

## The complaint

This complaint is about a buy-to-let (BTL) mortgage Mr P holds with Barclays Bank UK PLC. The core of the complaint starts from Barclays handled a request Mr P made to put the mortgage on a new fixed rate deal in May 2023. The rate switch didn't go ahead, due to differences in the repayment basis and remaining terms of the various component parts of the mortgage. Mr P says this has cost him £33,000 in extra interest whilst the mortgage has stayed on Barclays' standard variable rate (SVR).

## What happened

By way of a provisional decision dated 4 September 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mr P being identified. Instead I'll give a summary in my own words (and rounding the figures where appropriate) and then focus on giving the reasons for my decision.

Mr P's BTL mortgage runs on a legacy computer system which has limited functionality. There are three components to the mortgage; these are:

- the original advance of £260,000 in 2005, on a capital repayment basis with a term running until 2025;
- a further advance of just over £134,000 in 2007, on a capital repayment basis with a term running until 2032; and
- a further advance of £250,000 in 2018, on an interest-only basis with a term running until 2025.

This complaint arose because in May 2023, Mr P applied to put the entire mortgage onto a new interest rate product of 5.10% fixed until October 2025. Initially, Barclays sent separate offers, charging a product fee on each, and giving different end dates. Mr P disputed that, saying that as far as he was concerned, he had one mortgage running until 2032, and charging more than one fee was unfair.

Barclays then said that for the parts of the mortgage that had less than two years to run, it would not be able to apply the fixed rate product at all, because the duration of the product exceeded the time left on the loans.

Our investigator spent many months trying to get substantive information from Barclays about the mortgage history. When it eventually did provide something, it was just the three mortgage offers, confirming the repayment basis and duration I have set out above.

Our investigator recommended the complaint be settled by Barclays agreeing to extend, by up to a maximum five years, the term of the parts of the loan currently due for repayment in 2025. This would then allow the 5.10% fixed rate product to be applied, and backdated to 1 June 2023, when it should have taken effect. He also said Barclays should pay Mr P £450 compensation.

Initially Mr P accepted the proposal settlement, and so did Barclays, albeit with caveats. It said the proposed term extension would be subject to a formal application for an internal re-mortgage being made, and if accepted, creation of a new mortgage on the fixed rate product, which would run on the bank's current computer system. This would prevent the rate product being backdated, so Barclays proposed to calculate the extra interest charged in the meantime and refund it back to Mr P.

By then, Mr P had decided he wanted to move the mortgage way from Barclays altogether and asked that he simply receive the interest overcharge up to that point (around £33,000) to settle the complaint, leaving him free to re-mortgage elsewhere. We put this to Barclays as an alternative settlement, but it disagreed, pointing out that if it reimbursed Mr P on the premise that he received the fixed rate in 2023, he'd then be liable to pay an early repayment charge (ERC) if he then redeemed the mortgage.

With no agreement likely, the case was passed to me to review.

### **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 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. But in doing so, we have to work within the rules of the ombudsman service.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider

individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

Having no regulatory power means it's not open to me to direct Barclays on how it runs its business at the operational level. So the fact that the legacy system had limited functionality isn't part of my remit. What is in my remit is how that different treatment affected Mr P.

A BTL mortgage isn't regulated in the same way that a residential mortgage is; it's viewed as a business venture where both contracting parties are acting commercially. Barclays' role is to administer the mortgage accounts in accordance with Mr P's instructions, not to manage the accounts for him. It's Mr P's responsibility to monitor and manage the mortgage but of course, he's entitled to expect a reasonable level of service and reliable information to help him do that.

Turning to the specifics of the complaint, I'll start with the differences in how the various components of the mortgage were set up. Mr P is adamant that he has one mortgage account, all on a capital repayment basis and all ending in 2032. However, the evidence of the three mortgage offers directly contradicts that. I haven't had sight of the original application forms, but the three offers are all clear in specifying how the loan would be repaid and by when.

If Mr P thought anything was amiss with the term of the first further advance or the repayment method of the second, I'd have expected him to raise the relevant questions in 2007 and/or 2018. With nothing from either party to suggest he did that, I consider it reasonable to proceed on the basis that on both occasions, Barclays provided the further advances as agreed at the relevant times. But in doing that, Barclays created a problem for itself.

The offer for the interest-only component is silent on how Mr P is to repay the capital advance; it simply says he must do so by 2025 and it's up to him to make sure he has the means to do so. The problem with that is that unless there was express provision for a repayment vehicle such as an endowment policy, ISA or other financial instrument, it can safely be inferred that both parties entered in the 2018 agreement on the understanding that the money advanced would be repaid by Mr P either selling the mortgaged property or re-mortgaging it.

If that is the case, then Barclays has no option but to harmonise the expiry dates of all the advances, by making all of them due for repayment in 2032; that's the term end date of the last advance to expire. I'll explain why.

By issuing the 2007 agreement with a longer repayment date, Barclays has by default, put itself in a position where it must wait until the last debt to expire falls due before it can reasonably require Mr P to sell or re-mortgage the property to repay the money owed under the 2018 agreement. It's not possible to sell a mortgaged property – or re-mortgage it – and only pay off some of the money owed on the mortgage. If the property is sold or re-mortgaged, all of the debt has to be repaid so that the legal charge can be vacated.

Barclays can't fairly require Mr P to sell or re-mortgage the property in order to repay money that two out of three agreements says is due in 2025, because that would force him also to repay money borrowed under the agreement that isn't due for repayment until 2032.

It doesn't matter that Mr P may be contemplating re-mortgaging himself (and I'll come back to that shortly). Under the current set up, Barclays is requiring him to do that (or sell up) before the 2007 further advance is due for repayment, and that is neither fair nor reasonable. In order that there's no ambiguity, Barclays must take this action in respect of all of the advances that make up Mr P's aggregate mortgage debt and without making it subject to any conditions.

I said I'd come back to Mr P's idea of receiving the interest refund without the mortgage end dates being harmonised, and then re-mortgaging to another lender. I can see why the simplicity of that would appeal to him; I also appreciate why he might wish to move away from Barclays.

However, any entitlement he might have to the interest refund is predicated on the assumption that the mortgage accounts were all switched to the fixed rate on 1 June 2023; and if that happened, then Mr P would be liable to pay an ERC if he redeemed the mortgage – by re-mortgaging to another lender – before 2 October 2025.

### **Putting things right**

First of all, for the reasons set out above, Barclays must set the expiry dates of the original 2005 loan and the 2018 further advance to match the expiry date in 2032 of the 2007 further advance. Once the end dates of all parts of the mortgage have been harmonised to end in 2032, Barclays should then proceed to apply the 5.10% fixed rate product to them, with an effective date of 1 June 2023, and an end date of 2 October 2025.

It seems to me Barclays can do that one of two ways. It can either keep the accounts on the legacy system in which case the start date for the fixed rate can simply be backdated to 1 June 2023. Alternatively, it can carry out an internal re-mortgage onto its new platform and re-imburse Mr P that extra interest he has, and will have, paid between 1 June 2023 and the eventual settlement date.

Which of those methodologies is used to effect the application of the fixed rate isn't something for me to decide, so long as neither involves any cost to Mr P other than a single product fee of £1,795. It can be for the parties to agree between them, unless of course, the legacy system won't allow the changes I'm ordering Barclays to make. If that is the case, the settlement will have to be effected using the internal re-mortgage and refund route. Both parties should let me know their position on this specific point, separate from any other comment they might wish to make, in their respective responses to this provisional decision.

That leaves the question of compensation for Mr P's time and trouble. I know he's upset by what has happened; aside from anything else, that's probably what is currently driving his desire to move lenders altogether. However, I have to take a step back and assess things objectively. When I do that here, taking everything into account, I consider £450 to be fair compensation for the shortcomings in the service Barclays.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider

have a material effect on the outcome. I can see how strongly Mr P feels. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate legal conclusion; sometimes it's about compromising to reach a fair conclusion which both parties can accept in a spirit of conciliation, I think I've done that here."

Both parties responded to the provisional decision. Mr P accepted it without adding any further comment. After some delay, Barclays responded with the news that Mr P had redeemed all three components of the mortgage in full in June 2024. We checked this with Mr P and he confirmed it was true.

That didn't give me any reason to change my underlying findings on this complaint; however, the redress I intended awarding needed to be amended, given that the mortgage has been repaid. In a second provisional decision, I proposed the following.

### **Putting Things Right**

I now intend ordering Barclays to re-work all three components of Mr P's mortgage account on the basis that the 5.10% fixed rate product was applied on 1 June 2023, and then pay redress comprising A+B-C where:

- A. equals the differential interest Mr P would have incurred each month from 1 June 2023 up to the date of redemption in June 2024;
- B. equals interest on each monthly differential amount identified in A, at 8% simple per annum\* from the date each amount was paid by Mr P to the eventual date of settlement; and
- C. equals the higher balance payable on redemption in June 2024 as a consequence of an ERC being payable under the terms of the 5.10% fixed rate interest product.

I also intend ordering Barclays to pay Mr P £450 compensation.

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

For the avoidance of ambiguity, in the event that A+B-C results in a negative figure, only the compensation of £450 will be due.

### **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.

Both parties replied to confirm their agreement to the revised redress proposal; that being the case, there's nothing further for me to consider.

## **My final decision**

My final decision is that I uphold this complaint in part, by ordering Barclays Bank UK PLC to provide Mr P with the redress set out under **Putting things right** above. I don't make any other order or award.

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 P to accept or reject my decision before 16 December 2024.

Jeff Parrington

**Ombudsman**