

The complaint

Mr D and Ms J are unhappy with how they've been treated by Barclays Bank UK PLC in relation to their mortgage.

What happened

Mr D and Ms J originally took out a mortgage with a different lender. The mortgage was transferred to Barclays and it is responsible for dealing with this complaint.

The main mortgage was taken out in 2003, with two further advances taken in 2004. All three sub accounts are on an interest only basis.

In 2019, Mr D and Ms J referred a complaint to the Financial Ombudsman Service, to do with the way in which Barclays had treated them when they had experienced financial difficulties. The mortgage had a history of arrears and Mr D and Ms J thought that Barclays should've done more to try to help them get back on track, rather than commence possession proceedings.

An investigator here looked into the complaint and thought that Barclays hadn't treated Mr D and Ms J fairly. They thought Barclays should've given more consideration to the proposals put forward by Mr D and Ms J to repay the arrears, rather than commence possession proceedings when it did. The investigator recommended that Barclays refund fees and charges applied from January 2018 onwards.

It was also agreed that:

- Barclays would halt possession proceedings;
- Mr D and Ms J would pay £750 a month towards their mortgage account for the next 12 months; and
- Mr D and Ms J would clear the arrears balance in August 2022, using Mr D's pension.

Subsequent to this, Mr D and Ms J raised new concerns about the way in which Barclays was treating them. They said that during the Covid-19 pandemic, they had asked Barclays for a payment holiday (six months) and that Barclays had sent them text messages to confirm this had been agreed.

Barclays accepted they may have sent such texts but that this was in error. It said it wouldn't have agreed to provide Mr D and Ms J with a payment holiday, because of their arrears situation and that they hadn't made payment for several months prior to the pandemic. Barclays offered Mr and Ms J £100 compensation for the impact of having incorrectly told them that a payment holiday had been agreed.

Mr D and Ms J were unhappy with this resolution and thought Barclays should honour the payment holiday that it had said was agreed. They were concerned their arrears balance

had increased, instead of the missed payments being added on to the mortgage balance.

Mr D and Ms J also complained that the interest rate they'd been charged on the mortgage was too high, because when the mortgage transferred from the original lender, they lost the flexibility they had when they first took the mortgage out. Barclays thought it had charged interest fairly.

Mr D and Ms J also said they didn't think Barclays had refunded the fees as it had been agreed it would, as part of the resolution to the previous complaint. They referred their concerns to the Financial Ombudsman Service.

An investigator here first issued an assessment setting out what they thought they could and couldn't look at, in the context of the time limit rules that apply. In summary, they said they:

- could consider the complaint about the payment holiday and the refund of fees;
- could only consider the interest payments charged in the six years leading up to the complaint.

Both parties agreed with this. The investigator went on to issue an assessment of the merits of the complaint we could consider. In summary, they said:

- The Financial Conduct Authority had released guidance to lenders about how they should treat borrowers who were struggling to make their mortgage payments in the context of the Covid-19 pandemic. Under this guidance, Barclays ought to have granted Mr D and Ms J a payment holiday for the first three months, regardless of their arrears position.
- However, for borrowers already struggling before the pandemic, lenders weren't required to automatically grant a further payment holiday. Instead, lenders needed to tailor the assistance they offered borrowers according to their individual circumstances.
- Where a business provides a consumer with incorrect information, we consider what the position would be had the correct information been given. Given the position of Mr D and Ms J's mortgage, the investigator didn't think Barclays would've agreed to the payment holiday for the second three months and so this is what Mr D and Ms J ought to have been told at the time. As such, the investigator said Barclays should re-work Mr D and Ms J's mortgage account as if it had agreed a three month payment holiday when Mr D and Ms J had first requested this.
- The investigator said Mr D and Ms J would need to bear in mind this would mean the deferred payments would be added to the mortgage balance instead of the arrears balance, which would (all things being equal) lead to them paying more interest over the term of the mortgage.
- Regarding the concerns about the interest rate, due to the passage of time, Barclays hadn't been able to provide a copy of the original mortgage offer. Generally it is for a borrower to contact a lender to request a new interest rate, so if Mr D and Ms J were unhappy with the rate they were paying given the features of the account, it was their responsibility to contact Barclays to request a new rate.
- The exception to this is where a customer is in financial difficulties, when a lender is expected to consider a number of concessions to help, including reducing their

interest rate. During the period the complaint relates to, Mr D and Ms J had a long history of payment difficulties, including significant periods of time where they weren't making any payments at all. As such, a lower interest rate wouldn't have meant the mortgage was then affordable. Given that lower rates would likely have come with features such as product fees and early repayment charges, which could have made their situation worse, it wouldn't have been appropriate for Barclays to proactively move Mr D and Ms J onto a different rate.

- However, Barclays had confirmed that it offered a forbearance rate, which was lower than the standard variable rate (SVR) and without any product fees or early repayment charge. Barclays said this rate was a short term forbearance solution offered for 12 months from when a customer has a plan in place. Given that Mr D and Ms J had a plan in place to clear their arrears from May 2021, Barclays ought to have offered this rate earlier and should backdate it as though it began in May 2021, with the relative overpayments being used to reduce the arrears balance.
- In terms of the refund of solicitor fees, Barclays had provided evidence to show it had reversed the transactions, so nothing further needed to happen in this respect.

Barclays accepted the findings.

Mr D and Ms J didn't agree with everything the investigator said. In summary, they said that:

- They had been asking for an explanation regarding how the refund of fees had been applied to their account since August 2021. Their initial expectation was that the fees would be refunded to the mortgage current account (along with the other compensation).
- They thought they had finally been able to work out what had happened and that it looked like the refund probably had been applied. However, Barclays' communication of what would happen had been inadequate and when Mr D had queried the matter with Barclays, it hadn't been able to explain clearly what had happened, meaning he'd needed to spend a considerable amount of time trying to get to the bottom of it.
- Regarding the payment holiday, they accepted the recommendation for the first three months to be added to the mortgage balance. However, they still thought Barclays should have to honour the second three months as well. In addition, Barclays had increased the required monthly payment from £750 to £807 per month, which was contrary to what had been agreed.
- Although they accepted the proposal regarding the forbearance rate, and agreed it had been fair that they'd been charged the SVR before the forbearance rate was introduced, they thought they may have been charged more than Barclays' SVR in the relevant period.

The investigator issued another assessment saying their opinion remained the same in respect of the payment holiday and solicitor fees refund issue. In terms of the interest rate Mr D and Ms J had been charged, the investigator said that:

- Barclays' SVR had moved in line with changes to the Bank of England base rate in the six years we could consider. As such, this has been fair. Looking at a number of Mr D and Ms J's mortgage statements in the relevant period, the interest rate quoted matched Barclays' SVR rate, so it didn't seem that Mr D and Ms J had been charged more than Barclays' SVR.

- Although we couldn't consider the interest charged before the six years leading up to the complaint, we could take into account how Barclays managed its SVR before that point, because if the SVR had been unfairly increased during that time, it would have a knock-on effect to the level of SVR Mr D and Ms J had been charged during the period we could potentially award compensation for.
- The margin between the Bank of England base rate and Barclays' SVR had increased between 2007 and 2009 during the global financial crisis. Barclays had provided information to explain its decisions to vary the interest rate during this time and it had shown that its cost of funds had increased. On this basis, there wasn't any unfairness in terms of the interest charged during the period we can look at.

The investigator asked Mr D and Ms J what amount of arrears they had repaid in August 2022.

Mr D and Ms J's response about the arrears repayment wasn't altogether clear, but it looks like they hadn't made payment towards the arrears at that point. They remained unhappy with the outcome in respect of the payment holiday and solicitor refund issues and so the next step was for the case to be escalated to an Ombudsman for review.

After reviewing the case, I asked Barclays to confirm what had happened on the mortgage accounts since May 2021, to include the required payments, credits, debits and the arrears position. I asked Barclays for its comments on what Mr D and Ms J had said about the required monthly payment having been agreed at being £750 but then Barclays having increased this to £807. I also asked for a recording of the call between Mr D and Barclays that Mr D has said happened on 23 August 2021, in relation to the solicitor fees issue – plus all other call recordings relevant to that issue.

Barclays provided account statements showing what had happened on the mortgage accounts and confirmed the arrears position. It said that Mr D and Ms J hadn't made a successful payment towards the accounts since February 2022 and that at the point of providing the information, the arrears stood at £54,684.32.

In relation to the monthly amount required to be paid by Mr D and Ms J from May 2021, it said that the £750 was based on the contractual monthly payment (CMP) at the time plus £79.74. Barclays said that Mr D and Ms J's CMP subsequently increased, because the interest rate on their mortgage increased following increases to the Bank of England base rate.

Barclays provided a number of call recordings where the issue of the solicitor fees was discussed between Mr D and Barclays.

I issued a Provisional Decision (PD) in August 2023. In it, I said the following:

“Mr D and Ms J's complaint points can be summarised as follows:

- *They're unhappy with how Barclays treated them in relation to the Covid payment holiday issue. They think Barclays should honour the fact that it had told them the payment holidays had been agreed and they consider that this issue has significantly changed the position in terms of the amount of arrears they needed to pay at August 2022.*

- *They're unhappy that Barclays increased the amount they needed to pay each month from the £750 that had been agreed as part of the plan in May 2021.*
- *In relation to the refund of solicitor fees issue, they think that Barclays' initial communication about what would happen should've been clearer and that its efforts to deal with their subsequent queries weren't good enough.*
- *They're concerned they may have paid more than Barclays' SVR, during the period we can look at.*

Having considered all of the available evidence and arguments, I'm currently minded to reach the same substantive outcome on the payment holiday issue as that reached by the investigator. However, I also currently think that Barclays needs to pay more compensation in relation to that issue and some compensation in relation to the solicitor fees issue. I don't think Barclays needs to do anything further in relation to the increase to the monthly payment amount and I don't think it has acted unfairly in relation to the interest rate it charged during the period of time I can look at.

Before I explain why, I want to set out my role as an Ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.

The covid-19 payment holiday

Mr D and Ms J are unhappy that Barclays told them it had agreed their requests for payment holidays in relation to the Covid-19 pandemic, only to then reverse this. They think as Barclays told them the payment holidays had been agreed, it should honour this.

Barclays says it isn't sure exactly what happened in terms of the text messages Mr D and Ms J received. It has though accepted that it made some kind of error, resulting in Mr D and Ms J thinking that payment holidays had been agreed covering a six month period, when this was not the case.

In this situation, it is necessary to think about would've happened if the correct information had been given. Barclays says it should've told Mr D and Ms J that neither request was being agreed, because they were significantly in arrears before the Covid-19 pandemic happened. I agree with the investigator that under the relevant FCA guidance, Barclays should reasonably have agreed to the initial request for a three month payment holiday.

I also agree with the investigator that the same cannot be said for the second three month period. I consider there wasn't the same onus on Barclays to agree to the second request and that it was entitled to decline the request, given the extent to which Mr D and Ms J had already been struggling before the pandemic. I appreciate that Mr D and Ms J feel strongly that Barclays needs to honour what it told them, but as things stand, I disagree.

Mr D and Ms J have also pointed out in the context of this complaint point, that Barclays didn't specifically engage with them at that time, to understand their circumstances (in the context of the pandemic) and to think about options they may have had. It's possible Barclays ought to have attempted to contact Mr D and Mr J along these lines, however even if this is the case, I don't think Mr D and Ms J have been materially affected by this.

I say this because Mr D and Ms J have described the financial difficulties they faced at the time and it seems they were unable to make any repayments towards the mortgage, regardless of whether they did or didn't have a payment arrangement. That being the case, I can't see how any lack of contact by Barclays at that time can be said to have materially affected the position they were and are in.

Mr D and Ms J have I think suggested that this issue has impacted upon the arrangement that was agreed in 2021, in terms of them needing to repay a certain amount of arrears in May 2022. Given that the payment holiday issue relates to 2020 – before the repayment plan was agreed in 2021, it's not clear to me how the two issues are linked. I say this because I assume the agreement for repayment of arrears in May 2022, would already have factored in the build-up of arrears during the six months in 2020 when Mr D and Ms J thought they were in a payment holiday, but weren't. So as things stand, I don't think Mr D and Ms J have been treated unfairly in relation to this point.

However, I currently think that Barclays should pay an additional £100 compensation – so £200 in total – to fairly reflect the impact of its error giving Mr D and Ms J the impression the payment holidays had been agreed. I say this because I am satisfied that Barclays' error caused Mr D and Ms J unnecessary upset and I think that £200 is more reflective of this and in line with our approach to compensation awards.

The monthly payment amount increasing

Mr D and Ms J have said they had an agreement with Barclays that the amount they needed to pay from May 2021 was fixed at £750 per month.

Barclays says the £750 at outset was based on the CMP at the time, plus £79.74. It says that after the plan began, the CMP increased due to the interest rate applying to the mortgage increasing, following increases to the Bank of England base rate.

I've seen that the case handler here working on Mr D and Ms J's previous complaint wrote to them (on that complaint) setting out that the £750 was based on the CMP plus £79.74. I haven't seen anything setting out that the £750 would be fixed for the whole 12 months but equally I haven't seen anything setting out that the monthly repayment figure would increase if the CMP were to increase.

During one of the calls between Mr D and Barclays on 26 June 2021, the Barclays' adviser confirms that the required payment covering all three accounts is £750, with the CMP being £702. If the required monthly payment was fixed at the CMP plus £79.74, the required monthly amount would've become over £780 at that point. This leads me to believe it's likely that Barclays asked for a monthly repayment of more than £750, at the point that the CMP exceeded £750.

I think that Barclays could have been clearer with Mr D and Ms J about what would happen if and when the CMP increased after the plan began. Having said that, unless Mr D and Ms J have anything in writing to show it was explicitly agreed that the monthly repayment amount would be fixed at £750 a month, regardless of any changes to the CMP (or if Barclays confirms this to have been the case), then I don't currently think it was unfair for the figure to increase where this was due to the CMP increasing. Finally on this point, I would point out that if the required monthly payment was ever below the CMP, this would result in an increase in arrears, which is generally undesirable, for obvious reasons.

Refund of solicitor fees

Mr D and Ms J have said that Barclays ought to have been clearer up front about when and

how the solicitor fees would be refunded. They've also raised concerns that they had agreed the solicitor fees would be refunded to the mortgage current account, for them to be able to put towards mortgage repayments, rather than there being an adjustment to the balance. Mr D and Ms J have also said that Barclays wasn't able to satisfactorily deal with the questions they raised about the refund of the fees.

First, I don't think the letter informing Mr D and Ms J about the refund of fees was unclear. I know Mr D and Ms J think the letter ought to have gone into greater detail about the refund in terms of how it would be done, where it would be visible and that it might not lead to a reduction in the balance in the way one might think. However, I don't think the absence of this kind of detail means the letter was unclear.

I also can't see where it had been agreed that the solicitor fees would be refunded to the mortgage current account. I think Mr D and Ms J may have assumed this to be the case, but in the absence of clear evidence showing this had been agreed, I don't think it was unreasonable or inappropriate for the fees (plus relevant interest) to be automatically adjusted on the account where the fees were originally charged.

I take from what Mr D and Ms J have said, that since raising the complaint, they do now think the refund has taken place. Notwithstanding this, I've seen the 2022 annual statement for the mortgage account number ending 855 and I can see the entries for the relevant solicitor fee amounts, each with the description "Dr Cap Rev". I can also see that the balance figure at 1 April 2021 on that statement is approximately £1,142 lower than the balance figure at 31 March 2021 on the 2021 annual statement. This suggests to me that the adjustment has taken place as it should.

Having said all of that, I agree with Mr D and Ms J that the way Barclays dealt with their request for clarification of what had happened with the refund of solicitor fees, was unsatisfactory. I don't think it was unreasonable for Mr D to seek clarification of what was happening / had happened in terms of the solicitor fee refund, since it wasn't clear to him.

I've listened to a recording of the numerous calls that took place between Mr D and Barclays, where Mr D was seeking clarification. Mr D was given incorrect information at times and mixed messages at others. I think this caused Mr D and Ms J to experience unnecessary distress and inconvenience.

Taking everything into account, I currently think that a compensation figure of £250 is appropriate and in line with our approach to compensation awards.

Interest charged

Mr D and Ms J have indicated that they accepted what the investigator said about the interest charged on the mortgage. Notwithstanding this, for completeness, other than the recommendation by the investigator for Barclays to re-work the mortgage account as though the forbearance rate began in May 2021, I don't currently think there is anything unfair about the interest Mr D and Ms J have been charged, within the six years that I can consider.

It is not unreasonable that Mr D and Ms J were on the SVR before moving onto the forbearance rate. And there is no evidence to suggest that Mr D and Ms J were charged more than Barclays' SVR rate, when they were on it. So I don't currently intend to say that Barclays needs to do anything further in relation to this.

Other matters

The information recently provided by Barclays in relation to the status of the account

suggests that Mr D and Ms J are significantly in arrears. I don't know how much they are already engaging with Barclays to try to agree a way forwards, but I encourage them to engage as much as possible with Barclays about this.

Putting things right

I am provisionally minded to say that Barclays needs to do the following (if not already done), to put things right:

- *Adjust the mortgage as though it did agree a payment holiday for the first three months.*
- *Adjust the mortgage as though the forbearance rate began in May 2021. The additional interest charged in the period between this date and when the forbearance rate actually began, should be used to reduce the outstanding arrears.*
- *Pay Mr D and Ms J a total of £450 in compensation for the distress and inconvenience caused by its errors in relation to the payment holidays and the refund of solicitor fees."*

I told both parties to provide any further evidence and/or arguments by 15 September 2023. Barclays responded to say that it accepted the PD. It clarified that it hadn't taken the steps suggested by the investigator, because Mr D and Ms J hadn't accepted the investigator's view. It said it would be happy to do those things if Mr D and Ms J accept the final decision.

Mr D and Ms J initially didn't respond. When contacted by the investigator near to the deadline, they said they had no interest in any compensation and all they wanted was open dialogue with Barclays. They also said something which suggested they may need a little more time to provide a substantive response, so I gave them an additional week within which to provide anything further. Nothing further has been provided, so I've gone on to make my final decision based on what I have.

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.

Since Barclays agreed with my PD and that Mr D and Ms J didn't provide a substantive response to it, I see no reason to depart from my provisional findings (which form part of this final decision).

Covid-19 payment holiday

I still find that, under the relevant guidance, Barclays ought to have agreed the payment holiday request covering the first three months, but not the following three months - given Mr D and Ms J's circumstances. I also still consider that Barclays should pay £200 in compensation for the impact on Mr D and Ms J of it having incorrectly told them that both payment holidays has been agreed, when this was not the case.

The monthly payment amount

I still think that Barclays could have been clearer with Mr D and Ms J about what would happen if and when the CMP increased after the plan began. However, I've not been provided with anything showing that it was explicitly agreed the CMP would remain fixed at £750 regardless of any change to the interest rate. And as I set out in my PD, if the required

monthly payment was ever below the CMP, this would lead to increased arrears, which is obviously undesirable. Taking everything into account, I still don't consider that Barclays needs to take any kind of action in relation to this issue.

Refund of solicitor fees

I still find that the evidence shows the refund of fees took place as had been agreed. However, I also still consider that the way Barclays dealt with Mr D's questions about what happened caused unnecessary distress and inconvenience and that compensation of £250 fairly reflects this.

Interest charged

Other than the timing of when the forbearance rate began, I still don't find there is anything unfair about the interest Mr D and Ms J were charged in the six years that I can consider.

Other matters

In response to the PD, Mr D and Ms J said all they were seeking was open dialogue with Barclays. In my PD, I said that I didn't know how much they were engaging with Barclays to try to agree a way forwards, but that I encouraged them to engage as much as possible with Barclays about this.

If Mr D and Ms J are doing this and think that Barclays isn't acting fairly in relation to their current situation, they should raise this with Barclays in the first instance.

Putting things right

Barclays needs to do the following to put things right:

- Adjust the mortgage as though it did agree a payment holiday for the first three months.
- Adjust the mortgage as though the forbearance rate began in May 2021. The additional interest charged in the period between this date and when the forbearance rate actually began, should be used to reduce any outstanding arrears.
- Pay Mr D and Ms J a total of £450 in compensation for the distress and inconvenience caused by its errors in relation to the payment holidays and the refund of solicitor fees.

My final decision

My final decision is that I uphold Mr D and Ms J's complaint about Barclays Bank UK PLC and I direct it do what I've set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms J to accept or reject my decision before 24 October 2023.

Ben Brewer
Ombudsman