complaint

Ms S complains that she was mis-sold a mortgage by Barclays Bank Plc. In particular, she's concerned that a ten year fixed interest rate she took in 2007 wasn't suitable for her, and that her mortgage was wrongly changed from repayment to interest only in 2008.

background

Ms S originally took her mortgage out in 2000, as a repayment mortgage over 25 years. In 2004, she took further borrowing, again on a repayment basis.

In 2007, Ms S applied to Barclays for further borrowing for home improvements. She also took a new fixed interest rate to move off the standard variable rate (SVR). Both the existing mortgage and the new borrowing were placed on a ten year fixed rate. In 2008, she switched to an interest only mortgage. She wrote to Barclays asking for the switch to be for 18 months, and said that she would write again at that point asking for the mortgage to be switched back.

In fact, it seems that Ms S never asked for the mortgage to be switched back, and Barclays didn't discuss doing so with her. So the mortgage has continued on interest only terms to the present day. Ms S complains that she's now left with a large interest only mortgage. She has no prospect of repaying the capital. If the mortgage hadn't been switched, she'd be well on the way to paying it off. And, she says, the ten year fixed rate was mis-sold – it's resulted in her paying too much interest.

Because any over-payment attracts an early repayment charge (ERC) Ms S says she hasn't been able to take action to reduce the balance. She's made a few payments, but has been charged for doing so. She's also unhappy with how Barclays handled her complaint, which she considers to be unfair and biased. And she's unhappy that she's been paying for a Barclays premier account service, when she doesn't feel the service she's received is up to that standard.

Barclays didn't accept that the fixed rate had been mis-sold. It said that it didn't give advice, and it had given Ms S enough information to make up her own mind. It said the switch to interest only in 2008 was at Ms S's own request because of financial difficulty, and she'd never asked to be switched back. It noted that in recent months she'd made some small overpayments each month as her standing order was too large. It agreed to refund the ERC charged on those payments, amounting to around £32.

But Barclays wasn't willing to take Ms S off the fixed rate before it expired or to waive the ERC altogether. Ms S had made a lump sum payment in 2016 which attracted an ERC of £480. Ms S had queried that and initially been told it would be refunded. Barclays said that was wrong, and offered £50 compensation for the upset caused by the mistake – but didn't agree to refund the £480 ERC.

Our investigator thought that Barclays had treated Ms S fairly. I agreed with that broad conclusion. But because my reasons are different, and more detailed, I decided to issue a provisional decision before I make my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman Service's last word on the case.

my provisional decision

In my provisional decision, I said:

I'll first set out something of the evidence of what's gone on over the years in relation to Ms S's mortgage, and make findings on the factual background. I'll then go on to consider the various points of Ms S's complaint and set out what I think about each of them. I note that although some of the events happened more than six years ago (the primary time limit for complaining in our rules), Barclays has agreed to us looking at the merits of the whole case.

the mortgage history

I've seen Barclay's contact notes, which record notes of its discussions with Ms S, going back to 2005. They're a contemporaneous record of what happened and while in some cases they're very brief, I have no reason to doubt the broad circumstances they record. Ms S says she has some notes she's made herself of discussions with Barclays, but as she doesn't think they're relevant she hasn't sent them to us.

The notes – and the mortgage transaction history – show that Ms S had some financial difficulties for several years. In 2005 and 2006, she was over-extended on her unsecured borrowing and overdraft and direct debits sometimes went unpaid. This appears to be due variously to an unexpectedly large tax bill, some time off work through illness and other factors.

In 2007, Ms S moved from the standard variable rate – which she'd been on since 2006 – to a ten year fixed interest rate. This reduced her monthly payments. The mortgage offer from 2007 records that Barclays didn't give Ms S advice, and there isn't a detailed record of the discussions from the time. Ms S says she was given advice. I'll deal with this dispute below.

In March 2008, Ms S's Barclays Premier manager advised her about her financial situation and the need to budget her income from self-employment. He advised her to switch the mortgage to interest only for one year (to reduce her monthly payments) and advised her to see if she could make an insurance claim for the time she'd been unable to work through illness. In her response to the investigator's assessment of her case Ms S agreed that she was in financial difficulties at the time. So I think it's likely this brief note does capture the discussion at the time and the reasons for the advice Barclays gave – whether that was good advice or not is something I'll deal with below.

In fact, Ms S wrote to Barclays asking for a switch to interest only for 18 months rather than 12 – and said she would contact Barclays at the end of that time to request a switch back.

Unfortunately the change to interest only didn't immediately resolve the problem. There are several notes which record that – in the bank's opinion – Ms S was overspending compared to her income and needed to reduce her outgoings. The notes also record her telling the bank about difficulties with the timing of her income and about problems managing other financial commitments she has.

This background of financial difficulties impacted on the mortgage. There were missed payments in 2007. Although she switched to interest only in 2008, Ms S continued to be in arrears for some years. In December 2010 she made a payment to bring the mortgage up to date. However, she fell back into arrears with missed payments in early 2011 and during

2011 was in and out of arrears at various times. Ms S cleared the arrears towards the end of 2011. Apart from a couple of missed payments in 2012, the mortgage has been paid up to date since then.

Ms S's wider financial position seems to have stabilised as well from around 2011. But Barclays refused an application for a further loan in 2013.

Also in 2013, Ms S spoke to Barclays about switching the mortgages back to repayment. Barclays told her the monthly payments would be over £1,400 (on interest only the payment was under £700). Ms S didn't take the matter further. She enquired again in 2014, and again didn't pursue it. She made lump sum payments in 2015 and again in 2016, and then in late 2016 she complained.

suitability of the 10 year fixed rate in 2007

The paperwork from the time records that Barclays didn't offer any advice. Ms S says that it did. There aren't detailed meeting notes or call recordings from the time so it's difficult to be sure what was said.

But the interest rate was competitive for the time. Interest rates have fallen since 2009, but in 2007 they were on an upward trend. It made sense to fix the repayments at that time – especially since Ms S was trying to budget and control her outcomes and had increased her mortgage to consolidate other debt. She had other expensive commitments which would last some years into the future – so fixing her mortgage payments into the longer term made sense in the context of controlling her expenditure.

A fixed rate is, in effect, insurance against the possibility of rates rising. It turned out, following the economic events of 2008 and 2009, that that wasn't necessary. And it turned out that – when Ms S switched to interest only and couldn't switch back (which I deal with below) – she couldn't make periodic overpayments to reduce the capital without paying an ERC. But none of that was known, or knowable, in 2007.

Looking at the available evidence, I'm not persuaded that Barclays gave Ms S formal mortgage advice in 2007. But even if it did, based on what was known and knowable about her circumstances and the wider picture at the time, I don't think the rate was inappropriate for her circumstances.

the ERC

Ms S says that an ERC should be drawn to a borrower's attention. She's right about that, and I'm satisfied it was in this case. The regulator requires a mortgage offer to follow a prescribed format, including information about an ERC. I can see Ms S was sent an offer in the right format in 2007 when she took the fixed rate, and so it was drawn to her attention in the way required.

Ms S also says that, because the ERC is fixed at 6% throughout the duration of the fixed rate, it's unfair. Because, she says, the risk to the bank reduces over the term then so should the level of the ERC.

The rules of mortgage regulation say that an ERC has to be a reasonable pre-estimate of the costs of ending a fixed rate early. But those costs don't have to relate to the costs of individual loans or the risk associated with individual borrowers. Lenders are allowed to estimate the costs across a group of mortgages and a range of products. They don't have to apply an individually calculated ERC to each loan to reflect the risks or costs that the particular loan would terminate early. The pre-estimate can be widely drawn and the costs of meeting that estimate be apportioned across a group of mortgages – it's not unusual to have a fixed rather than stepped ERC as a result. So I don't think the ERC is unfair.

the switch to interest only

I don't think that the switch to interest only amounted to the sale of a new mortgage or the replacement of the existing repayment mortgage with a new one. Instead, it was a change to the existing mortgage made to assist Ms S with financial hardship. That may seem a technical distinction, but it's an important one. It means that Barclays wasn't selling a new mortgage which was required to be suitable. It was assisting an existing customer in financial hardship. There are different rules and requirements surrounding those two things.

In short, in assisting a customer facing financial hardship, a lender is required to work with the borrower to try to reach a solution, and act fairly and sympathetically.

There are various options available to assist borrowers in difficulties. These include payment holidays and payment arrangements, interest rate concessions, extending the term of the mortgage, and converting it to interest only – either temporarily or permanently.

There are advantages and disadvantages to all of these. A payment holiday or arrangement to accept reduced payments can create short-term breathing space. But while no, or reduced, payments are being made arrears continue to build up – and are recorded on a credit file. And once the holiday or arrangement comes to an end, the monthly payments will need to go up to cover the shortfall.

Extending the term will reduce the monthly payments by increasing the time available to reduce the capital. But it's a permanent change, which results in more interest being payable over the life of the loan. And a significant extension is required to make much difference – which was a difficulty in this case given Ms S's age at the scheduled end of the term.

Ms S had recently fixed her interest rate. Although it's less so now, at the time it was a competitive rate – so it's unlikely there were other rates available which would have made much difference to the payments. And changing the interest rate would have involved the payment of an ERC.

That leaves an interest only switch – which in the event is what Barclays advised Ms S to do. The problem with that comes where there's no means of repaying the capital at the end of the term if it's switched over permanently.

But that wasn't the plan. Barclays advised a 12 month switch, and Ms S requested 18 months. The plan was that at the end of that time she would switch back to repayment. So she would have benefitted from reduced payments in the meantime – but still have paid the capital off by the end.

Based on what was known at the time and without the benefit of hindsight, I think this was the best advice for Ms S's circumstances. She'd clearly been in financial difficulties for a couple of years by that point. She was overstretched on her expenditure and hadn't been able to work for a time. But she was hoping to budget and get her finances back on track. A year or 18 months of reduced payments would allow her to do that.

I don't agree with Ms S that she should have converted only part of her mortgage – or that Barclays should have presented that as an option. Even with the whole mortgage converted, she still struggled – missing payments, and not finally being out of arrears for another four years. Only converting part of the mortgage would have made that situation worse, because the monthly payments wouldn't have reduced as much.

It's difficult to be certain what would have happened had any of the other options been pursued. But I'm not persuaded that any of them would have left Ms S in a better position. A short term arrangement wouldn't have worked because it took four years to get finally back on track. A partial interest only conversion wouldn't have reduced the payments as much, and so the arrears would have been worse. Ultimately, I think it's likely that – if any of the other options had been tried – Ms S would have ended up in a much worse arrears position. She may even have ended up facing repossession proceedings – which the interest only switch avoided.

The problem Ms S faces now is that the mortgage remains on interest only. The plan was to convert it back after 18 months – once Ms S was ready to ask for that to happen. But Ms S couldn't do that, because she was still in financial difficulty. It was only after 2012 that she was out of arrears altogether. By then the term was shorter, and so switching back to repayment was more expensive. Ms S explored this option but didn't pursue it once she learned how much it would cost and learned that Barclays wanted to see whether she could afford the change. I don't think it was unreasonable for Barclays to want to assess whether changing back would be affordable – if it wasn't, doing so would put Ms S back into arrears.

I do appreciate the position Ms S finds herself in now. I'm sympathetic of course to the fact that she finds herself approaching the end of the term faced with a large capital balance and no means of paying it back short of selling her house. As she comes near to that point, Barclays will need to look at her situation fairly and sympathetically.

But I don't think that Barclays did anything wrong in advising her to switch. I think it acted fairly and sympathetically when she was in financial difficulty and the action it took at the time – with Ms S's agreement – probably avoided her home being repossessed at the time.

the Barclays premier service

For the same reasons, I don't think Barclays fell down in the service it offered Ms S. In fact, as I've said, I think the advice offered by the premier manager in 2008 contributed to keeping her in her home.

how Barclays handled the complaint

I don't think Barclays acted unfairly in how it handled the complaint. I can see that Ms S feels very strongly about her situation. She fundamentally disagrees with the outcome it reached. But that doesn't mean that it was biased in the way it approached the complaint.

Ultimately, I've reached the same outcome Barclays did. However, it's unfortunate that it gave Ms S incorrect information about whether she could overpay without paying an ERC. It's since put that right. But I think refunding the ERC on the recent small overpayments and paying £50 is fair compensation for that mistake.

conclusion

I'm sorry to hear of the problems Ms S has had over the years. I don't doubt her strength of feeling, and her worries about what will happen when she gets to the end of the term. But I hope she'll understand that I've thought carefully about everything that's happened here – and I do think Barclays has treated her fairly.

the responses to my provisional decision

Barclays accepted my provisional decision. Ms S also accepted it. She says that she doesn't think that Barclays properly explained to her the implications of switching to interest only, and hasn't provided her with assistance since then. But she accepts that the switch was, at the time, the least worst option for her. She explained that since she brought her complaint to us, her fixed rate term has come to an end and she's now converted her mortgage to repayment, and so will be able to pay it off by the end of the term.

my findings

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 considered again the conclusions I reached in my provisional decision. Having done so, I haven't changed my mind. I accept that Ms S remains unhappy about the switch to interest only. But as I explained – and she now agrees – she was in a situation where some action needed to be taken. A switch to an interest only mortgage did potentially store up problems for the long term, but in light of the circumstances at the time it was the least worst option open to her. I'm pleased to see that Ms S is now in a position to afford a repayment mortgage, and has converted it.

my final decision

For the reasons I gave in my provisional decision, set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 February 2018.

Simon Pugh
ombudsman