

The complaint

Mr and Mrs H complain that Barclays Bank UK PLC trading as Woolwich says they owe more on their mortgage than they believe they do, and it hasn't been able to prove what it says they owe.

What happened

Mr and Mrs H have a mortgage with Barclays. They're in dispute with Barclays about the current balance and the amount Barclays is asking them to repay.

Mr and Mrs H say that they borrowed £124,950 to purchase their property in February 2000. In 2005 they applied for a further £46,000, but Barclays would only offer £30,000. Therefore, they believe that they borrowed £154,950 in total.

Barclays says that Mr and Mrs H borrowed £124,950 in 2000 (made up of two accounts - £119,500 to purchase the property and £5,000 for home improvements). In 2004, it says they increased their borrowing to £170,000. Because the mortgage is on repayment terms, by November 2005 the balance had reduced to £166,068. Mr and Mrs H then applied again for further borrowing. Barclays offered them a new mortgage of £196,000, which was used to pay off and replace the old one. This new mortgage was made up of two accounts - £166,068 to repay the borrowing on the previous mortgage, and £29,932 in further borrowing. Since then Mr and Mrs H had made payments in line with that borrowing. It said the current mortgage balance was correct. But it said it hadn't handled a subject access request appropriately, and paid £200 compensation for that.

Mr and Mrs H say that they've asked Barclays for evidence of their agreement to extra borrowing, and for evidence of the sums it says they borrowed. They say they only ever borrowed, or agreed to borrow, £124,950 in 2000 and £30,000 in 2005 and Barclays can't provide evidence of any other borrowing. They say that they've therefore challenged its right to recover the sums it now says are due, but it has refused to engage and said their complaint is about events more than 20 years ago and is out of time.

Our investigator said that we couldn't consider how the mortgage was set up or the amounts that were lent between 2000 and 2005, because that was out of time. She said the compensation for the subject access request was fair. Mr and Mrs H didn't agree and asked for an ombudsman to review their complaint.

I agreed with the outcome the investigator reached, but as some of my reasoning was different to hers I issued a provisional decision to give the parties a further chance to make any submissions they wanted me to consider before making a final decision.

My provisional decision

I said:

“As our investigator said, there are time limits for making a complaint to the Financial Ombudsman Service. A complaint must be made within:

- Six years of the date of the event complained of; or, if it gives more time,
- Three years from when the complainant was aware, or ought reasonably to have been aware, of cause for complaint.

If a complaint is not made within the time limits, we can't consider it – unless Barclays consents to us looking at an out of time complaint, unless there's evidence of a previous complaint having been made within time, or unless there are exceptional circumstances which explain why it couldn't have been made in time.

Mr and Mrs H's representative says that this is a continuing complaint and so not out of time – because Barclays is continuing to require payment of a debt it can't evidence Mr and Mrs H owe. Therefore the time limit has not started running and the complaint is not out of time.

I think Mr and Mrs H's complaint is both about a continuing issue and also a historic event – their complaint, properly understood, is that they didn't receive the sums Barclays says they did between 2000 and 2005, and also that as a result it's not fair that Barclays is now requiring them to make payments to a mortgage based on that disputed borrowing.

I've first reviewed the available evidence. Barclays says that it has limited information available, because this complaint concerns events more than twenty years ago and it doesn't generally retain documentation for that long. However, some documents do survive, and it's given us copies of those.

I've seen the following documents which confirm the mortgage borrowing:

- Internal records of an application and underwriting decision for a mortgage in 2000, borrowing £119,950 plus £5,000 – making £124,950.
- A mortgage offer dated 3 August 2004, offering a mortgage of £170,000.
- A handwritten application and record of discussion about a mortgage of £196,000 and associated insurance – it's not clear whether the handwriting is that of Mr or Mrs H or a Barclays staff member, but the document is signed by Mr and Mrs H. It makes clear they are applying to increase their borrowing from the existing balance of £166,000 to £196,000. It includes details about their income and other finances from the time.
- A mortgage offer dated 7 November 2005, which is for borrowing of £196,000 – split into two sub-accounts of £166,068 and £29,932. Both parts are for a term of 20 years and 10 months. This is followed up by a letter dated 10 November 2005 confirming the mortgage has completed.

Barclays says that there are three borrowing events:

1. Mr and Mrs H borrowed £124,950 in 2000.
2. Mr and Mrs H applied for further borrowing in 2004, increasing their balance to £170,000.
3. Mr and Mrs H again applied for further borrowing in 2005. Barclays offered £29,932 – their existing mortgage had by then reduced because of regular payments, so £29,932 plus the existing balance of £166,068 meant that

Barclays offered them a new mortgage of £196,000; £166,068 was used to repay the previous mortgage and £29,932 was paid to Mr and Mrs H.

The documents it has provided support what it says. And Mr and Mrs H also agree that they borrowed £124,950 in 2000 and borrowed an extra £30,000 in 2005 – which accords with Barclays' surviving documents. The dispute between them is the 2004 borrowing, which Mr and Mrs H say they never took.

In order to decide our jurisdiction, I must first establish the facts and then apply jurisdiction to those facts. If I decide I have jurisdiction, I can then consider whether Barclays acted fairly and reasonably in all the circumstances.

Having considered everything, I think Mr and Mrs H's complaint, properly understood, is that they don't agree that they took the additional borrowing in 2004. They recall the original loan in 2000, and the further borrowing in 2005. But they don't agree that the 2005 balance, insofar as it included the 2004 borrowing too, was correct – either at the time, or as it impacts the amount Barclays says remains outstanding and is asking them to pay now.

The available evidence does suggest that Mr and Mrs H both took the further borrowing in 2004, and were aware that Barclays had taken into account in calculating the new mortgage balance in 2005. That evidence includes:

- The 2004 mortgage offer for £170,000, addressed to Mr and Mrs H
- The 2005 application for further borrowing, signed by them, which confirms that the existing balance at that time was around £166,000 – which is as it would be if they did increase their mortgage to £170,000 in 2004 and then made some repayments, and much more than it would have been if they hadn't borrowed more in 2004.
- The 2005 mortgage offer showing increased borrowing of £29,932 (consistent with Mr and Mrs H's recollection of borrowing £30,000) on top of an existing balance of £166,608.
- The current balance of the mortgage, which is consistent with payments having been made since 2005 from a starting point of £196,000.

If Mr and Mrs H's complaint is that they didn't take that further borrowing in 2004, and so that their mortgage balance in 2005 and thereafter was too high, then I think that would therefore have been apparent to Mr and Mrs H at the time. They ought to have been aware that the documents they signed in 2005 included too high an existing balance, and therefore weren't accurate. And that's enough to say they ought reasonably to have been aware of cause for complaint at that time.

I've considered what they and their representative have to say about this. These events are more than six years ago. And I'm satisfied they're out of time on the three year part of the rule too. Even if the documents aren't correct, they would have known in 2005 that the paperwork they signed, and the offer they received, were based on a mortgage balance that was much higher than it should have been. Similarly, if they believed that they had only ever borrowed around £155,000 (the 2000 borrowing of £124,950 plus the 2005 borrowing of around £30,000), then every statement they received from 2005 onwards, until the balance fell below that amount several years later, would have told them that their mortgage balance was higher than it ought to have been.

For those reasons, I'm satisfied that the complaint that Mr and Mrs H didn't apply for and didn't receive further borrowing in 2004 is out of time. They had enough information to know that at the time of the 2005 application, and since. I've taken into account what they've said about their circumstances, including Mr H's dyslexia and Mrs H's physical health. But nevertheless I'm satisfied that if they really hadn't taken extra borrowing in 2004, they ought reasonably to have known they had cause for complaint about that in 2005. Therefore this part of the complaint is out of time on the three year rule.

I've also considered whether there were exceptional circumstances which prevented Mr and Mrs H complaining any sooner. But I don't think there were. Their conditions haven't prevented them complaining now, so it's difficult to see why the same conditions would have prevented them complaining sooner.

However, I can consider whether Barclays is acting fairly in seeking to collect the sums it now says are due. This part of the complaint concerns what's happening now, and is therefore not out of time.

It's true that there is no signed contract, or signed acceptance of a mortgage offer, which survives. Given the passage of time it's unsurprising that some documents haven't survived. In any case there may not ever have been a signed acceptance – it's usual, but not essential or a legal or regulatory requirement – for there to be one. But nevertheless the evidence I've seen is persuasive. I don't think it's likely that this evidence has been fabricated. There is no reason why Barclays would do that. And the 2005 documents are signed by Mr and Mrs H.

I'm therefore satisfied that it's more likely than not that Mr and Mrs H agreed to take further borrowing in 2005 based on a mortgage balance that was increased to £170,000 in 2004 and further increased to £196,000 in 2005. All the documents from the time which survive, including ones signed by Mr and Mrs H, make that clear. I think the most likely explanation is that, twenty years on, they've simply forgotten about the 2004 borrowing and conflated the two applications into a single one in 2005. It's well known that human memory is fallible, the more so as time passes, and that later recollections and beliefs influence and change earlier memories that do survive. I do not suggest any dishonesty on Mr and Mrs H's part. I think they've simply forgotten that they took further borrowing in 2004 as well as 2005.

I'm satisfied, on the balance of probabilities, that Mr and Mrs H did borrow what Barclays says they did. They took initial borrowing in 2000, with further borrowing in 2004 and 2005, by when their mortgage balance was £196,000. And I'm therefore satisfied it's fair and reasonable that Barclays is now expecting Mr and Mrs H to make the repayments now due based on that borrowing, taking into account the payments they've made since. I've seen nothing that persuades me that the current balance of their mortgage is incorrect.

Finally, I've considered whether Barclays made a fair offer of compensation in respect of the handling of their subject access request. I'm satisfied that it did. It's important to note that a subject access request only entitles a customer to copies of their personal data, not to everything that a lender may hold. I understand that Barclays has now provided all the documents it has which still exist and are covered by its obligations to meet a subject access request. There were delays in providing those to Mr and Mrs H, and I think £200 is fair compensation in all the circumstances."

The responses to my provisional decision

Barclays said it agreed with my provisional decision and had nothing more to add. Mr and Mrs H didn't agree. They said, in summary:

- My conclusion that the 2005 further borrowing was based, in part, on a further advance also being taken in 2004 wasn't supported by the evidence. As the lender of a regulated mortgage debt, Barclays must be able to demonstrate that they agreed to all borrowing. In the absence of a signed mortgage offer or acceptance for either 2004 or 2005 it has failed to do that. An inference that they agreed cannot be a substitute for documentary evidence.
- I relied on a handwritten document from 2005, but said it wasn't clear in whose handwriting it was. A document of unknown authorship cannot be relied on as evidence and is not proof of agreement to borrowing of £196,000. A supposition based on the balance of probabilities is not a substitute for documentary evidence.
- There is no signed document evidencing that Mr and Mrs H agreed to, or received, the further borrowing Barclays alleges they took in 2004. They dispute ever having received that money and Barclays hasn't proved they did. In the absence of such evidence it's not reasonable to conclude otherwise.
- Mortgage borrowing should generally be accompanied by clear documentary evidence, including a mortgage offer, executed deed and registered charge. That evidence doesn't exist.
- In 2005 Mr and Mrs H reasonably believed they were borrowing £30,000 on top of the original 2000 borrowing only. Barclays didn't explain that there was other borrowing and Mr and Mrs H didn't sign a mortgage offer agreeing to any other borrowing.
- Barclays is currently trying to enforce a mortgage balance including disputed borrowing which isn't supported by documentary evidence or Land Registry records.
- Barclays has admitted maladministration yet has only offered £200 compensation for an inflated balance of £45,000 plus interest.
- It isn't fair and reasonable to resolve any uncertainty in favour of the lender not the consumer.
- Barclays has not evidenced that Mr and Mrs H borrowed additional sums in 2004 and it isn't fair for it to expect them to repay a balance based on the assumption that they did.

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 also thought again about the conclusions I reached in my provisional decision in light of the responses to it – having done so, I haven't changed my mind.

As I explained, I can't consider what happened in 2004 and 2005 as that part of the complaint is out of time. It happened more than six years ago. And given that Mr and Mrs H signed the application for 2005 borrowing based – in part – on the 2004 borrowing, that they received annual statements showing that amount of borrowing, and that there were mortgage offers setting it out in both 2004 and 2005, I can't find that they couldn't reasonably

have been aware that Barclays believed they had taken extra borrowing in 2004. And I can't find that they couldn't reasonably have been aware that the amounts they had received were much less than Barclays said – if indeed that was the case. That's enough to say they ought reasonably to have been aware of cause for complaint that they hadn't taken extra borrowing in 2004 by 2005 or soon after.

I can consider whether Barclays is acting fairly in expecting Mr and Mrs H to repay a balance based on, in part, the 2004 borrowing. For the reasons I've already given, I'm satisfied it is acting fairly. I don't agree with Mr and Mrs H that there is insufficient evidence of the 2004 borrowing. The surviving documents from the time are clear, as is the history of the mortgage balance over the years since. There is a mortgage offer. There is a signed agreement to apply for further borrowing in 2005 based on the 2004 borrowing.

There doesn't need to be a separate mortgage deed or registered charge, because this was further borrowing following on from the 2000 mortgage – further advances are covered by the existing security and there is no need for there to be a fresh mortgage deed or a new registered charge. The existing security covers all borrowing, including subsequent borrowing. Nor is there a requirement for the mortgage offer to be signed by Mr and Mrs H. There's often a signed acceptance form, but it's not mandatory – if there was one, it's unsurprising it's no longer available 20 years later. And if there wasn't, that doesn't mean they didn't in fact take the borrowing.

I'm satisfied that the evidence shows that Mr and Mrs H did take further borrowing in 2004, even if they now don't remember having done so. Given the passage of time it's not surprising that not all documents have survived. But what does survive is persuasive. It's fair and reasonable for Barclays to expect Mr and Mrs H to repay their current mortgage balance in line with the terms and conditions – including not only the 2000 and 2005 borrowing, but also the 2004 borrowing, taking account of interest charged and payments made in the years since then.

I've seen nothing that leads me to believe that Barclays is currently acting unfairly in how it is treating Mr and Mrs H or the amounts it is expecting them to repay. I'm satisfied Mr and Mrs H did agree to the 2004 borrowing, that they received the funds at the time, and that it's therefore fair and reasonable to expect them to repay it.

My final decision

My final decision is that I don't 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 5 March 2026.

Simon Pugh
Ombudsman