreeing for the fee to be added to the mortgage and also backdated to 3 October 2022 – in either case minus the £99 fee paid for the later tracker rate.

My final decision

My final decision is that Barclays Bank UK PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr M to accept or reject my decision before 27 December 2024.

Janet Millington
Ombudsman