

The complaint

This complaint is about a mortgage Mr O and Ms P hold with Barclays Bank UK PLC. Mr O and Ms P are unhappy that Barclays promised them a certain interest rate when their existing deal expired, but then applied a higher rate. It's a joint mortgage, and both borrowers have joined the complaint. However, all of our dealings have been with Mr O, on behalf of himself and Ms P.

What happened

By way of a provisional decision dated 10 April 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr O and Ms P being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr O and Ms P have two mortgages with Barclays; one is residential, the other is buy-to-let (BTL). At the beginning of October 2022, they applied for new rate deals on both, via their broker, to take effect on 1 February 2023. As I understand it, the application for the BTL, a five-year fixed rate of 3.43%, went through without an issue and isn't part of this complaint. Where I mention it here, it's for context only.

The problem is with the residential mortgage, on which the deal Mr O and Ms P were seeking was a five-year deal at 3.46%. It seems that the application was formally submitted the day after the 3.46% deal had been replaced by one at 4.96%. When Mr O and Ms P complained about this, Barclays issued a final response dated 20 October 2022. In this letter, Barclays said that although they had missed the deadline, the bank had agreed to apply the lower rate* with effect from 1 February 2023. It also offered £100 compensation which, according to Barclays' internal notes, was accepted and paid.

*Although not specified, the lower rate referenced in the 20 October 2022 final response letter was in fact the five-year 3.43% deal agreed on the BTL mortgage, not the five-year 3.46% that had been the intended deal for the residential mortgage.

That should have been that, but what happened next is that Barclays issued an offer on 31 October 2022, quoting the 4.96% rate. Mr O and Ms P again queried this by phone and were reassured several times that the lower rate (which Mr O and Ms P believed to be the 3.46% rate) would be applied.

However, on 1 February 2023, the residential mortgage went onto the 4.96% deal, prompting a further complaint. Barclays issued another final response on 8 February 2023, apologising for having misled Mr O And Ms P in the earlier final response and offering a further £300 compensation.

Mr O and Ms P referred their complaint to us. Our investigator wasn't persuaded that Barclays should be required to apply the lower rate to the mortgage. But he did think Barclays should pay more compensation than it had offered. Rather than £400 (the initial £100 paid in October 2022 and the £300 offered in February 2023) the investigator thought £600 was fair.

Barclays accepted the investigator's recommendation, but Mr O and Ms P asked for it to be reviewed by an ombudsman. It's come to me, and having reviewed the casefile, I've reached a different conclusion from the investigator on how the complaint should fairly be determined. Accordingly, I'm setting out my conclusions in a provisional decision, to allow both parties to comment before the matter is finalised.

What I've provisionally decided – and why

I'll start with some general observations. 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 (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. 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.

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

Barclays has gone to great pains, both internally and in communication with its customers and this service, to emphasise that there was no error on its part, because the application for the 3.46% rate was submitted after the product had been withdrawn. That's fine as far as it goes, but it's not actually what the outcome of the complaint turns on. What it *does* turn on is the final response Barclays issued on 20 October 2022, because that is the point at which Barclays *did* make an error.

I think it's possible to surmise how the error arose; the case-handler drafting that letter most likely looked at the BTL mortgage account instead of the residential one, which would explain the reference in the letter to the 3.43% rather than the 3.46% product. But whatever led to that error, it's the effect of the error that matters, because it created an expectation in Mr O and Ms P's minds about the rate Barclays had agreed to apply to their residential mortgage with effect from 1 February 2023.

That expectation was disrupted by the offer issued on 31 October 2022, but quickly restored, and then reinforced, in the phone calls that followed, when Barclays confirmed that the lower rate would be applied. Critically, that expectation then governed what Mr O and Ms P did (or more pertinently didn't do) up to 1 February 2023.

Having been reassured that they were going to receive the 3.46% rate they'd applied for the previous autumn, Mr O and Ms P had no reason to look for alternative deals to the 4.96% rate that, unknown to them, Barclays had applied in reality.

There's no doubt in my mind that if Mr O and Ms P had known the true position (that the 3.46% deal was off the table) they would have acted differently by seeking out a better rate. I say that not least because Mr O's occupation gives him specialist knowledge of the subject matter. The only reason they use a broker for their personal financial arrangements is to avoid a potential conflict of interests that might arise if Mr O arranged them directly.

Putting everything together, I consider all the elements are present for a finding of promissory estoppel: those are;

- a representation made by Barclays that wasn't true;
- Mr O and Ms P acting on that in good faith;
- as a result, they suffered detriment;
- if Mr O and Ms P had known the true position, they'd have acted differently;
- Barclays is therefore estopped from simply saying "sorry, we made a mistake".

Our I held back from recommending Barclays apply the 3.46% rate as redress for the complaint, reasoning that because they'd applied after it had been withdrawn, Mr O and Ms P could not have been eligible for it. I fully understand his logic, and in other circumstances, I might have reached a similar conclusion. Here, however, I consider it fair and reasonable to conclude that Mr O and Ms P became eligible for that rate when Barclays issued the final response on 20 October 2022 in which the bank assured them that they would have that rate on their residential mortgage.

Because they were assured by Barclays – several times – that they would have the 3.46% rate rather than the 4.96% rate, Mr O and Ms P didn't ask their broker to source lower rates than 4.96% that they might otherwise have qualified for. That was entirely reasonable, in my opinion, as there was no reason, based on what Barclays had told them, for Mr O and Ms P to think that the 3.46% rate wouldn't be applied to their mortgage. In all the circumstances, I'm satisfied the finding of estoppel is enough, in my view, to bind Barclays to the 3.46% product it misled Mr O and Ms P into believing they'd been given."

I gave the parties two weeks to comment on the provisional decision; both have done so already. Mr O and Ms P accepted the provisional decision and confirmed they'd like the overpaid interest refunded to them directly. Barclays said that before it could make a decision, it needed to see proof of what Mr O and Ms P's broker booked for them.

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.

Having considered afresh everything that both parties have said and provided, I won't be departing from my provisional conclusions. It's a bit late for Barclays now to be saying it has no evidence of Mr O and Ms P's broker having booked a particular product. In any event, the enquiry is irrelevant because it's not what the outcome of the complaint turns on.

The case turns on the estoppel Barclays created on 20 October 2022 when it told Mr O and Ms P in writing they would receive the rate they'd applied for even though the deadline for doing so had been missed. Barclays hasn't answered that in its response.

My final decision

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

- re-work Mr O and Ms P's mortgage account on the basis that the 3.46% fixed rate product was applied on 1 February 2023;
- refund the differential interest Mr O and Ms P have incurred each month from February 2023 up to the eventual date of settlement;
- pay interest on each refunded amount, at 8% simple per annum* from the date each refunded amount was paid by Mr O and Ms P to the eventual date of settlement; and
- pay Mr O and Ms P £500 compensation (making £600 in all) for their time, trouble and upset.

*If Barclays deducts basic rate income tax from the interest element of this award, it should supply Mr O and Ms P with the relevant tax certificate, so that they can apply to HMRC for a refund if their wider circumstances allow.

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 Mr O and Ms P to accept or reject my decision before 14 May 2024.

Jeff Parrington

Ombudsman