

The complaint

Miss S complains about her mortgage current account (MCA) with Barclays Bank UK PLC. She says that it was mis-sold to her because she didn't want an MCA in the first place. She also says it's unfair that Barclays kept increasing the facility limit and that it's charging her substantial interest on the outstanding balance.

What happened

Miss S has a mortgage with Barclays, taken out in 2006. She borrowed around £92,500 on repayment terms over 23 years. The mortgage included a linked MCA – a current account which Miss S could use for everyday banking, but which was linked to the mortgage. The mortgage offer said that Miss S was obliged to take the MCA as part of the mortgage.

The MCA allowed Miss S to take further borrowing via an overdraft facility. There was no overdraft in place at the time the mortgage was taken out, but that changed over time. As the balance on Miss S's main mortgage reduced, the overdraft limit automatically increased by an equivalent amount, so that the overall borrowing available to Miss S remained the same. If Miss S chose to make use of the overdraft facility, the borrowing would be secured against her property via the mortgage charge.

Miss S did make use of the overdraft facility over the years. The balance of her mortgage is now below £20,000, but the overdrawn balance on the MCA is over £50,000.

The main mortgage borrowing was on a fixed rate until 31 May 2008, reverting to a variable rate 0.95% above the Barclays Bank base rate (which, in practice, is the same as the Bank of England base rate). But Barclays says that does not apply to the MCA overdraft, and it is charging 3.49% over base rate on that part of Miss S's borrowing.

Over the last two years the interest rate on both elements has increased in line with increases to the Bank of England base rate, and as a result of that – and of the differences in the balances – the interest Miss S is being charged on the MCA borrowing each month is much larger than her monthly mortgage payment.

Miss S complained. She said that she'd never wanted the MCA in the first place but was forced to take it. She'd never asked for the facility limit to be increased, and Barclays just continued to do so without her agreement. And she said that the interest rate she's being charged is unfair.

Our investigator said that we couldn't consider Miss S's complaint about the sale of the MCA, because that was out of time. But he said we could consider how the MCA had been managed over the six years before Miss S complained. He then set out his view on the merits of the part of the complaint we could consider.

Miss S didn't agree with the investigator's conclusions on either our jurisdiction, or the merits of her complaint. She asked for it to be reviewed by an ombudsman.

I've previously issued a decision setting out what parts of the complaint I can consider. I said

that I could only consider how the MCA has operated from 3 November 2017 onwards. This includes:

- Increases to the reserve limit from time to time
- Interest charged on the MCA balance
- Whether Barclays acted fairly when Miss S made clear she was struggling with the MCA balance.

I then set out my thoughts on the merits of the complaint in two provisional decisions.

My first provisional decision

I said:

“Miss S took the mortgage out in 2006. It came with a linked MCA, which Miss S was required to take. The MCA reserve operated as an overdraft on a current account, but one which was secured to her property as part of the same charge as her main mortgage. The two accounts were linked and treated as such by Barclays.

Barclays operated an automatic re-balancing feature on Miss S's MCA. What this means is that as she made payments to her main mortgage – and the balance reduced accordingly – the overdraft facility limit on her MCA increased by broadly the same amount at the same times. The effect of this was that although Miss S was paying her mortgage off as planned, Barclays offset that reduction in her overall secured borrowing by increasing the facility limit and – if she made use of the overdraft facility – Miss S's secured indebtedness would remain the same even though she was repaying her mortgage. Indeed, it would increase – unless she also paid off the interest charged on the overdraft borrowing each month.

It's important to be clear that this happened automatically – without Miss S making any application to increase the overdraft limit – simply because she was repaying her main mortgage.

By November 2017, the point at which I can consider this complaint, Miss S had reduced her mortgage balance from £92,500 to around £49,000. But the balance outstanding on the MCA had increased to around £47,000, and Miss S was being charged overdraft interest of £190 per month. Despite paying a repayment mortgage for over ten years, Miss S now owed more than she had borrowed to start with.

I've already said that I can't consider the fairness of Barclays' actions up to this time. But I can consider what happened from then on.

Barclays has explained that since November 2017 it further increased the MCA limit at the following times:

Month	Limit	Balance
January 2018	£49,020	£47,262
March 2018	£51,370	£49,405
May 2018	£53,660	£51,776

August 2018	£56,020	£54,095
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There were no further increases after August 2018 and the limit remains at £56,020.

Barclays says that each of these increases were because the balance had reduced on Miss S's main mortgage. There was no separate lending decision or affordability assessment carried out.

I'm not persuaded that Barclays acted fairly and reasonably in increasing the limit in this way. The rules of mortgage regulation require firms to carry out an assessment of affordability before entering into or varying a regulated mortgage contract. A regulated mortgage contract is simply an agreement to provide credit secured over residential land for the borrower or their family to live in. That includes overdrafts such as this one as well as traditional mortgage loans. So even if the MCA reserve was an entirely separate account to the main mortgage (albeit secured by the same charge) it would still be subject to the rules of mortgage regulation, including the requirement to carry out an affordability assessment before increasing the borrowing.

But there's no evidence that Barclays did carry out an affordability or responsible lending assessment before increasing the facility limit on Miss S's MCA. It seems to have been essentially a series of automatic increases driven by reductions in the balance of Miss S's main mortgage. The rules say that the requirement to do an affordability assessment doesn't apply where there is no further borrowing. But by increasing the facility limit after the mortgage balance has [reduced]¹, Barclays was allowing Miss S to take further borrowing. Her mortgage balance had reduced – so increasing the facility limit allowed her to borrow more than was available to her before the limit was increased. So that exception doesn't apply.

In those circumstances, I'd have expected Barclays to consider whether the further borrowing was affordable for Miss S, and whether it was responsible to lend. If she increased the borrowing on the MCA to the new limit, the amount of interest she would be charged would also increase.

And although there was no formal contractual obligation to pay that interest off monthly in pre-determined amounts, in practice Miss S would have to do so to prevent the balance increasing further and potentially exceeding the limit.

There was no assessment of whether it was affordable for Miss S to increase the amount she owed, or affordable to increase the amount she was paying each month. Miss S has explained that she has in fact struggled to keep up with the interest charged on the MCA.

There was also no assessment of whether it was responsible to increase Miss S's available borrowing for reasons other than affordability. Had Barclays considered this, I'm not persuaded that it would have found doing so to be responsible. There was evidence that Miss S had already struggled to remain within the existing MCA limit – it wrote to her about being over the limit in August 2017, a few months before the increases set out above, for example. But Barclays didn't take that into account.

And there's no evidence that Barclays considered how Miss S would repay any increased borrowing limit if she made use of it. As I say, there was no obligation to

¹ I have corrected a typing error in my provisional decision here

repay the capital borrowed in any particular month. But if she didn't, Miss S would have to repay it in full at the end of the mortgage term in 2029. In that sense it's essentially a form of interest only mortgage – where the capital borrowed only becomes repayable at the end of the term. When lending – or increasing the lending of – an interest only mortgage I'd expect a lender, acting fairly, to consider what strategy the borrower has in place to repay the capital and whether that's plausible and realistic. There's no evidence Barclays did that either.

For all those reasons, I'm not persuaded that increasing the facility limit in the way that Barclays did, without assessing whether doing so was affordable or responsible, was fair and reasonable in all the circumstances.

To put this part of Miss S's complaint right, Barclays should remove all interest charged on the MCA above £46,610 – the limit as it was in November 2017 before the increases I can take into account. I don't think it's fair and reasonable to charge interest on money that wasn't responsibly lent because Barclays shouldn't have increased the limit. But the increases prior to November 2017 are out of time and can't be considered in this complaint, and so I can't make a finding on whether those increases were responsible – or require Barclays to remove the interest charged on that part of the borrowing.

I don't think it would be fair to require Barclays to write off the capital part of the borrowing above £46,610, though – because although it shouldn't have been lent, it was lent to Miss S and she made use of that borrowing. It's therefore fair to expect her to repay the capital she borrowed, if not the interest on it, even if Barclays should never have lent it.

The second part of Miss S's complaint concerns the interest charged on the MCA balance. This complaint falls away in respect of the borrowing above £46,610, but is still relevant to the amount of interest charged on the capital below that amount since November 2017.

Barclays says that, although the main mortgage is charged at 0.95% above base rate, the borrowing on the MCA overdraft is charged at 3.49% above base rate.

I have asked Barclays, several times, to explain why this is the case. In particular, I've asked it to show me where that interest rate (or the fact that the MCA interest rate is different to the mortgage rate) is set out in the contractual documents, and what Barclays considers it can rely on to charge part of Miss S's secured debt at 3.49% above base rate rather than 0.95% above base rate.

Barclays has not given me that explanation or contract. It's simply pointed out that the interest rate charged is recorded on the MCA statements it sent Miss S from time to time. But that seems to me to miss the point – I have not asked Barclays to tell me what it did charge (which the statements set out), I have asked it to explain *why* it charged that amount and what the contractual basis for it being a different interest rate to the main mortgage is.

I have looked carefully at the contractual documents Barclays has provided – the mortgage offer, and the mortgage terms and conditions (the "Woolwich Mortgages from Barclays Mortgage Conditions (December 2003 edition)").

The mortgage offer covering letter says that Barclays sent Miss S the mortgage offer, terms and conditions, and the mortgage deed. No other document (such as, for example, a separate set of terms and conditions relating to the MCA) is referred to.

The mortgage offer itself says, at section 4:

Lender: Barclays Bank PLC

Product: 2 yr Fixed 4.79% Switch&Save: Cback (2UY): A Fixed Rate of 4.79% until 31/05/2008. After 31/05/2008, the rate will be a Variable Rate which is 0.95% above the Barclays Bank PLC's [sic] Base Rate, currently 4.5%, for the remainder of the term, to give a current rate payable of 5.45%. Changes to the Base Rate made during the month will take effect from the 1st of the following month. Following an interest rate change, your monthly payments will be amended at the first available monthly payment date.

Tied Products: You are obliged to take out a linked current account through Barclays Bank PLC as a condition of this mortgage. Please refer to Section 12 of this offer document for further details.

At section 12:

Linked Current Account

A Barclays Mortgage Reserve Account must be taken out with this mortgage in order to access the reserve facility.

Other than that, the mortgage offer is silent on the MCA reserve. It does not specify any particular reserve limit, any mechanism for varying it, or any separate interest rate for any borrowing on the reserve.

The 2003 Mortgage Conditions do not specify that different interest rates apply to different parts of the mortgage borrowing either. They do provide that the mortgage charge secures all borrowing. The mortgage conditions also say that the "first advance", any "further advance" and any "miscellaneous debit" will all be charged at the "interest rate". Condition 9 says that any "further advance" or "miscellaneous debit", and any separate account, will be charged at the "relevant interest rate". The "relevant interest rate" means either the rate set out in any offer of further borrowing, or the mortgage interest rate.

What this means is that unless there are separate terms and conditions, offer letter, or similar for the further borrowing on the MCA reserve which specify a separate interest rate for that borrowing, then the borrowing on the MCA reserve – which is all part of the debt secured by the mortgage charge – will be at the mortgage interest rate.

As I say, we have repeatedly asked Barclays to show us on what contractual basis it charged interest at a different, higher, rate on the MCA reserve. I would expect that to be an offer of lending or set of terms and conditions given to Miss S when that further borrowing was agreed – a statement after the fact does not show that there was a contractual right to charge what is set out in that statement.

Our rules – specifically DISP 3.5.8 R and 3.5.9 R – allow me to direct what evidence is required, and to take into account any failure to provide it.

Having reviewed the contractual documents we do have, and having taken into account that Barclays has not provided evidence otherwise, I'm not persuaded that Barclays had the power to charge interest on mortgage borrowing at more than the rate set out in the mortgage offer.

Should Barclays provide further evidence in response to this provisional decision, then I will of course take that into account. But as things stand, I don't see any basis on which Barclays could fairly charge more than 0.95% above base rate on the borrowing on the MCA reserve, and therefore my current intention is to require it to refund all interest charged above that amount (which has not already been refunded because of the unaffordable and irresponsible increases to the MCA limit) since 3 November 2017.

Finally, I deal with how Barclays has treated Miss S following her difficulties in managing the MCA.

As a responsible lender acting fairly, I would expect Barclays to show appropriate forbearance. But I'm not persuaded it has done that.

Miss S has asked for help on several occasions, but Barclays has not offered her assistance:

- In October 2018, she asked to reduce the balance on the MCA by transferring an overpayment balance from the main mortgage account, but Barclays refused. Doing this would have increased the balance on the main mortgage – but wouldn't have put it into arrears. Given that, at the time, Barclays was charging higher interest on the MCA than on the main mortgage, this would have reduced the overall interest Miss S was paying and helped her by reducing the amount of interest she had to pay each month, thereby freeing up more money for her to reduce the capital balance on the MCA further.
- In December 2018, Barclays considered (but didn't take) litigation action because Miss S was £1,100 over the MCA balance. That wouldn't have been the case had Barclays not increased the limit irresponsibly, or had it allowed her to reduce the balance using the overpayment reserve on the main mortgage.
- In December 2019, Miss S said that her income had reduced and while she was keeping up with the MCA interest and mortgage she had no money left over each month. Barclays said Miss S should take independent financial advice – but didn't consider whether there was any forbearance it could offer itself.
- In March 2021, Barclays again referred Miss S to independent financial advice without considering any forbearance itself.
- In April 2021, Miss S asked Barclays to freeze or reduce interest on the MCA. It didn't agree to that, but did agree to a payment arrangement to clear some arrears.
- In March 2022, following a missed payment of interest on the MCA, Barclays did agree to transfer an overpayment balance from the main mortgage to the MCA.
- In May 2022, Barclays again referred Miss S to independent financial advice.
- In November 2022 Miss S again asked Barclays to reduce or freeze interest on the MCA.

- In February 2022, Miss S again asked about the interest rate. She was concerned that Barclays was taking collections action because the MCA was over the limit.

More recently, since Miss S brought this complaint, Barclays has taken legal action. In October 2023 it wrote to her threatening legal action and repossession. At that time the main mortgage was £378 in credit and the MCA was £577 over the facility limit. In June 2024, its solicitors sent Miss S a letter before action, because the MCA was by then just under £2,000 over the limit.

I don't think this was fair and reasonable. I've already said that the increases after November 2017 were irresponsible and shouldn't have been granted. And I've said that I'm not currently persuaded that Barclays is charging a fair rate of interest. While Miss S was over the MCA limit, that was in large part because Barclays had repeatedly increased the credit limit to a point at which the interest payments (especially following recent base rate rises) were no longer affordable for her. In those circumstances, I don't think taking legal action was appropriate – particularly given the failures before that to consider or agree other forms of forbearance.

In the circumstances, Barclays should withdraw any legal proceedings that may have already been issued, and – whether or not proceedings have actually been issued – ensure that no legal fees are added to Miss S's account. Any already added should be removed.

I think Barclays should also pay Miss S substantial compensation for the ongoing long term impact its decision to irresponsibly increase the MCA limit has had on her. Taking into account everything she's said about the impact on her, I currently think £800 is fair.

Moving forward, Barclays should work with Miss S to agree an affordable way of addressing the remaining balance on the MCA once the amounts I've set out above have been reduced. The simplest way of doing this may be to consolidate the remaining borrowing on the MCA into the main mortgage balance, extending the term if necessary and responsible to make doing so affordable. But that is a matter to be explored between them."

In light of those conclusions, I said I was minded to require Barclays to do the following by way of redress:

- Remove all interest charged on borrowing on the MCA reserve above £46,610, backdated to 3 November 2017. The refunded interest should be used to reduce the balance of the MCA reserve.
- Reduce the interest charged on borrowing on the MCA reserve below £46,610 to 0.95% above base rate, backdated to 3 November 2017. The refunded interest should be used to reduce the balance of the MCA reserve.
- Ensure that future interest charged on any remaining borrowing on the MCA reserve is charged at no more than 0.95% above base rate for any borrowing below £46,610 and 0% for any borrowing above that amount while that remains the interest rate applicable to the main mortgage. Should Miss S take a new interest rate on the main mortgage in future, the same interest rate should then apply to borrowing on the MCA reserve below £46,610.
- Reduce the MCA reserve limit to the amount of the revised balance plus a small

buffer to allow for the charging of monthly interest, ensuring Miss S cannot increase the borrowing in the future. This should include removing the auto-rebalancing feature if it remains in place.

- Write to Miss S setting out the new MCA reserve balance and interest rate, and the amount in cash terms that will be charged in interest each month.
- Work with Miss S to come to an affordable arrangement for the repayment of the remaining MCA reserve balance – which may include consideration of consolidation into the main mortgage balance.
- Withdraw any legal proceedings and not add any legal costs to Miss S's mortgage balance, removing any that have already been added.
- Pay Miss S £800 compensation.

The responses to my first provisional decision

Miss S welcomed my provisional decision, though she didn't think it went far enough. She reiterated that the MCA had been mis-sold to her in the first place, and said it had had a severe impact on her over the 18 years she had had it. She has worked hard to reduce her mortgage balance, but finds she still owes a significant amount – on which excessive interest is being charged – on the MCA. She is now paying £185 in mortgage payments each month, but £470 on interest on the MCA. She said that Barclays had destroyed any quality of life she might have enjoyed.

Miss S said that there had been many other increases to the facility limit before the ones I had dealt with from 2017 onwards. She said she had asked to consolidate the MCA into the main mortgage many times and had always been refused. She said she had also asked to transfer an overpayment balance from the main mortgage to the MCA, to reduce the MCA balance, in October 2018 but Barclays had refused to allow this. She said this had greatly upset her at the time. More recently, she has pleaded it with it not to take legal action. To resolve things she wants the MCA to be terminated, interest over 18 years to be refunded, £5,000 compensation and a formal apology, and a named member of staff at Barclays to take responsibility for dealing with her and resolving her situation.

Barclays didn't accept my provisional decision. It said that while Miss S was obliged to take out the MCA alongside her mortgage, she wasn't obliged to use it – but if she did, she was bound by the terms and conditions. It said that the terms and conditions set out how the re-balancing feature would work, and that Miss S could ask for it to be removed at any time, but didn't do so. Barclays said that there was no obligation to carry out an affordability assessment when increasing the facility limit, because it wasn't entering into or varying the mortgage contract, but operating it in line with its terms. It's not correct to say in any case that increasing the facility limit allows Miss S to take further borrowing, because any increases only offset reductions in the main mortgage balance.

Barclays said that it had checked with Miss S how she planned to repay the MCA balance, and she had at various times said that she would use a pension lump sum or an inheritance. It said that it had advised her to take financial advice but wasn't aware that she had done so.

Barclays said that the interest rate was set out in the original terms and conditions, and in an interest rate variation mortgage offer from 2008, and it had charged interest on the MCA in line with those contractual terms. It apologised for not having provided the correct contractual documents previously, but said that in light of them I should revise my view of the fairness of charging interest.

Barclays accepted that it hadn't provided appropriate support to Miss S from 2016 onwards, though it pointed out that it had tried to engage with her without success between 2013 and 2016.

Barclays therefore agreed to pay the £800 compensation I had said I was minded to award. It also offered to reduce the MCA balance by £4,000, to bring it back below the current facility limit and bring legal action to an end, but said Miss S would need to continue to pay the interest due going forward.

Having reviewed matters again, I reached a different outcome about the interest rate, so I issued a second provisional decision.

My second provisional decision

I said:

“Having carefully considered the further evidence I've now received, I've changed my mind about the fairness of the interest rate applied to the MCA. But I haven't changed my mind about the rest of the complaint. I'll explain why.

The fairness of the interest rate

I asked Barclays to provide me with contractual authority for the interest rate it was charging several times before reaching my first provisional decision, but it didn't do so. I therefore concluded that it didn't have contractual authority for charging the rate that it did.

It's very unfortunate that, despite those multiple opportunities, Barclays didn't provide the correct documentation – only doing so after my provisional decision.

Having reviewed the documentation Barclays now provides, I'm satisfied that it has been charging interest at the correct contractual rate, and therefore I no longer intend to uphold this part of the complaint.

However, I do think it's important to note the impact a change of outcome here is likely to have on Miss S. That could have been avoided had Barclays provided the correct documents when we first required it to do so. Under our rules, a failure by a respondent to comply with a time limit for providing evidence is a factor that can be taken into account in making an award of compensation for distress and inconvenience.² In my view, this is an appropriate case for such an award. Barclays' failure to provide relevant evidence at the appropriate time, in compliance with a request that it do so, led to Miss S's hopes being raised, and now leads to her being disappointed by the change in outcome. In the circumstances, I intend to increase my award of compensation for distress and inconvenience to £1,000.

The contractual documents Barclays has now provided show that when Miss S took out the mortgage and MCA, there was a separate set of terms and conditions for the MCA. The MCA terms and conditions did not specify a particular interest rate, but said that borrowing on the MCA would be charged at a variable rate.

In 2008, Miss S took a new interest rate on her mortgage. Barclays issued a new rate switch offer, which replaced the previous mortgage offer I quoted in my provisional decision.

² See DISP 3.5.14 R

The 2008 offer said that Barclays would charge a fixed rate of 5.59% for three years, followed by a variable rate of 0.95% above the Barclays Bank base rate from 1 July 2011 onwards. This mortgage offer also contained more details about the MCA. At section 12, it said

A Mortgage Current Account Reserve Facility is available which can be used to draw down additional borrowing. The Current Account Reserve is a secured overdraft on a Mortgage Current Account.

The maximum Mortgage Current Account Reserve available is £5,880

The current available balance on your reserve account is £3,075.24

The interest rate charged on the Mortgage Current Account Reserve will be at our Standard Variable Rate, currently 7.39%.

This therefore does show that interest was correctly charged at the SVR, rather than the mortgage rate of 0.95% above base rate, from November 2017 onwards (the period I can consider). In light of this, I can no longer find that Barclays acted unfairly in charging interest at that rate. To that extent, I've changed my mind about the fair outcome to this complaint.

Increases to the MCA limit

Barclays doesn't agree that changes to the facility limit require an affordability assessment. I've considered what it's said about this. I've noted other cases that it's referred me to, but each case is decided on its own facts and circumstances. Having considered this particular complaint, I'm satisfied that it wasn't fair and reasonable to have increased the facility limit without having first assessed whether doing so was affordable and responsible.

As I said in my provisional decision, the rules of mortgage regulation require an affordability assessment when entering into or varying a mortgage, unless doing so is not material to affordability.

I've noted that this is a flexible mortgage facility, and that the ability to vary the limit was included in the terms and conditions – though not the specific auto-rebalancing feature, just a general power to vary the limit. But that doesn't change my view. Even if doing so was envisaged in the original lending agreement, in my view it's clear that a change to the facility limit is a variation of the existing mortgage agreement – because it entitled Miss S to increase her borrowing on the MCA should she make use of the increased facility. The terms and conditions included a power to vary the contract by varying the limit – that a variation is contractually permitted doesn't stop it being a contract variation.

I also don't think it matters that the increase was designed to broadly offset reductions in the main mortgage balance. As a repayment mortgage, the balance is designed to reduce over time. Following each monthly payment, the capital balance reduces – and therefore so does the overall borrowing available to Miss S. Applying the auto-rebalancing feature then increases that overall available borrowing. I think it's immaterial that it increases by roughly the same amount as the earlier balance reduction through overpayment.

Indeed, as I said in my first provisional decision, this feature turns a repayment mortgage into one that has the nature of an interest only mortgage – without any of

the safeguards attached to interest only borrowing.

Even though the terms and conditions haven't changed, the amount of borrowing that Miss S is contractually entitled to take increases each time the facility limit changes, compared to what it would be had the change not been made. That is a variation to the existing mortgage agreement. And it's a change that's material to affordability, because it has the potential to increase Miss S's overall indebtedness (if she makes use of the increase) and has the potential to increase the capital balance which will be outstanding at the end of the term (unless she makes capital reductions to the MCA balance even though she's not required to). It's also material to affordability because even if the overall borrowing doesn't increase (which I don't agree about, for the reasons I've given), it shifts part of that borrowing from the lower mortgage interest rate to the higher MCA interest rate and makes that borrowing more costly.

The fact is that but for the increases, the borrowing available to Miss S would be lower – and the re-balancing decision means that Miss S's overall borrowing might not go down even though this is supposed to be a repayment mortgage – and that wouldn't be the case had the facility limit not increased.

I also note that changes to a standard overdraft limit do require an assessment of creditworthiness.³ The logic of Barclays' position is that while it would be required to assess whether an increase to a small unsecured overdraft is affordable, it is not required to assess the affordability of an increase to an overdraft which is already around £50,000 and is secured over a borrower's home. I find it difficult to believe that could be the case.

Even if I'm wrong about whether the rules of mortgage regulation specifically require an affordability assessment to be carried out before an increase to the facility limit – and I don't think I am – I still wouldn't be satisfied that doing so was fair. Even if lending of this type strictly sits outside the relevant rules, the purpose of the rules in MCOB 11.6 is to ensure that lenders don't lend – or increase lending – without ensuring that doing so is affordable. And that they don't enter into interest only lending without an adequate repayment strategy being in place. In my view these are important protections for borrowers. The regulator's general principles for firms require them to treat customers fairly, taking account of their best interests. I'm not persuaded that substantially increasing the amount of secured indebtedness Miss S was able to take, compared to what would have been available to her without the auto-rebalancing increases, amounted to fair treatment when it was done automatically without regard to whether doing so was affordable, responsible or in her best interests.

I'm therefore satisfied that, acting fairly and reasonably, Barclays ought to have assessed whether the successive increases to the facility limit were affordable to Miss S – but it didn't do that. Had it done so, it would have found that those limit increases were not affordable for Miss S, or responsible to lend without a confirmed repayment strategy, and so – acting fairly – those increases would not have been implemented.

Barclays says that Miss S didn't have to borrow the additional funds, and could have asked for the re-balancing feature to be turned off or the limit reduced, at any time. That's true. But it shouldn't have put her in that position in the first place – it's not an answer to a complaint of irresponsible lending to say that the fault lies with the borrower for using the credit rather than the lender for making it available. The

³ See CONC 5.2A in the FCA Handbook

purpose of responsible lending assessments is to ensure that borrowers are not put in that position. Use of the facility is relevant to whether it's fair to expect Barclays to write off the capital as well as the interest, but not to whether it was responsible to lend.

For the reasons I gave in my provisional decision, I remain satisfied that Barclays should not have increased the facility limit when it did after November 2017. And I remain satisfied that the appropriate remedy is to require Barclays to remove and refund all interest charged on the facility limit increases.

Forbearance in financial difficulties

Barclays now accepts that it ought to have done more to assist Miss S since 2018. Having reviewed things again, I haven't changed my mind about what I said about that. As well as agreeing to pay compensation, Barclays has offered to reduce the current borrowing to below the facility limit. I think that's fair, and if having applied the interest refund the borrowing is still above the limit, that will assist Miss S further.

I remain of the view that Barclays will need to engage with Miss S to try to find a way forward that includes showing reasonable forbearance – this should include considering whether to consolidate the MCA balance into the main mortgage on repayment terms, at the lower mortgage interest rate, factoring in whether other measures such as a term extension would also assist Miss S to repay the remaining borrowing in a sustainable and affordable way. This would give Miss S the assurance that the full amount is being repaid, at a lower interest rate than remaining on SVR in the MCA. If the MCA reserve was paid off and removed, it would also prevent Miss S getting back into further difficulties with it in the future.”

The responses to my second provisional decision

Miss S said she hadn't agreed to the interest rate on the MCA being charged at the SVR rather than the mortgage rate. She said the 2008 mortgage offer wasn't signed by her. And she said she hadn't been informed of changes in the rate in the years since. She said that the lack of affordability checks for further borrowing showed the product had been mis-sold to her. She said she was now left in a situation where she had nearly repaid the main mortgage but still had a large amount outstanding on the MCA she couldn't afford to repay. She said Barclays should have stepped in and helped her years ago. She said she wanted the MCA cancelled and all interest she had paid refunded to her. And she said that compensation of at least £5,000 would be appropriate.

Barclays said that the increases to the MCA limit were not a variation to the contract – they were something allowed for within the contract, and so no affordability assessment was required. It referred to previous ombudsman decisions. It said it had made Miss S aware of how the MCA operated, and made her aware of changes to the limit over the years. Miss S had chosen to use the facility.

Barclays said that there was no indication that increasing the MCA limit was unaffordable for Miss S in any case. In 2018 she said she would be clearing the balance with a lump sum from her pension, and in 2021 that she would use her pension and an inheritance.

Barclays also said it had provided forbearance when Miss S was in financial difficulties. But there were times when it had discussed things with Miss S and she had insisted she was not in difficulty. However, it said that on reflection it now accepted that it ought to have turned off the auto-rebalancing feature in 2016, not 2018. At that time Miss S had asked for assistance and, after discussing her income and expenditure, an arrangement was agreed.

With that in mind, Barclays offered to settle the complaint in the following way:

- Refund 50% of all interest charged since February 2016, plus £500. This would have the effect of bringing the MCA balance down to £45,913.69 – below the £46,610 (including a buffer) that I said the limit should not have been increased beyond.
- Reduce the MCA limit to £46,610 – ensuring that (provided Miss S maintains interest payments) the borrowing can not go above that level.
- Subject to Miss S engaging with Barclays and completing an income and expenditure form, it would discuss her situation with her and try to come to an affordable arrangement for repayment of the outstanding balance.
- If an acceptable arrangement can be agreed, it would withdraw the legal proceedings. But it reserves the right to take proceedings again in the future if Miss S cannot maintain the mortgage and MCA interest payments.
- The only legal costs incurred to date are £93.60, which will not be charged to Miss S.
- It agreed to pay £1,000 compensation.

We put this offer to Miss S. She didn't accept it. She said that all interest, not just 50%, should be refunded. And the interest should be paid direct to her, not to the MCA. She said it wasn't right to say that she shouldn't have paid that interest, but that only 50% would be refunded. She said that it wasn't sustainable for her to keep paying interest on the remaining MCA balance, and that it needed to be consolidated into her mortgage at the lower mortgage interest rate so that she could repay it over time. As no agreement could be reached, I now need to make a final decision on the complaint.

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.

I've noted what Miss S says – that there's no signature on the 2008 mortgage offer, or any signed agreement to vary the MCA facility limit.

As I explained, I can't consider the fairness of anything that happened before November 2017. But it's not unusual for Miss S's signature not to be on a mortgage offer. That doesn't mean that she didn't accept it, or that it's not binding. There's no dispute that the offer sets out the correct interest rate for the main mortgage. I think it's likely that Miss S did accept that rate switch offer in 2008, and that as a result that offer sets out the interest rates to be charged on both the main mortgage and the MCA from then on. I don't therefore think that Barclays has overcharged interest on the MCA from November 2017. It has charged interest at the rate set out in the mortgage agreement.

Barclays doesn't agree that it ought to have assessed whether Miss S could have afforded increases to the MCA balance before increasing it. But it hasn't made any new arguments that weren't made in response to my provisional decisions, and for the reasons I gave in those decisions – reproduced above – I still think that acting fairly it ought to have assessed whether the increases were affordable. And, again for the same reasons I gave in my provisional decisions, I think that if it had done so it would have concluded that the increases weren't affordable during the period I can consider, from November 2017 onwards. It follows that in increasing the limit after that time, Barclays didn't lend responsibly.

I said in my provisional decisions that fair redress for that is that Barclays shouldn't charge interest on any borrowing above the £46,610 limit that applied before the increases I have found shouldn't have been made. That amounts to around £4,200 of interest that shouldn't have been charged since November 2017. As I explained, it wouldn't be fair to expect Barclays to write off the capital too.

Barclays has now reconsidered its view of the complaint. It says that it ought to have stepped in sooner, and removed the auto-rebalancing feature from 2016, not – as I said – from November 2017. It has offered to refund 50% of the interest charged on the entire MCA balance – not just the amount above the limit – since then, plus an extra amount to ensure a buffer below the revised MCA limit. This amounts to a refund of around £13,700.

I think that's a fair offer to resolve this complaint. It significantly exceeds the amount I said should be refunded in my provisional decision. It also extends the period on which redress is applied further back than the period I said I could consider in my jurisdiction decision. And it goes beyond what I said in terms of the method of calculation as well – in offering to refund 50% of the interest on the whole balance, not just the amount of the balance above the increased limit, in effect it is writing off not just the interest charged as a result of the increased limit, but part of the capital too.

I don't think it would be fair to require Barclays to refund 100% of the interest charged since 2016. That goes beyond the period covered by my jurisdiction. If I can't say that none of the limit increases between when the mortgage was taken out and November 2017 should have happened – because they are before the time I can consider – then I can't say that Barclays has acted unfairly in charging interest on borrowing up to those limits. For the reasons I explained in my jurisdiction decision and provisional decisions, I can only consider the fairness of the limit increases since November 2017. My provisional decision was that fair redress for that complaint involves an interest refund of around £4,200. By offering to refund £13,700 to settle the complaint, therefore, Barclays' offer exceeds what I would have awarded had that offer not been made and I can't fairly require it to go even further. I'm satisfied that its offer is a fair way of resolving the complaint I can consider.

I don't agree that this sum should be paid direct to Miss S. Interest added to the balance means the balance is higher than it otherwise would be, so it's appropriate to use the refund to reduce the balance back down again. I don't think it would be in Miss S's best interests to pay that sum to her, leaving the MCA balance higher – increasing the amount of capital and interest she has to pay to clear it.

I remain of the view that Barclays shouldn't have taken legal action. I'm pleased it's agreed not to add the costs to Miss S's mortgage balance. I don't agree that withdrawing the action should be conditional on agreeing a way forward. Once the redress has been implemented, Miss S will not be in breach of either her mortgage terms or the terms of the MCA and so there is no need for legal action. But that does not mean that Barclays cannot take action in the future if, for example, serious arrears arise and all other options have been exhausted.

I can't require Barclays to consolidate the mortgage and the MCA. Although doing so would not increase Miss S's overall borrowing, it would convert the MCA element from, in effect, interest only terms to a repayment mortgage. It's therefore reasonable for Barclays to consider whether tying Miss S into a repayment mortgage for the full MCA balance is affordable and sustainable for her. Though I also remind Barclays that it may not need to insist on the full affordability assessment it would require for new borrowing of that amount.⁴

⁴ For example, MCOB 11.6.3 (3) (c) says that the requirement to carry out an affordability assessment does not apply to a contract variation made for the purposes of forbearance to avoid a payment shortfall.

Rather, Barclays should look at Miss S's overall situation in the round and try, as far as possible, to agree an arrangement that best supports Miss S repaying her total borrowing in an affordable and sustainable way. That may or may not include consolidating the MCA balance into the main mortgage alongside other options such as extending the term, reviewing the interest rate, and so on.

Barclays and Miss S will both need to engage with each other, openly and constructively and putting the past behind them, to reach agreement on the best way forward in light of all the circumstances. If, once that has happened, Miss S doesn't think she has been treated fairly it's open to her to make a fresh complaint about that. But until that assessment has been done it's appropriate for me to set out some of the options to be considered – but not to direct a particular one.

Finally, I've thought again about compensation for distress and inconvenience. Miss S says that compensation of at least £5,000 is appropriate. I've thought about what she says. But £1,000 is already a substantial award. Much of what Miss S says I should consider in setting the award of compensation falls outside my jurisdiction. And I have to take into account that Barclays has now offered to refund almost £10,000 more in interest than I said it should in my provisional decisions. It's agreed to pay £1,000 compensation alongside that refund, and I think that's fair.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. To put matters right, Barclays Bank UK PLC should:

- Reduce the MCA balance to £45,913.69.
- Reduce the MCA reserve limit to £46,610 and ensure there are no future increases by auto-rebalancing.
- Withdraw the legal proceedings and not add any costs in respect of it to the mortgage balance.
- Work with Miss S to come to an affordable arrangement for the repayment of the remaining MCA reserve balance in an affordable and sustainable way – which may include consideration of consolidation into the main mortgage balance, a term extension, reviewing the interest rate, or a combination of those or other options.
- Pay Miss S £1,000 compensation – this should be paid direct to Miss S, unless she asks Barclays to use it to reduce the MCA balance further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 January 2025.

Simon Pugh
Ombudsman