

complaint

Mr P complains about a re-mortgage he took out in 2006 with Barclays Bank Plc ("Barclays") trading as the Woolwich. He believes the mortgage was unsuitable as it was unaffordable for him. He complains too about how Barclays handled the arrears on his account.

background

Mr P took out a mortgage account for £68,165.86 in February 2002 over a term of 25 years. In September 2006 he approached Barclays for a re-mortgage to consolidate some debt. A mortgage of £100,000 was arranged over a term of 21 years. A reserve limit of £50,000 was also requested.

However arrears started to build up on the mortgage. The situation worsened and this resulted in Barclays taking Mr P to court to repossess the property. A possession order was granted in July 2013 requiring Mr P to give possession of the property by October 2013. Barclays has not sought to enforce this order.

I'm told that Mr P was reliant upon alcohol and has since been diagnosed with a mental illness. I'm told that his condition went undiagnosed for a substantial period of time and spanned the life of his borrowing with Barclays. He is now undergoing treatment. I can see that he understands that at time he buried his head in the sand and I'm told that he has blocked some of his financial stress from his mind.

Mr P complained to this service and an adjudicator decided not to uphold his complaint. However, he recommended that Barclays refunded Mr P 14 arrears charges of £40 each from the mortgage and £300 for the distress and inconvenience caused. Barclays agreed to this settlement; however Mr P has rejected this and asked for an ombudsman to consider the complaint.

I considered the case and issued my provisional decision in September 2015. I've attached the key parts of that decision to avoid repetition. I was minded to uphold the case due to an unsuitable recommendation having been made. I thought that this case was a clear case of irresponsible lending.

I invited comments to my provisional decision. For the sake of brevity I've summarised the salient points. Ours is an informal dispute resolution service and I hope the parties don't feel I'm being discourteous in condensing the key observations.

Mr P with the assistance of his representative made the following comments:

- That he is largely in agreement with my provisional decision;
- That Barclays heed my observation in terms of putting things right and paying any redress that exceeds my £150,000 jurisdiction;
- That Barclays provide confirmation from all relevant credit reference agencies that any adverse credit data arising from these debts is amended and his credit file is restored;
- That following any account adjustments or payments for redress that Barclays put forward proposals for repayment of any residual balances;
- And that Barclays apply to withdraw the Order for Possession.

Mr P's representatives also made representations for its costs. It is suggested that our adjudicator didn't fully appreciate the complexity of this case and that in my own provisional decision I stressed that it has taken me "considerable time" to decide. Mr P's representatives also advance that the matter was too complex for Mr P to present himself and beyond the understanding of the Citizen's Advice Bureau ("CAB") who tried to assist. I'm also referred to Mr P's own vulnerable personal situation and I've considered this throughout my handling of this case.

I've seen Mr P's representative's bill of costs. The sum suggested as of September 2015 was £1,417.50.

Barclays accepted my provisional decision and provided a detailed hypothetical recalculation of Mr P's mortgage account stemming to in excess of 300 pages.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Because Barclays accept my decision, I uphold this case.

Barclays made no observations on the proposed redress suggested in my provisional decision. The suggested recalculation seems to achieve the redress objectives of that decision. This is a complicated case to put Mr P back into the position he would've been in had the lending not taken place, but I'm satisfied that between the parties the redress shall achieve what my decision intends. I've gone on to consider the matters raised following my provisional decision.

costs

I'm left with the principle of whether or not I should award Mr P's representative's costs.

Our service is free of charge to consumers and provides an informal alternative to going to court. Consumers should not need special expertise or the help of a paid representative to bring their case to us. We judge cases on the facts - not on the way the case is presented. Were we to require consumers to employ a representative to present their cases to us, then our informal process would become adversarial rather than inquisitorial. It would begin to replicate the court system rather than being an alternative to it.

If consumers choose to employ a professional to look into their case and present it to us, then they will almost certainly have to pay the costs themselves, even if the complaint is successful. We never reimburse such costs if a complaint is unsuccessful.

Very exceptionally, in certain successful complaints we may sometimes consider reimbursing part of the costs. But the circumstances would have to be unusual. We would also have to be convinced that:

- it was entirely reasonable for the consumer to have sought the third party's assistance, in view of the complexity of the issues involved; *and*
- the fees were reasonable.

Turning to Mr P's situation I'm persuaded that his case meets the threshold in terms of complexity. I'm told that the CAB was originally engaged but the matter was too complicated for its advisors. Indeed, I can see that our adjudicator also had difficulty in unravelling the social, financial and welfare issues that the case involved. However, I place more weight upon the fact that Mr P has been struggling due to his personal and medical issues. I'm persuaded that this is an exceptional case which required the assistance of a third-party advocate.

Next, I've considered the extent of the costs. I'm persuaded that the costs are reasonable and have assessed the itemised bill of costs. The suggested time upon taking Mr P's instructions and actual work involved doesn't seem to have been excessive or in any way inflated. I'm satisfied too that the costs are reasonable.

I'm therefore going to make an award for Mr P's costs in this case.

Order for Possession

I've considered Mr P's suggestion that Barclays makes an application to revoke its Order for Possession. I'm afraid my jurisdiction cannot fetter the legal process. However, I have confidence that Barclays will take the necessary commercial decisions in this case. It is a matter for Barclays as to whether it wishes to revoke the Order for Possession.

I've considered that Mr P has been put to significant trouble and upset during the life of the complaint. I'm inclined to say he was mis-sold a product he could never afford and has caused him stress and anxiety during the years that followed. Barclays was aware of at least some of his problems in 2006, and has learned more since.

Mr P has also been subject to court possession proceedings for not being able to make the much higher monthly payments. This would've placed him under significant strain for fear of losing his home, and would have had a much greater impact on him than on other customers in arrears.

distress and inconvenience

In my provisional decision I made an award for distress and convenience. I quote from my decision below:

"I'm aware that the rules which regulate this Service allow me to award "fair compensation". This includes awards for non-financial loss such as harm to reputation, inconvenience, distress and pain or suffering.

In this case, Mr P was sold a mortgage that he should never have taken out, as should have been clear to Barclays at the time. The result was that he was put through several years of increased financial hardship. He had to attend court and face the real risk of losing his home. He has had to deal with this despite the background of the health problems I've described. The harm described would've been caused as a direct result of the mis-sold mortgage and an award in the "severe" category (£2,000-£5,000) is reasonable. I therefore intend to award £3,500. This places the harm squarely in the middle of the severe category. I don't think an award into the higher band or "extreme" category is necessary. Mr P has managed to keep his home, so I'm not prepared to award beyond the severe category."

I make this award following my provisional decision having had no substantive representations on the point.

This case has been complicated and has taken considerable time to resolve. However, I'm grateful to both parties for their representations in this matter. I must personally apologise for the length of time this complaint has taken, but I hope it's understood that this needed time to carefully evaluate the issues in the case.

redress

Barclays should:

- 1) Re-calculate the mortgage account as if the 2006 mortgage had never taken place, using the balance prior to that as the starting point, and write off the increases to the reserve since that time
- 2) From that starting point, Barclays should apply interest due from time to time, and reduce the balance by any payments made to the mortgage account direct from Mr P (rather than from the reserve account);
- 3) Re-work the mortgage account in line with 1) and 2) above and write to Mr P and his authorised representatives explaining how it arrived at any outstanding balance;
- 4) Write to credit reference agencies removing any adverse credit data from when the mortgage was taken out in 2006 onwards and confirm in writing to Mr P that this has been completed;
- 5) To enter into a constructive dialogue with Mr P and his authorised representatives as to how any outstanding balance should be paid taking into account Mr P's situation now;
- 6) To not enforce the possession order granted in July 2013 for at least 12 months following this decision whilst coming to a suitable way forwards in line with 5) above.
- 7) Pay Mr P £3,500 for the distress and inconvenience caused to him by this matter.
- 8) Pay Mr P's representatives its costs upon receipt of an itemised bill of costs.

If my total award exceeds my award limit of £150,000 I direct Barclays Bank Plc to carry out and pay the calculation up to £150,000, and I recommend that it pays the residual amount beyond my ceiling award of £150,000.

my final decision

Under the rules of the Financial Ombudsman Service I uphold this case and I direct Barclays Bank Plc to pay and comply with the redress outlined above. I'm required to ask Mr P to accept or reject my decision before 19 February 2016.

Daniel Lucas
ombudsman

Extract from my provisional decision

"This case has taken some considerable time to decide. However I am inclined to uphold this case. I set out my current thoughts about the complaint below.

It is clear that Barclays recommended the mortgage in 2006. I've seen the mortgage application form and the offer that follows. So the rules in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) for advised sales apply here. They include obtaining all relevant information and ensuring any mortgage recommendation is suitable for the customer's needs and circumstances.

The thrust of Mr P's complaint is that Barclays has acted irresponsibly in recommending an unaffordable mortgage facility. I've considered whether the re-mortgage was affordable and suitable for him at the time of the sale. The purpose of the re-mortgage was for consolidation purposes. This is quite clear. I've seen on the mortgage application that Mr P was looking to consolidate £19,000 of existing liabilities. This spanned four creditors at the time. I'm conscious too that the re-mortgage would repay his existing mortgage he had with Barclays. In deciding whether the mortgage was affordable and suitable I've been referred to Mr P's lending history.

lending history

It is clear that Mr P made previous attempts at consolidating his liabilities prior to the 2006 re-mortgage. I've seen that in February 2002 Barclays agreed to an advance of £68,165. This transferred his previous mortgage commitments to an Open Plan mortgage account (ending 4263). Alongside this Mr P appears to have had access to a reserve account known as an "Open Plan Current Account" (ending 41224). In January 2002 the account reserve limit appears to have been £100.

I'm told that he borrowed substantial sums of money from his father in the first half of 2002. I've seen two deposits towards his mortgage for £8,000 in March and in June 2002, and a further deposit of £7,000 in July. This was followed shortly after – towards the end of July – with a denied request to extend his borrowing. Barclays said this was because it didn't think his income was high enough to be able to afford the mortgage.

Barclays has told me that Mr P didn't take out a reserve limit at the outset. I'm told that the reserve limit increased due to automatic rebalancing. I've understood this to mean that when the mortgage balance reduced the reserve limit increased so that the total of the two remained the same. Barclays has confirmed that as of 1 October 2002 the reserve limit was £1,279.99 and that the limit increased over the years until it was £29,401 at September 2006. I've seen a letter that Mr P's representatives have provided which contradicts this. This shows that Barclays offered the increase in the reserve account on the 22 September 2004. The mortgage statements which span this period also show the addition of the increased reserve.

I haven't been provided with any explanation as to why the Open Plan Current Account increased to £22,861.70 as of the 1 Feb 2005. But it shows that Mr P had extended himself significantly by this period and within a short period of time (Jan 2004 through to Jan 2005).

Prior to the August 2006 re-mortgage I can see too that Mr P had fallen behind with his mortgage payments and letters had been sent advising him of arrears and charges applied. I have to consider also, that in looking at Mr P's finances prior to the re-mortgage I can't see a stable income being paid to the mortgage current account.

the 2006 re-mortgage

Barclays agreed Mr P's re-mortgage via its accelerated lending criteria. This policy allowed a mortgage to be granted on a limited information basis as long as a consumer met certain pre-set

criteria. This policy also allowed lending to be granted on a paper-based affordability exercise without the need to provide evidence of earnings or income and expenditure.

I'm not convinced given Mr P's lending history and the way in which his borrowing had been managed at the time that he was a candidate for this. I would also go as far to say that this case is one of clear irresponsible lending. I shall explain my thoughts at this stage.

It appears that Mr P had the reserve of £29,401 offered in September 2004 and within less than half a year this was used by Mr P. I can see too that he has contacted Barclays at times to explain his financial difficulties prior to the 2006 re-mortgage. At this stage Barclays was aware of Mr P's situation and the drastic use of the reserve account should've placed Barclays upon notice that Mr P was struggling to meet his commitments.

Mr P's salary is recorded as £38,000 per annum on the 2006 application form, but I've not seen any evidence to show that he could significantly extend his mortgage borrowing at the time. I'm told too by Mr P that he recalls laughing at the income suggestion during the meeting for the mortgage. This re-mortgage was for debt consolidation and Barclays should've considered whether or not to commit Mr P to further secured borrowing. This is especially so when the proposed lending went significantly beyond that which he was already struggling to maintain. Although I don't have the reserve account details, I draw a reasonable inference that Mr P was utilising the reserve to meet his daily living expenses, as well as paying the mortgage account.

In addition, I don't think the recommendation made was suitable. The re-mortgage increased Mr P's monthly mortgage payment significantly and the reserve facility was granted upon the remote possibility that Mr P would purchase a plot of land. The re-mortgage and reserve combined exposed Mr P to a significant increase in his indebtedness if the reserve option was used by Mr P. I think that had Barclays taken a common-sense view of the information Mr P provided, as well as records in its own control, it would have reason to doubt what it had been told by Mr P. It didn't have in its possession at the time any evidence to suggest this was affordable, and on the contrary the accounts held by Mr P would've shown serious concerns about his erratic income from 2005 onwards. I'm persuaded that Mr P struggled to meet his mortgage liabilities prior to 2006 when his mortgage payment was much less than the 2006 position. With this in mind I'm persuaded that the lending history alone suggests that this mortgage was unaffordable.

I'm also told that Mr P was struggling with his own very personal and challenging health problems at the time. I can't see from the evidence before me that Barclays offered any assistance when approached by Mr P prior to 2006. Barclays were aware of his situation at the time but I can't say that it provided him with any meaningful help.

I'm persuaded therefore that this case is one of clear irresponsible lending which was unsuitable and unaffordable and I propose to uphold this complaint.

I turn now to redress and putting Mr P back in the position he would've been in had he not taken out the re-mortgage and reserve.

redress

This is a difficult case to put right the shortcomings in the sale. I say this because the 2006 re-mortgage was used to consolidate debts. Mr P had the benefit of the mortgage facility to repay his creditors at the time. I'm aware too that Mr P's re-mortgage in 2002 was also used to pay off an existing mortgage prior to 2002 for which he's had the benefit too. But had the 2006 mortgage never been taken, Mr P's unsecured debts may have been paid off by now. Or he may have been able to come to an arrangement with his creditors. I don't therefore think that Mr P has gained any real benefit from the additional 2006 borrowing. And since then, it seems to me, he has been using the current account reserve to pay the mortgage – so using debt to Barclays to pay debt to Barclays.

I also have to consider the position now where I'm told that Mr P is coming to terms with his own personal and mental health problems and his current inability to pay the contractual mortgage payments. These are serious considerations given the vulnerability of Mr P and the medical evidence I've seen. Alongside this I also have to factor into my decision the prospects of Mr P returning to work following his recent diagnosis and meeting the mortgage commitments, as well as the position of the possession order in favour of Barclays.

I therefore think that Barclays should:

- 1) Re-calculate the mortgage account as if the 2006 mortgage had never taken place, using the balance prior to that as the starting point, and write off the increases to the reserve since that time*
- 2) From that starting point, Barclays should apply interest due from time to time, and reduce the balance by any payments made to the mortgage account direct from Mr P (rather than from the reserve account);*
- 3) Re-work the mortgage account in line with 1) and 2) above and write to Mr P and his authorised representatives explaining how it arrived at any outstanding balance;*
- 4) To write to credit reference agencies removing any adverse credit data from when the mortgage was taken out in 2006 onwards;*
- 5) To enter into a constructive dialogue with Mr P and his authorised representatives as to how any outstanding balance should be paid taking into account Mr P's situation now;*
- 6) To not enforce the possession order granted in July 2013 for at least 12 months following this decision whilst coming to a suitable way forwards in line with 5) above.*

I'm conscious that this will leave Mr P with an outstanding balance and I stress that Barclays would be expected to handle this case with due care and sympathy working with Mr P and his authorised representatives throughout. It may wish to consider options such as switching the balance to interest only, freezing or applying a reduced interest rate, or extending the term. Mr P's representatives may want to consider options if they exist for Support for Mortgage Interest allowance. I leave these options with Barclays and Mr P and his representatives to consider within the scope of point 5 above."