

The complaint

This complaint is about an interest-only mortgage Ms M holds with Barclays Bank UK PLC. Ms M is unhappy that Barclays refused to extend the mortgage term when it expired.

What happened

By way of a provisional decision dated 9 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 Ms M 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.

Ms M’s mortgage is made up of two components, a main mortgage of £50,000 and a further advance of £30,000. Both are interest-only, and were due to be repaid in January 2023. Ms M has told us her plan to use investments to repay the mortgage was disrupted by the pandemic when she lost her job, and she had to use her investments to cope with the resulting financial hardship.

Ms M returned to well-paid employment in 2022, and has since been making substantial lump sum payments to bring the mortgage balance down. Ms M was aware she wouldn’t be able to clear the mortgage completely by January 2023. but says she’d been assured in conversations with Barclays that if she needed more time there wouldn’t be a problem.

However, when Ms M did ask about a term extension of a few months, she says it was refused. Barclays wrote to tell her it would send a field agent to discuss how she intended to repay the mortgage. Ms M complained; Barclays issued a final response on 28 April 2023 saying that a mortgage can only be extended by applying for a re-mortgage, and that this policy must be followed. Barclays also wrote again to tell her it would send a field agent to discuss how she intended to repay the mortgage.

When the case came to us, our investigator didn’t think Barclays had done enough to communicate with Ms M, and recommended it pay her £300 compensation. Ms M was content to accept the settlement, but Barclays provided evidence of attempts it had made to contact Ms M by phone. The investigator revised his compensation proposal to £150, which Ms M agreed to accept. However, Barclays asked for the case to be reviewed by an ombudsman. It doesn’t think it’s done anything wrong to warrant paying Ms M compensation at all.

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.

My starting point here is that Ms M borrowed money from Barclays and under the terms of her original agreements with Barclays, was due to repay the money in January 2023. No-one is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to more time to repay the debt after it has fallen due. But a lender must treat customers fairly. In the context of an application for a term extension, that means assessing it fairly in accordance with the bank's lending criteria and being mindful of what mortgage regulation requires of it. Lenders' criteria are commercially sensitive and not generally made public.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A term extension *is* a material change to the mortgage contract. In the circumstances, Barclays would, I find, have been entitled to consider affordability. But it would also have had to consider whether the change to the mortgage would be in Ms M's best interests – and if it was, then the affordability assessment could be disregarded.

Here, Ms M never got as far as submitting a formal application, so I can't say one way or another whether a fair assessment of her circumstances would have resulted in an extension, formal or otherwise, being agreed. So I've focussed on whether it was fair and reasonable to insist she do so, and even if it was, what then got in the way of a formal application being submitted for assessment.

In its final response to Ms M's complaint, Barclays said that its policy is that the only way for an interest-only mortgage to be extended is for the borrower to apply for a re-mortgage. It also says this policy must always be followed. If that is Barclays' policy, then I have no regulatory power to say that it shouldn't be.

But to say, or at least imply, in a final response that the policy must be followed rigidly in every case seems to me to run contrary not just to the MMR provisions in MCOB, but also to the FCA's high-level Principle 6 requiring it to pay due regard to the interest of its customer and treat them fairly.

If Ms M only needed an extension of a few months then going through a full re-mortgage application does seem rather onerous and inflexible. Of course, it's always possible that Barclays just wanted to understand Ms M's circumstances fully before it discussed options with her. If that was the case, it may not have been acting unreasonably, but the business needed to communicate clearly with her at all times.

I've already cited the FCA's Principle 6; additionally Principle 7 requires Barclays to pay due regard to Ms M's information needs and communicate information to her in a way that was clear, fair and not misleading. Having looked at the various exchanges between bank and customer, I do think Barclays came up a little bit short. I think that can best be illustrated by considering first of all, Barclays' letter to Ms M dated 12 April 2023.

This bears all the hallmarks of a formulaic standard letter sent to borrowers whose mortgage term has expired and who haven't been in touch to tell the business what they're intending to do. Ms M replied on 14 April 2023 with a hand-written letter, effectively her complaint letter, setting out that she'd already been in touch previously

to explain the large payments she'd been making since resuming employment, and that she needed a few extra months to clear the mortgage in full.

Barclays has told us that on receiving this letter, it tried phoning Ms M several times (the calls seemingly weren't answered) and that's fine as far as it goes. It's exactly what I'd expect the business to have done. It's what happened next that concerns me.

In my view, the fair thing to do at that point is for the complaint handler to have written Ms M a non-standard, bespoke letter saying, in effect, *"I think a conversation would be helpful here to find out what's happened before and work out where we go from here. I've tried calling you but without success, so here's my number, please call me and we can explore the options and put you in touch with the right person to see if there's are ways of helping you"*.

I don't know what might have happened if such a letter, or something similar to it, had been sent. What happened instead was that Barclays sent the final response I referred to earlier informing Ms M of its rigid requirement that she apply for a re-mortgage. This was then followed by another formulaic letter along the same lines as the from 11 April 2023 that had prompted Ms M to write her letter of complaint in the first place.

All things considered, I'm not persuaded Barclays fully met its obligations to Ms M under MCOB, or the FCA's high-level Principles 6 and 7, and that justifies the investigator's recommendation of compensation.

There's something else, though. At the end of April 2023, the two account balances were around £32,000 and £200 respectively. According to information received from Barclays on 9 April 2024, the balances as I write this are roughly £765 and £106 respectively. So it looks to me that whilst the case has been with us, Ms M has continued with her plan to pay as much as she could whenever she could (and is now on the cusp of clearing the mortgage debt altogether) and Barclays has apparently allowed her to do that rather than attempt to enforce its security.

In the wider scheme of things, that's a good outcome, but if Barclays had paid a little more attention to Ms M's interest and information needs, then the same outcome could in all likelihood have been reached in a mutually-agreed manner. This would have avoided putting Ms M through the uncertainty of the past year or so, and the trouble and upset that will no doubt have come with that. In all the circumstances, I am minded to restore the award of compensation to the £300 first suggested by the investigator."

I gave the parties two weeks to comment on the provisional decision; both parties have replied already, to confirm they accept my proposed outcome.

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.

My final decision

My final decision is that I intend to uphold this complaint in part, by ordering Barclays Bank UK PLC to pay Ms M £300 compensation for her time, trouble and upset.

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 Ms M to accept or reject my decision before 14 May 2024.

Jeff Parrington

Ombudsman