

complaint

Mrs K, through her daughter, complains that Barclays Bank Plc (trading as the Woolwich) mis-sold her a mortgage and a further advance which wasn't suitable to her needs. She also complains that Barclays Bank Plc is not treating her sympathetically in her financial difficulties.

background

In 2004, Mrs K took out a flexible mortgage on a 16 year term for around £40,000 on her property. At the time, she was medically retired due to serious health problems and the property was unencumbered. It seems her only income was her pension. The borrowing was to pay off some unsecured debt and for home improvements. Mrs K lived with other adult family members at the property but the mortgage was in her sole name.

The mortgage was sold to her by the Woolwich on an advised basis and included a Mortgage Current Account (MCA). Although it was a repayment mortgage, it included an MCA reserve which meant Mrs K could borrow back money as she paid off the mortgage. Mrs K took out a further advance of £9000 in 2007. This was again on an advised basis and had the same MCA reserve facility. It seems the further advance was to pay off debts including a part to pay off the balance on the MCA reserve facility.

Over the life of the mortgage Mrs K has made regular repayments but she has also drawn down on the MCA reserve. Interest has been applied both to the capital remaining on the mortgage and to the balance on the MCA reserve. I understand the current balance of the mortgage and further advance is just under £20,000 and the MCA reserve balance is around £18,500 with a limit of almost £24,000. It seems the rebalancing feature is still applied so the available funds on the MCA reserve will continue to rise as the mortgage balance is paid down. There is only around 4 years remaining for Mrs K to pay off both balances.

Mrs K, through her daughter, complained to Barclays saying the mortgage had been mis-sold and was unsuitable for her needs. She said she was very ill and couldn't possibly pay off the MCA reserve so she asked for it to be written off. Barclays rejected her complaint. It said it would engage with her to find an affordable way of addressing the debt but it needed her cooperation. But it didn't accept the mortgage had been unsuitable for her at the time she was advised. Mrs K wasn't happy with this so she brought it to this service.

The adjudicator and team manager investigating the complaint thought it shouldn't be upheld. Mrs K and her daughter disagreed with this outcome so it came to me for a decision. I disagreed with their assessment and thought the complaint should be upheld in part because I didn't think a mortgage with an MCA reserve was suitable for Mrs K.

I outlined possible redress in my provisional decision and requested further information. Based on the new information provided, I issued a second provisional decision setting down the way Barclays should calculate redress. Mrs K's daughter followed up on this as she said she needed the actual figures before she could assess the decision properly. Barclays accepted the provisional decision but took longer than expected to provide the figures. These can now be given to Mrs K alongside my decision and I hope this will help her decide whether or not she accepts this final decision so she can put this complaint behind her.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having taken into account the submissions from Barclays and Mrs K's daughter, my reasoning and suggested redress hasn't changed from that set down in my second provisional decision.

I find the complaint about suitability of a mortgage with a MCA Reserve and the suitability of the further advance should be upheld. Barclays now accepts this. I'm grateful to Mrs K and her daughter for all the information they've provided me with to help me understand her situation. They have a number of issues with the way they feel they've been treated by Barclays. But I'll focus on three main points of the complaint:

- the mis-sale of the mortgage in 2004,
- the mis-sale of the further advance in 2007, and
- the way Mrs K is being treated in her financial difficulties.

mis-sale of the mortgage in 2004

In 2004 when Mrs K applied for her mortgage, she was already medically retired with a limited income that was unlikely to increase over time. The application shows the mortgage was to pay off existing unsecured debts and for home improvements.

There is limited information from the time of the sale in 2004 but it seems Mrs K's had no debt secured on her home when she asked for advice. It's possible the mortgage reduced the amount Mrs K had to pay on her debts. But it may have been better advice for Mrs K to look into ways of managing her unsecured debt and to consider the impact of any financial arrangements on her eligibility for benefits before recommending a mortgage which gave her access to such a degree of debt secured on her home. So I don't think the advice to consolidate her unsecured debt into a mortgage was suitable at the time.

The mortgage offered may have been affordable in terms of monthly payments. But the MCA reserve facility allowed Mrs K to continue taking out more debt while she was paying her mortgage. This made it much less likely that Mrs K would pay off the entire debt by the end of the term. She says she was told the MCA reserve could help her pay the mortgage if times were difficult. It's not clear how she used the MCA over time. But the credit provided through the MCA reserve allowed Mrs K to borrow beyond her means and put her home at risk. Therefore I don't think the advice given to Mrs K to take out a mortgage with an MCA reserve was suitable to her circumstances at the time.

mis-sale of further advance

When Mrs K asked for the further advance in 2007, this was to pay off further unsecured debt and, in part to pay off the MCA reserve which had built up. I don't think it was suitable advice for Mrs K to increase the level of debt to pay off the MCA because I don't think the MCA reserve was suitable for her from the outset. By 2007, it was clear that Mrs K was struggling with her finances and I don't think Barclays should have advised her to take on more secured debt in these circumstances. Mrs K's financial situation wasn't going to improve as her income was her existing pension. So at this stage, more care should have been taken before advising her to increase the secured lending on her home.

I can see that further lending was refused in 2009 because it wasn't affordable. But in the circumstances in 2007 and given the reasons of the lending, I don't think it was responsible for Barclays to provide the further advance.

financial difficulties

Barclays is under an obligation to treat her fairly and sympathetically in her financial difficulties. It's said it's willing to engage with Mrs K to reach a reasonable agreement on how to manage the debt and it recognises the problems caused by Mrs K's ill health. Mrs K's daughter has offered £5,000 in full and final settlement of the outstanding balance on the MCA reserve but Barclays isn't willing to accept that. It has asked for a full income and expenditure report and a commitment to manage any outstanding unsecured debt so the secured debt can be prioritised. Mrs K has now provided this.

Barclays says it can't provide a named contact but is ready to engage with Mrs K. I don't think a named contact is a requirement and I hope Mrs K's financial situation will be much better if she accepts the redress in this decision. But Barclays will still be under an obligation to treat Mrs K fairly and sympathetically in the future. If she feels it doesn't she can make another complaint.

Mrs K's problems have been ongoing for many years and have been made worse by the further advance. But from the evidence I've seen, I think Barclays is now trying to reach a solution. Her situation should be improved significantly by the redress I am proposing. Mrs K and her daughter should take independent advice on how to manage her existing debt and maximise her available resources.

redress

Mrs K's situation is complex. Although I think some of the advice given to Mrs K was unsuitable and some of the lending was irresponsible, I do think Mrs K has had the benefit of a large part of the loan so I don't think it would be fair to write off the loan completely. I don't have a clear picture of Mrs K's unsecured debts, but it seems that her financial difficulties aren't only due to this mortgage and further advance. It's impossible to put Mrs K back into the exact position she would have been in but for the bad advice. So I need to decide on redress that takes into account the fact that she's used the funds she had as well as the problems the lending has caused her.

I don't think it was suitable advice for Mrs K to consolidate unsecured debt into secured borrowing in her circumstances in 2004. So I think the amount of the mortgage that was used for debt consolidation in 2004 should be written off. The mortgage should be recalculated based on the amount lent that wasn't used to pay off existing debt.

The further advance was used to consolidate more debt and to pay off part of the MCA reserve. I don't think it was responsible to provide further lending for these reasons in Mrs K's circumstances in 2007. Because I think the further advance shouldn't have been granted, I think this part of the mortgage should be written off. The balance of both the mortgage and the MCA should be recalculated as if the further advance hadn't been granted.

Mrs K has complained about the interest being applied to the MCA reserve. While the difference in rates may have been referred to in the paperwork, because I'm not satisfied the facility was suitable for Mrs K's needs, I think interest and charges should be removed from

the MCA balance and the MCA should be frozen so no more credit can be used on the reserve. The MCA balance should be recalculated with 0% interest applied from the start of the mortgage. This should mean that, even though the removing the further advance will mean less of the MCA has been paid off, Mrs K shouldn't be worse off because there'll be no interest to pay on the MCA balance.

Barclays has now provided figures based on this formula which will be forwarded with this final decision. It's not for me to audit the calculations and Mrs K may want to get advice about those calculations and raise any questions directly with Barclays.

It's difficult to separate Mrs K's financial difficulties over the years from the mis-sale of the mortgage and further advance. But I've reconsidered the evidence and the impact on Mrs K's health of trying to sort out her financial difficulties over a number of years. Based on this, I think an award of £1,500 is appropriate for the stress caused to Mrs K of trying to manage the financial difficulties caused, in part by the unsuitable lending.

my final decision

For the reasons given above, it's my final decision that this complaint is upheld.

Barclays Bank Plc should recalculate the mortgage on the following basis:

- write off the part of the mortgage used for debt consolidation in 2004;
- write off the 2007 further advance for £9,000;
- apply 0% interest to the MCA reserve from the start of the mortgage.

In addition, it should:

- freeze the MCA reserve so that no more credit is provided;
- pay Mrs K £1,500 for the serious distress caused by the unsuitable lending and the financial difficulties she's had as a result.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 25 August 2016.

Susie Alegre
ombudsman