

## **The complaint**

Mr and Mrs S's complaint is that Barclays Bank UK PLC has been unhelpful and unsympathetic, and has failed to offer them a payment arrangement, in relation to financial difficulties affecting their mortgage account. They have explained that until an insurance policy pays out, they aren't able to pay their mortgage.

## **What happened**

The evidence in the case is detailed, running to several hundred pages of documents and telephone calls. I've read everything and listened to the call recordings, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has 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.

What happened really isn't in dispute, so I don't need to analyse the events in order to determine why a complaint has been made. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified.

In April 2014 Mr and Mrs S took out a mortgage with Barclays (under its residential mortgage lending brand, Woolwich). They borrowed £105,000 on a capital repayment basis over a term of 15 years. The mortgage was on a fixed rate that expired on 30 June 2019. In September 2017 Mr and Mrs S took out a further advance of £45,000, also on a repayment basis, over a term of 20 years. This was on a fixed rate until 31 October 2019.

Barclays has now clarified that the mortgage is currently on a fixed rate of 2.19% until 2024. There is an early repayment charge (ERC) if the mortgage is repaid within the fixed-rate period.

In 2019 Mr and Mrs S took out an insurance policy through Barclays that offered cover for total permanent disability (TPD). In addition, Mr and Mrs S had a policy taken out in 2008 which also offered this type of cover.

I am very sorry to note that in 2020 Mrs S became very ill and unable to work. Claims were put in on both policies, but the insurer on the 2008 policy declined the claim, and I understand the claim on the 2019 policy has yet to be finally determined by the insurer after it was initially declined and appealed (I have limited information about this, which I will address later in this provisional decision).

(Complaints were made to our service about mis-sale of the 2019 policy by Barclays and about the insurer's decision to decline the claim on the 2008 policy – which is unrelated to Barclays. Notwithstanding the sympathy felt for Mrs S, the ombudsmen who issued final decisions on those complaints weren't able to find in Mrs S's favour. I will make no further comment on the merits of those complaints but will make reference to them by way of background information for this complaint.)

Mrs S contacted Barclays on 27 July 2021 because her claim under the 2019 policy had been declined. Mrs S was told by a staff member not to worry about the August mortgage repayment and that he would call her back once he'd spoken to the relevant department. However, he didn't do so.

Barclays has acknowledged that this wasn't the right thing to do; instead Mr and Mrs S should have been referred to a mortgage team to discuss the mortgage with them in more detail. Unfortunately, in trying to be helpful and reassuring at this initial stage, Barclays didn't signpost Mr and Mrs S to the section of the bank that they should have been speaking to.

Barclays' notes record that on 4 August 2021 Mr S spoke to Barclays, when he explained that Mrs S wasn't able to work and that it would be difficult to make the current monthly payment (CMP) on the mortgage. Barclays suggested Mr and Mrs S might want to take independent financial advice, and that, once the bank had full details of their income and expenditure (I&E), the bank could look at what options might be available.

Mr and Mrs S complained to Barclays and the bank acknowledged that Mr and Mrs S should have been referred to the mortgage team. The bank offered compensation of £150 for this. Dissatisfied with Barclays' response, Mr and Mrs S contacted the Financial Ombudsman Service. An investigator looked at what had happened. He didn't think Barclays had been sympathetic enough to Mrs S's situation – particularly as Mrs S had thought that her two insurance policies were going to cover her situation. In October 2021 he asked the bank to pay £250 compensation, and explore options with Mr and Mrs S about the help that could be provided. This would be dependent on Mr and Mrs S providing details of their income and expenditure. The bank paid the £250 compensation.

Mr and Mrs S accepted this. They had raised complaints with our service against the providers of the two insurance policies. The complaint in relation to the 2008 policy was decided by an ombudsman in September 2021, and was not upheld. But Mr and Mrs S were hopeful that their complaint in relation to mis-sale of the 2019 policy arranged by Barclays would be upheld. The policy would have paid out £78,000 on a successful claim.

On 31 October 2021 Mrs S contacted the investigator on that complaint. She wasn't happy with the way the bank had dealt with the details of their Income and expenditure analysis (I&E). She asked the investigator to consider telling Barclays that the bank had to *"pay a sum now because this has gone on too long and we need a rapid change not the back and forth with Barclays and getting nowhere. We believe that they should really be responsible for £78,000... (but we will agree a decent amount)..."*

However, in February 2022, in a final decision, an ombudsman didn't uphold the complaint that Barclays had mis-sold the policy. I understand that a claim has been made to the insurers on the 2019 policy but as at 12 May 2022 (the last information we have from Mrs S's solicitor) no decision had been made on the claim by the insurer.

On looking at the matter again, the investigator didn't think Barclays had done enough to help Mr and Mrs S. Barclays had compiled Mr and Mrs S's I&E, which showed their

expenditure greatly exceeded their mortgage. As a result, Barclays wasn't able to put a payment arrangement in place. But the investigator didn't think the call with the bank when their finances were discussed was clear, and they had to repeat much of the information. Given this, the investigator didn't think an accurate note had been taken of the I&E.

The investigator thought that, even if an accurate record of I&E showed that there was a deficit, this shouldn't prevent Barclays from putting a payment arrangement in place. He pointed out to the bank that Mrs S is a vulnerable customer and explained all the ways mortgage regulations say that lenders should help people in Mr and Mrs S's circumstances.

The investigator asked Barclays to put an affordable payment plan in place, reimburse all the money Mr and Mrs S had to borrow from relatives for their living expenses and pay them £1,000 compensation.

Barclays didn't accept the investigator's findings. The bank made some further comments in response, which I summarise below:

- Mr and Mrs S had a negative monthly disposable income (MDI). As a result, no payment plan could be considered affordable.
- The I&E details given to Barclays don't appear to be unreasonable given Mr and Mrs S's circumstances and Barclays considers these to be a fair reflection of their situation at the time. If this is inaccurate, Mr and Mrs S are welcome to send in another with any corrections they might want to make.
- It's unlikely Mr and Mrs S would have been advised by a debt charity to go bankrupt if they had a positive MDI.
- Where customers have a negative MDI, they are advised to seek independent financial advice, and Barclays had already advised Mr and Mrs S to do this.
- Concessions are intended to be a temporary solution, but are unsuitable for long-term financial difficulties.
- It would be a breach of regulation to request a payment from customers who are actually unable to pay anything.
- Barclays isn't able to give advice to mortgage customers on how to deal with other bills or creditors – which is why the bank suggested Mr and Mrs S should have independent advice.
- In relation to the insurance claim on the 2019 policy, Barclays would like authority to talk directly to the insurer about the claim. If there is a realistic possibility that a lump sum of £78,000 is likely to be paid in the foreseeable future, this will affect the assistance Barclays would be able to give. But even if the mortgage was reduced by this amount, it would still leave a balance that Mr and Mrs S would have no income to service.
- It was Mr and Mrs S's choice to borrow money from family and so it's unfair to ask Barclays to reimburse them for this.
- Barclays has followed its correct procedure and hasn't made an error. It made Mr and Mrs S aware of their options from the start and correctly referred them to a financial adviser. As a result, it's unfair to ask the bank to pay compensation of £1,000.

## **Provisional decision of 16 June 2022**

I issued a provisional decision in which I made the following findings.

I've looked at what Barclays has done, and what it is required to do, to help borrowers in financial difficulty. The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. The Council of Mortgage Lenders (CML) also has its own guidelines about what it expects lenders to do to comply with MCOB, which mirror closely the requirements of MCOB.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

Barclays has said, on the basis of the information given by Mr and Mrs S about their I&E, there was a negative MDI, as a result of which no payment arrangement can be put in place. I've looked at the figures compiled by Barclays during the telephone call with Mr S in December 2021 - and I've also listened to the call. This was a long call, from which it is apparent at various points that the parties are at cross-purposes or having difficulty understanding each other. But I've looked at all the information gathered and it doesn't seem to me to be inaccurate, compared with the call.

The I&E showed a negative MDI of over £1,000, and so I don't think it was open to Barclays to think about a payment arrangement. Even taking out the monthly mortgage payment of just over £900, there was still a negative MDI.

Switching Mr and Mrs S to a lower interest rate would usually come with an early repayment charge if the mortgage is repaid during the period when the lower interest rate applies. Given that the mortgage was unaffordable on the figures Barclays had, it wouldn't have been appropriate to offer a product with a lower interest rate if that mortgage was also unaffordable.

A term extension on the mortgage might reduce the payments, but not within the range of affordability, based on Mr and Mrs S's I&E.

Likewise, a temporary switch to interest-only would only help if there is "a light at the end of the tunnel", such as a new job offer or something of that nature. I know that Mrs S is unable to work and it appears this may be permanent, according to the information I've read from her GP. (For the sake of privacy, I will not disclose the details here.)

However, there may be the light at the end of the tunnel if the claim under the 2019 policy is accepted and paid in full - £78,000. Neither our service nor Barclays has been given much information about the progress of the claim. The last information we have - on the file relating to the complaint against Barclays that the policy was mis-sold - is a note of a telephone conversation with Mr and Mrs S's solicitor on 12 May 2022. She says that she thinks the insurer is deliberately delaying the claim and so there may be a new complaint raised against the insurer about that.

However, it seems to have been agreed that Mr and Mrs S would await the outcome of the claim before raising any complaint, because if the claim was denied, then they could complain about that, as well as about the delay in handling it.

I think the issue of the potential insurance pay-out is critical to the outcome of this mortgage complaint; if Mr and Mrs M will definitely be receiving a large lump sum, they could pay off credit cards and other unsecured debts, reduce their mortgage balance and have more disposable income to go towards paying the remaining balance of their mortgage, being essentially debt-free apart from the mortgage. If the insurers reject the claim, then this will have long-term implications for Mr and Mrs S in relation to the mortgage.

Because of the potential impact of the claim, before I issue any final decision, I need to know what the position is on this. I require Mr and Mrs S to complete and sign a form of authority (which will be sent along with this provisional decision), authorising the insurer to release full details of the claim to both the Financial Ombudsman Service and Barclays. I also require them to provide a copy of the policy schedule showing the level of cover and the policy number.

I would also like Barclays to clarify whether it offers products specifically for vulnerable customers, or products without fees or early repayment charges, with details of any such products and the lending criteria for them (which criteria I will accept in confidence, given that it is commercially sensitive.)

I can see that Mr and Mrs S have made their mortgage a priority, and that they have borrowed money from relatives for their living expenses, including the mortgage. As a result, the mortgage isn't in arrears. But I don't think it's fair that Barclays should reimburse any of this. Barclays' role as mortgage lender is to administer the mortgage account in line with regulations. But this does not extend to managing Mr and Mrs S's finances for them. I totally understand why Mr and Mrs S borrowed from their family, but it was their decision to do this and it's not fair or reasonable for me to order Barclays to pay this back – which in effect would mean Barclays had paid the mortgage for them.

I'm also not persuaded that an award of compensation of £1,000 is appropriate. In its final response letter Barclays had previously offered £150 for giving Mrs S incorrect information during the call on 27 July 2021. I also think the call in December 2021 when the I&E was compiled was unnecessarily protracted and was obviously stressful for Mr S. In the circumstances, I think Barclays should pay a further £150 compensation for this, taking the total compensation (including the £150 offered in the final response letter) to £300.

But in relation to the help Barclays is able to offer, up to this point I don't think the bank has done anything wrong, given the position in relation to Mr and Mrs S's financial circumstances and the bank's regulatory obligations concerning the affordability of any arrangements.

What Barclays is able to do to help may change, depending on the insurance claim, but I am not going to make a final decision until the insurers have confirmed the position on the claim, including any timescales if a decision has not yet been made.

## **Responses to the provisional decision**

Barclays clarified that the mortgage is on a five-year fixed-rate product at 2.19% with an ERC if it is repaid before 2024. The bank says that there are no lower interest rates that would make the mortgage affordable, based on the I&E the bank holds. Therefore, even if a

lower rate was available, it wouldn't be possible for Barclays to switch the mortgage, particularly as an ERC would be incurred in closing off the previous mortgage.

Barclays said that there is a negative MDI and so there isn't anything Barclays can do other than to direct Mr and Mrs S to getting independent financial advice.

The bank also noted that Mr and Mrs B recently made a part-redemption - £41,039 on 13 June 2022. This has reduced the balance on the account.

Barclays also noted that I had increased compensation from £150 to £300, but the bank has confirmed that, after the investigator's first opinion on the case when he recommended compensation of £250, the bank paid this. Therefore increasing compensation to £300 would mean the bank should pay a further £50.

Mr and Mrs S have made copious responses to my provisional decision. Much of what they say relates to their dissatisfaction with the way the complaint has been dealt with, which isn't something I will be looking at. They have also made detailed comments about what they perceive to be regulatory breaches by Barclays. The Financial Ombudsman Service isn't a regulator, and historic regulatory issues reported in the press aren't within the scope of my remit in relation to an individual complaint against Barclays.

Mr and Mrs S have also quoted issues relating to Consumer Credit, specifically concerning small business and retail customers, that had been reported in the press. Mr and Mrs S say they are going to contact the Financial Conduct Authority to see if they can get support from the team or advisor that fined the bank in relation to those issues.

However, none of this relates to a regulated residential mortgage (which falls under a different set of regulations, MCOB, from consumer credit contracts). Therefore, whilst I appreciate the research Mr and Mrs S have done, this information is not relevant to their complaint.

With regard to issues that *are* relevant to this complaint, Mr and Mrs S say that they've provided Barclays with multiple I&Es, and so I should not have based my decision on a single I&E which Barclays claim showed the mortgage wasn't affordable. Mr and Mrs S also say Barclays recorded information incorrectly on their I&Es, and even after Mr and Mrs S cancelled direct debits, Barclays still wouldn't offer them any help.

Finally, Mr and Mrs S have made it very clear that they do not want the Financial Ombudsman Service to explore ways in which Barclays might be able to help them going forward. All they are concerned with is what they say is the lack of help and forbearance offered by Barclays up to the point where they brought their complaint to us. Their position is that they were unable to pay their mortgage, they were awaiting payment of the claim on their insurance policy and expected Barclays to offer them some assistance while they were in financial difficulty.

### **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.

I've reviewed the file again from the outset, revisited my provisional decision and considered the further points made by the parties.

Because Mr and Mrs S do not want us to look at any ways that Barclays might be able to help them in future, I do not need any information from Mr and Mrs S about their insurance

claim or from Barclays about what the bank might be able to do to assist in the future. I will consider only the issues relating to the customer service issues Mr and Mrs S were unhappy about when they brought their complaint to us.

Having done so, I'm not persuaded that I should change the outcome I reached in my provisional decision, for the reasons set out in that provisional decision and repeated above.

Although I accept Mr and Mrs S provided Barclays with several other I&Es, their position throughout is that they want help from Barclays because they aren't able to pay the mortgage – although they have done so with the help of family. But Barclays can't take money borrowed from family into account as income when assessing affordability.

Mr and Mrs S haven't been able to show that they had sufficient income to be able to afford the monthly mortgage payment. A concession is only available under MCOB 13 for customers in arrears, and where putting in place a temporary forbearance measure would be affordable. That wasn't the case with this mortgage account, as it wasn't in arrears (due to Mr and Mrs S borrowing to pay the mortgage) and because no concession would have met affordability due to a negative MDI.

I fully understand and appreciate that Mr and Mrs S cancelled direct debits, and that they say Barclays made a mistake in recording a benefit as monthly when it was fortnightly. But even taking this into consideration, the mortgage was still unaffordable and so Barclays could not put in place any type of arrangement where there was no affordability.

In the circumstances, I don't think Barclays could have offered a concession. The bank suggested Mr and Mrs S should take independent advice, which is all it was able to do. Overall, I'm not persuaded Barclays has done anything wrong. There was no concession it could have offered, based on the negative MDI the I&Es showed.

I appreciate this isn't the outcome Mr and Mrs S were hoping for. I acknowledge they have, by borrowing money, made sure their mortgage hasn't gone into arrears. But there's no basis on which I could fairly or reasonably order Barclays to reimburse them for this.

In my provisional decision I had thought the compensation offered by Barclays in its final response (£150) wasn't sufficient, and that this should be increased to £300. I still think that this is fair, reasonable and proportionate, for the customer service issues I have identified. I wasn't aware that Barclays had already paid the £250 recommended by the investigator following his initial review of the complaint. To clarify, I am awarding total compensation of £300 for distress and inconvenience, so Barclays is required to pay a further £50 on top of the £250 already paid.

Mr and Mrs S are clear that they do not wish to discuss with the Financial Ombudsman Service any issues concerning the insurance claim or any future mortgage issues. I sincerely hope Mr and Mrs S are able to resolve these issues. I would urge Mr and Mrs S to maintain an open dialogue with Barclays about their financial situation and, as the bank has suggested, to take independent financial advice or to speak to StepChange, Citizens Advice or Shelter about their options.

### **Putting things right**

To settle the complaint I direct Barclays Bank UK PLC to pay Mr and Mrs S total compensation for trouble and upset of £300, to include £250 already paid. I make no other order or award.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Barclays Bank UK PLC to pay compensation as set out above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 15 August 2022.

Jan O'Leary  
**Ombudsman**