

## **The complaint**

This complaint is about a Woolwich-branded mortgage Mrs and Mr H used to hold with Barclays Bank UK PLC. The mortgage ended in 2016, but they still owed Barclays around £95,000 on a secured overdraft. The overdraft was then put on a repayment plan, which Mrs and Mr H mostly adhered to. Barclays cancelled the plan in 2019 after Mrs and Mr H missed a monthly instalment for the second time. Rather than offer a new plan, Barclays began possession proceedings, which were paused during the pandemic. Before the legal action could be resumed, Mrs and Mr H obtained a lifetime equity release mortgage to repay the overdraft, but believe Barclays treated them unfairly.

## **What happened**

By way of a provisional decision dated 7 December 2021, I set out my provisional conclusions on how this complaint should be determined. The following is an extract from the provisional decision.

*“The history and background of this complaint are well known to both parties so I won’t repeat them in detail here. Instead I’ll give a brief summary (rounding figures where necessary) and then focus on giving the reasons for my decision. If I don’t mention something, it won’t be because I’ve ignored it. It’ll be because I didn’t think it was material to the outcome of the complaint.*”

*Mrs and Mr H missed a payment in 2017, Barclays agreed a new plan and Mrs and Mr H kept to it for almost two years, during which the outstanding balance was reduced to around half its original size. But in the summer of 2019, Mr H had a car accident which prevented him working for a time. They missed another instalment, and this time Barclays declined to set a new plan. It began legal action for possession of Mrs and Mr H’s home, which was held in abeyance during the pandemic. In the meantime, Mrs and Mr H obtained an equity release mortgage and paid the remaining debt in full.*

*Their complaint, in summary, is that Barclays provided the overdraft irresponsibly at the outset, forced them into an unaffordable payment plan in 2016, and then unfairly started possession action after they missed a payment for the second time in 2019.*

*Our investigator didn’t recommend the complaint be upheld so Mrs and Mr H have asked for it to be reviewed by an ombudsman.*

## **What I’ve provisionally decided – and why**

*I’ll make some general observations before dealing with the substance of the complaint. We’re not the regulator of financial businesses, and we don’t “police” their internal processes or how they operate generally. That’s the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don’t replicate the work of the courts. We’re impartial, and we don’t take either side’s instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.*

*If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round". I also have to ensure I don't include any information that might identify Mrs and Mr H when my decision is published.*

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

*Having done so I've reached the following conclusions.*

*I don't find that Barclays acted irresponsibly simply because it made the overdraft facility available for Mrs and Mr H to use. Unless and until Mrs and Mr H made use of it, it was just a facility; it only became a debt when they did make use of it. No one forced Mrs and Mr H to make use of the facility; I'm satisfied they did so of their own volition, and it's reasonable to conclude they accrued a benefit from spending the money they borrowed.*

*I think it's reasonable to say Mrs and Mr H should have understood that the overdraft would need to be repaid when the mortgage ended. That was an inherent part of the contract at the outset. Also, even if Mrs and Mr H didn't assimilate that when they took the mortgage out, the same message will have been reinforced by the information included in the account statements that were issued at regular intervals.*

*Mrs and Mr H say they understood that a new arrangement would be put in place for the overdraft after the mortgage ended in 2016. That's exactly what did happen; Barclays asked Mrs and Mr H for an income and expenditure analysis, and on the basis of what they told it, agreed a payment plan to repay the overdraft over several years. I appreciate why Mrs and Mr H believe the payment plan was excessively strict, but I think it was fairly assessed at the time.*

*When Mrs and Mr H missed a payment in 2017, Barclays agreed to reset the payment plan. I think that was an appropriate response, in the reasonable expectation that this was a "one-off" deserving of flexibility. On first glance, I can understand why Barclays was less accommodating when it happened for a second time in 2019. After all, the starting point in this complaint is that this a debt that was meant to have been repaid in 2016. But everything has a context, and even though the missed payment in 2019 was a "second offence", I think Barclays' reaction to it was a little heavy-handed.*

*It was an external event outside Mrs and Mr H's control that caused the missed payment, and they proactively contacted Barclays when it happened rather than wait for them to contact them. It seems to me that all times, Mrs and Mr H were doing (or trying to do) the right thing in adversity. That should have earned them a little more consideration than they received.*

*Even if Barclays didn't want to continue with a payment plan, I think it would have been kinder, and fairer, to explain why but give Mrs and Mr H a grace period (say six months) to find alternative finance rather than force the issue by beginning possession proceedings. Had it done that, Mrs and Mr H would most likely still have ended up taking out the equity release mortgage, but in a more orderly fashion and under less stress. They would also not have been charged the litigation fees. Overall, starting legal action and incurring those costs wasn't fair treatment."*

The parties were given until 21 December 2021 to respond to the provisional decision. Mrs and Mr H accepted my provisional decision; Barclays asked for an extension of time

until 29 December, which was granted. It has since asked for a further extension, this time until 13 January 2022.

After careful consideration, I have declined this second request. I appreciate that there has been a holiday period, and that the business may be suffering from staff shortages. But the reason it has given is that it wishes to check with its litigation department regarding contact it had with Mrs and Mr H during the relevant period. In other words, Barclays is asking for more time to disclose evidence that it can't be sure exists, and if it does, should have been disclosed when our investigation first started and we requested Barclays to submit its case. That was on 2 July 2020.

### **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 considered afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusions.

### **My final decision**

My final decision is that I uphold this complaint in part by ordering Barclays Bank UK PLC to:

- Refund all of the fees and charges it debited to Mrs and Mr H's mortgage account in connection with the possession action that started in 2019;
- pay Mrs and Mr H interest at 8% simple\* on the refunded amounts, from the dates each fee was applied to the eventual date of settlement; and
- pay Mrs and Mr H £250 compensation for unnecessary stress.

\*If Barclays considered it should deduct basic rate income tax from the interest element of this award, it must then supply Mrs and Mr H with the relevant tax certificate.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr H to accept or reject my decision before 2 February 2022.

Jeff Parrington

**Ombudsman**