

The complaint

Mr and Mrs M have complained about their mortgage current account ("MCA") they hold with Barclays Bank UK PLC. They say they've been overcharged interest as they think the rate should have tracked the Bank of England Base Rate ("BoEBR").

What happened

Mr and Mrs M had a mortgage with Barclays, and in 2008 they transferred it to a new product.

The mortgage offer issued in July 2008 set out:

- The loan amount was around £56,400,
- It was a repayment mortgage with a term of 13 years and 9 months,
- The main mortgage account was to be charged on a product described as *"Lifetime Tracker Base +0.74% (M1Z): A Variable Rate which is 0.74% above Barclays Bank PLC's Base Rate, currently 5%, for the whole of the term, to give a current rate payable of 5.74%."*
- The credit limit was around £95,100 with the difference between that and the loan amount available to be drawn down on the MCA.
- The MCA interest rate was explained as *"The interest rate charged on the Mortgage Current Account Reserve will be at our Standard Variable Rate, currently 7.14%."*

For clarity, the Barclays Bank PLC Base Rate has mirrored the BoEBR. For ease I'll refer to the BoEBR in this decision, but that should be taken to mean the Barclays Bank PLC Base Rate where appropriate.

On 26 January 2021 Mr and Mrs M wrote to Barclays. They said:

"We refer to the above Mortgage Current Account we have had for many years and we wish to query the interest we have been charged throughout the period of the current account's operation. We want to make sure we have not been overcharged."

"Will you please provide us within the next 30 days a copy of the following"

A copy of our original mortgage offer, it was with the Woolwich at the time, showing the rate of interest applicable on both the main mortgage account and the mortgage current account."

"Will you please give us a detailed calculation on all the withdrawals on the account and the interest charged monthly on the outstanding balance and a full statement from the initial operation of the account and identify the rate of interest being charged monthly and all changes to the rate as they occurred."

Barclays responded on 26 February 2021 thanking Mr and Mrs M for their enquiry and asking them to get in touch by phone.

On 20 April 2022 Barclays wrote to Mr and Mrs M. It said the mortgage term had now ended and the total outstanding balance was due for full repayment. It showed the main mortgage in credit (by under a pound) and the MCA had an outstanding balance due of around £88,000. The letter explained that as the mortgage term had ended the original Direct Debit in place could no longer be used, interest would continue to accrue and information may be passed to credit reference agencies and solicitors acting on behalf of the bank. It asked

Mr and Mrs M to contact it by phone within seven days to let the bank know how they intended to repay the outstanding balance.

On 22 April 2022 Mr and Mrs M wrote to Barclays. They said they'd written on two previous occasions about being overcharged on their MCA but were brushed off with excuses about difficulty in obtaining information. They enclosed their calculations which they felt meant they owed around £65,000 rather than £88,000, and asked that it be dealt with as an overpayment complaint. They enclosed a cheque for £25,000 towards the debt, and proposed they pay at least £1,000 a month going forward until the MCA debt was repaid.

On 30 April 2022 Mr and Mrs M wrote again to Barclays saying they'd made three separate complaints about overcharging on the MCA, sent a cheque for £25,000 and made an offer to pay £1,000 a month towards the amended balance. They asked Barclays to confirm receipt of the letter and whether the proposal was acceptable, and if it was, to send them a direct debit mandate.

On 26 May 2022 Barclays returned the £25,000 cheque to Mr and Mrs M saying it was unable to process it as the mortgage account was paid off.

Barclays responded to Mr and Mrs M's complaint on 3 June 2022. It said it had received the letters, and the cheque would be reviewed and, if acceptable, would be credited to the MCA, and with regard to Mr and Mrs M's proposal to start paying £1,000 a month, that was something they'd need to discuss with the mortgage team, and it provided the number for them to call. It said in respect of the overcharging complaint that it had carried out an extensive review and it hadn't overcharged Mr and Mrs M. It provided some reconciliation documents to show this. It said it had replied to Mr and Mrs M's letter of January 2021 asking they get in touch, but it didn't hear anything further until the letter of 20 April 2022.

Mr and Mrs M wrote back to Barclays on 26 July 2022 enclosing a further cheque, as it had been returned to them. They said the complaint response had glossed over the point they'd made about the MCA rate, in that they thought the rate should be 2.14% above BoEBR, and said they'd be referring the complaint to our service. They asked Barclays to confirm receipt of the letter, and whether the £1,000 a month proposal was acceptable. They asked, if their proposal was acceptable, that Barclays send them a new direct debit mandate.

The complaint was sent to our service the same day, with us receiving it on 2 August 2022.

It was looked at by one of our Investigators. He said that Mr and Mrs M had complained too late about the interest they had been charged before 22 April 2016, although he said he would take account of earlier interest rate changes as part of the overall circumstances of the complaint. He considered the merits of the part of the complaint we could consider, and didn't uphold it.

Mr and Mrs M didn't agree, and one thing they said was that they notified Barclays of their complaint by letter dated 26 January 2021. This led to our Investigator issuing revised findings saying Mr and Mrs M had complained too late about the interest they had been charged before 26 January 2015 (rather than 22 April 2016) but the remainder of his assessment remained the same.

Mr and Mrs M didn't agree with our investigator's findings and so the case was passed to me to decide.

In October 2023 I issued a decision about our jurisdiction. In that I said our service only has the power to consider this complaint in respect of the interest rate charged on the MCA since 22 April 2016.

I've now considered the complaint and issue this decision as the final stage of our process.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and we look at things independently without taking sides.

Did Barclays' actions cause Mr and Mrs M to have a legitimate expectation that their MCA interest rate would track the BoEBR?

Mr and Mrs M have argued that in the absence of information to the contrary then it is *"reasonable to assume that the margin to be applied to the MCA would be tracked at 2.14% above the BBR or the BoEBR"*.

I haven't seen any evidence that persuades me that Barclays was obligated, contractually or otherwise, to have its MCA interest rate track the BoEBR. I've also not seen any evidence that even implies that would be the case. Just because the MCA interest rate happened to be at 2.14% above BoEBR at the time the offer was issued doesn't make it a base rate tracker product, that isn't a reasonable assumption. If it was the intention that the MCA interest rate would track base rate then it would have been explained in a similar way to the main mortgage interest rate, that is describing the rate as *"A Variable Rate which is 2.14% above Barclays Bank PLC's Base Rate, currently 5%, for the whole of the term, to give a current rate payable of 7.14%."* But it didn't.

The mortgage offer is clear in that whilst Mr and Mrs M's main mortgage would track BoEBR, their MCA would be charged at the standard variable rate ("SVR"); I quote *"The interest rate charged on the Mortgage Current Account Reserve will be at our Standard Variable Rate, currently 7.14%."*

I'm not aware of any evidence that can properly be said to show that Barclays acted in a way where it committed to keep the margin between the BoEBR and the SVR the same and, I'm not aware of any principle of law that, on the facts of this case, would obviously commit Barclays to doing so.

So, it follows that I do not uphold this part of Mr and Mrs M's complaint.

Has Barclays acted fairly when varying the SVR?

I must consider whether from 22 April 2016 onwards, Mr and Mrs M paid an unfairly high rate of interest. As I explained in my decision about our jurisdiction, in considering the fairness of the interest charged since 22 April 2016, it will be necessary for me to consider

what is fair and reasonable in all the circumstances of the case. This means that I will need to consider all the matters that contribute to and make up the interest charge added to the loan each month. And in turn that means considering the fairness of the interest rate used as the basis of the calculation.

In order to consider what is fair and reasonable I need to consider all the circumstances. I need to look at the impact of what may or may not have contributed to those charges – including things that happened before 22 April 2016 which influenced the rate charged at that time.

I'm satisfied that this is an essential part of determining whether or not the rate charged from 22 April 2016 onwards was fair and reasonable in all the circumstances. But in the event that I find something unfair about what happened before that date, I can only consider its impact on the interest charged since then – and therefore any redress I would award would only cover interest charged since 22 April 2016. That's because the complaint I'm considering is that interest was unfairly charged from 22 April 2016 onwards.

To assess the fairness of the interest rate terms, it is helpful to first set out the relevant terms themselves.

The Mortgage Conditions document states:

“31.2 Our rights to change the Interest Rate are set out below. But these rights will not apply at any time when your Offer says the Interest Rate is fixed, and nor will they permit us to change the agreed margin when your Offer says the Interest Rate tracks Barclays Bank Base Rate or Bank of England Base Rate (or another reference rate) by an agreed margin.

31.3 When the Interest Rate is linked to a reference rate it will change to track changes in Barclays Bank Base Rate or Bank of England Base Rate (or any other reference rate), but not otherwise.

31.4 If your Offer says the Interest Rate is, or is linked to, a rate which we control (such as Barclays Bank Base Rate), we may change the Interest Rate, or the rate to which it is linked. We may do this if, at any time;

(A) there is a change in Bank of England Base Rate; or

(B) there is a change in the cost of the funds we use in our mortgage lending business (or we reasonably expect that a change in funding costs is about to occur); or

(C) there is a change in Regulatory Requirements (or we reasonably expect that a change in Regulatory Requirements is about to occur).

Where we make a change to comply with a Regulatory Requirement, the change will be a fair proportion of the cost of compliance on our mortgage lending business, as reasonably estimated by us. Other changes will respond proportionately to changes in Bank of England Base Rate or our funding costs. We will not change the Interest Rate and our Charges to cover the same cost twice.”

Our service is required to consider what is fair and reasonable in all the circumstances. That includes, thinking more broadly about whether the way, and the extent to which, the terms have been used has resulted in unfair treatment for Mr and Mrs M. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

I've considered all the available evidence and all of the changes Barclays made to the SVR since Mr and Mrs M took their mortgage. Having done so, I am not persuaded that anything Barclays has done in varying the rate has led to Mr and Mrs M being treated unfairly. I have set out why below.

For reasons of commercial confidentiality, I haven't set out in detail the evidence Barclays has been able to provide in full or provided copies of it to Mr and Mrs M. Our rules allow me to accept information in confidence, so that only a description of it is disclosed, where I consider it appropriate to do so. In this case, I do consider it appropriate to accept the information and evidence Barclays has provided in confidence, subject to the summary of it I have set out in this decision.

At the time of Mr and Mrs M's mortgage offer in July 2008 the difference between the BoEBR and the SVR was 2.14%. The changes to the margin largely occurred between November 2008 and March 2009. During this time not all the BoEBR reductions were passed on and the margin increased to 4.49%.

I've already set out that this was not a tracker mortgage, so Barclays was not contractually obligated to track the BoEBR. Nor is it the case that Mr and Mrs M's mortgage had a 'cap' preventing Barclays' SVR from increasing beyond a certain 'margin' above the BoEBR. So, there was nothing in the contract that expressly prohibited Barclays from setting the SVR at a level whereby the margin between the SVR and BoEBR would change. But that doesn't mean that Barclays could set the SVR at whatever level it chose. The terms enabling Barclays to vary the SVR itself must be fair (to prevent businesses taking advantage of customers), and Barclays had to ensure that in varying the SVR it only did so for one of the reasons set out in the contract.

To evidence its decisions at the time and reliance on the above terms, Barclays has told us that despite a reduction in the BoEBR, its overall funding costs increased considerably between 2008 and 2009.

Barclays has provided relevant explanations and reasoning behind the decisions made to vary the interest rate during this period. This is supported by evidence that shows the direct impact of its increased cost of funding and how this correlated with its decision to vary the SVR.

Barclays has shown our service that its pre-tax profit significantly reduced between 2008 and 2009. This was largely due to several contributing factors including an increased cost of both wholesale and retail funding coupled with an increase in the perceived risk of default by Barclays leading to an increased cost of administering those mortgages accounts as well as overall increased loss provisioning. Barclays has evidenced the further impact it would have suffered had the full BoEBR reductions been passed on during this time. Barclays has explained why margins had to be carefully monitored and managed to protect its capital base to protect against any financial instability.

Barclays provided information to show that the widening of the SVR margin from 2.14% in July 2008 to 4.49% in March 2009 reflects the change in the funding costs it experienced as a result of changes in market conditions in the lead up to and during the global financial crisis and interest rate levels. The increase in the margin of 2.35% roughly equates to the percentage increases of the various funding costs referred to above.

Considering all of the information and evidence available to me, I have not seen any evidence to suggest the changes Barclays made were arbitrary, excessive, or unfair. Rather, the evidence I've seen satisfies me that Barclays acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mr and Mrs M fairly.

And I'm further satisfied that the evidence Barclays has provided for this period is corroborated by evidence of wider market conditions at the time.

At this time, the mortgage market was going through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including Barclays, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the FCA since. Whilst the BoEBR did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their prudential requirements. These were made up of several factors that are not directly linked to BoEBR. With this in mind, and in conjunction with the evidence Barclays has provided, I am satisfied it had legitimate reasons to vary its SVR in the way that it did.

In the aftermath of the global financial crisis, there were long lasting effects on the financial economy which ultimately changed the regulatory landscape. This included heightened concerns that a reduced availability of funding and the resulting rollover of risk would adversely affect the performance of banks and building societies leading to tightening of capital requirements to ensure sustainability.

Whilst Barclays was not obligated to track BoEBR or reduce its SVR solely because the BoEBR had reduced, the changes it did make to its SVR post March 2009 (up until this complaint was made in April 2022) were soon after changes were made to the BoEBR and by the same amount – therefore maintaining the margin that had been in place since the end of the global financial crisis. Those changes were permitted under the terms of the contract.

Mr and Mrs M have said “...we have no record of receiving any notification from Barclays of their decision to increase the margin on our Mortgage Current Account (MCA).” But as I've found there was no margin (that is, the SVR wasn't a BoEBR tracker product) then it follows Barclays couldn't notify them of a change in any margin.

Mr and Mrs M have also argued that the 2008 Mortgage Conditions document shouldn't apply as there is no reference to that document in the mortgage offer. I've considered that point very carefully but I'm afraid it doesn't help Mr and Mrs M. That's because if we remove the right for Barclays to vary the SVR (as contained within the Mortgage Conditions document) then the SVR would have remained at 7.14% for the life of the MCA, rather than varying between 4.74% and 6.64% as it actually did between November 2008 and April 2022). If we were to say the 2008 Mortgage Conditions document shouldn't apply that wouldn't instead turn the SVR into a BoEBR tracker product as there is nothing contained within the mortgage offer to say, or imply, that would be the case.

I understand Mr and Mrs M have since raised further complaints with Barclays. As both I and our Investigator have explained we can only consider the matters that formed part of the original complaint so we can't consider those other points as part of this complaint. Our rules state that a business must be given the opportunity to investigate and respond to any issues first. Once they've received a response from Barclays to those complaints, Mr and Mrs M may then be able to refer them to this service as separate complaints if they remain unhappy with the outcome (subject to our usual rules).

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 4 December 2023.

Julia Meadows

Ombudsman