

## **The complaint**

R complains that Barclays Bank UK PLC unfairly altered the terms of a loan agreement it had with them.

R is represented in bringing this complaint by its director, Mrs F.

## **What happened**

R took out a commercial mortgage with Barclays in 2016. At the time, there were discussions between Mrs F and R's business manager at Barclays about the agreement starting with a five-year facility, despite the facility being calculated on the basis of a 15-year amortisation profile for the purpose of reducing the cost of the credit.

Mrs F entered into a five-year agreement with Barclays on behalf of R. The facility letter was signed and accepted by Mrs F on 31 October 2016.

After the five-year period ended, Barclays told Mrs F that a review of R's finances and a further application were needed. Mrs F provided the information requested and following the review, Barclays agreed to renew the facility with different terms being offered to R including a higher interest rate, early repayment charges and a further arrangement fee.

In early 2022, Mrs F complained to Barclays about the changes to the terms of the agreement. Barclays agreed there had been some confusion caused by the way the relationship manager had explained the arrangement to Mrs F, but they disagreed that the loan had been mis sold.

Barclays said the facility letter didn't say the facility would be renewed on the same terms and that it was ultimately R's responsibility to make arrangements for the balance to be repaid, or to apply for a new deal with Barclays at the end of the five-year term.

Barclays explained they were willing to offer a new five-year facility on a variable interest rate which would include an arrangement fee of £223.35. However, they said they were willing to waive this fee if R proceeded with the new facility with Barclays.

In closing, Barclays said the complaint wasn't being upheld on how the facility had operated, or how the renewal had been handled, but they wanted to offer £100 to R in acknowledgement of any confusion the email sent by the relationship manager in the early stage of the negotiations had caused.

Mrs F was unhappy with this response, so she brought R's complaint to our service. One of our investigators looked into the matter. He didn't think the loan had been mis sold but he agreed that the information given to R by Barclays had been misleading. He thought Barclays should increase the compensation to £300 as R had declined to enter into a new agreement with Barclays and as such hadn't benefitted from the waived fees.

Barclays accepted our investigator's view, but Mrs F asked for a decision, so the case was passed to me.

I contacted both parties in an attempt to resolve the matter informally. I said:

*"At present I am minded to uphold the complaint and ask Barclays to increase the total amount of compensation to £500. I appreciate this may not be the resolution you were hoping for, but I've explained my reasons below.*

*I agree that the emails sent to you by the relationship manager when you were initially applying for the loan were misleading. However, I don't agree that the loan was mis-sold. Those emails were sent during the negotiation stage of the process, but the legally binding document involved is the facility letter which you signed and accepted on behalf of R on 31 October 2016.*

*We would normally expect that legal advice would've been taken by the limited company before signing the contract with the bank, so although you raised issues about the five-year term during the negotiation stage, I can't see that there was any further concerns raised about the five year term at the time of signing the facility letter and entering into a contract with Barclays.*

*The special conditions of this loan, detailed in the facility letter, explain that it is a five-year facility that had been calculated on the basis of a 15-year amortisation profile. It explains that there will be 59 fixed instalments followed by a final instalment sufficient to repay the loan in full.*

*This doesn't mean that the facility was for 15 years but rather than the cost of lending had been calculated in this way to keep the costs down for both R and the bank.*

*Although financial institutions offer loans over different terms, there is usually a review built into the process to protect both themselves and their customer from changing circumstances. I understand your frustration that Barclays undertook a review at the end of the five-year period, but this wouldn't be unusual, and the facility letter was quite clearly for five years.*

*I can see that Barclays did offer a new facility to R but on less favourable terms and you have pointed out that the company remained in profit despite the pandemic and had made all the repayments on time and in full. I appreciate this was not the offer R were expecting, but many different factors affect the decision of the lender and not just the current performance of a company. It is likely that the unprecedented impact of the pandemic will also have affected the risk appetite of many lenders.*

*Ultimately, Barclays are entitled to make a commercial decision about who they lend to and what the terms of the agreement are, and I don't have the power to dictate to them what those terms should be. So, I can't say that they have done anything wrong by changing the terms of the lending at the review stage.*

*However, I can see there was some poor communication from Barclays during the negotiation stage of the lending process and there is no doubt that this caused inconvenience to R after the initial five years.*

*As the complaint is being brought on behalf of a limited company, I am unable to consider an award for distress as the company itself cannot be 'distressed', so I can only award compensation for inconvenience that has occurred. And in this case, I think £500 is a fair reflection of the inconvenience caused to R."*

Barclays accepted my recommendation to increase the compensation to £500. However, Mrs F asked for a final response. Although no further evidence was provided by either party,

Mrs F commented that she wouldn't have signed the documents had she not been led to believe that the mortgage would continue for a further ten years on the same terms.

She also said that the cost of lending was totally mis-represented, as it was communicated to her that the reason Barclays were doing it over the five years was because it would be cheaper to do it that way. However, she then found that additional fees would have been payable every five years which were not part of her understanding of the original agreement.

Mrs F would like Barclays to refund two thirds of the fees paid by R over the five-year term and pay compensation for the stress and inconvenience caused.

### **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 already given my provisional thoughts on the matter and I've not seen anything from either party that has made me change my mind. However, I would like to address the points that Mrs F made in response to my provisional decision in more detail.

Mrs F said she would not have signed the facility letter had she not been led to believe that the mortgage would've continued after the five-year period on the same terms.

I can see Mrs F's point here. There is no dispute that the emails were misleading. However, in the email of 15 September 2016, Barclays say a letter of variation would be issued *"...providing you are happy and we are with performance...to extend the term to match the amortisation profile."* This indicates that a review of some description would be conducted at the end of the five-year period, but Barclays should've been more specific about the implications this might have for R - particularly in their follow up emails.

The facility letter that Mrs F signed on behalf of R clearly indicated the term of the lending. There is nothing in this document to suggest the lending was guaranteed to continue at the end of the five-year term. As I've said above, the earlier emails allude to the fact that a review would take place towards the end of the five-year period to ensure all parties were happy with the performance of the loan. When this review did take place, for various reasons, Barclays decided not to issue a letter of variation. This was a commercial decision and I can see in an email dated 31 December 2021, Barclays have raised some concerns and asked for additional information about R's performance.

As I mentioned, I would usually expect to see a review in circumstances similar to the lending that was agreed with R. A responsible lender should be taking the time to review the terms of an agreement at timely intervals for the protection of all involved parties. Both personal and economic factors can change quickly and unexpectedly, as we saw in the case of the recent pandemic, so I don't think Barclays did anything wrong when they reviewed the lending after five years.

Following the review, Barclays agreed to extend the loan on new terms which, based on the circumstances at that time, seem fair and reasonable to me - apart from the arrangement fee. However, Barclays had agreed to waive this before R would've signed the new facility letter, so this is not a cost R would've incurred had it decided to stay with Barclays.

Mrs F also said that the cost of lending was totally mis-represented, as it was communicated to her that the reason Barclays were doing it over the five years was because it would be cheaper to do it that way. However, she then found, that additional fees would have been payable every five years.

Having reviewed the agreement, I can see that the main fee associated with the lending was the arrangement fee. This was 1.5% of the cost of the total lending, so I agree with Mrs F that R should not have had to pay a further arrangement fee after the five-year review. During the negotiations with Barclays in 2021, they did agree to waive this fee so had R remained with Barclays, this wouldn't have impacted R.

I know that Mrs F would like Barclays to refund two thirds of the fees R paid as R only had the benefit of the loan for five of the fifteen years. I can understand why Mrs F feels that way however it's not that straight forward. The cost of lending had been calculated over a 15-year period to keep the costs down for both R and the bank. R had the benefit of a reduced cost of lending during the initial five-year period and this was reflected in a lower interest rate. Had R not paid the fees at the outset, the knock-on effect of a lower interest rate for that period would not have been possible. So, I therefore won't be asking Barclays to refund these fees.

### **Putting things right**

Although I agree that the communications sent by Barclays to Mrs F in the negotiation stage did not clearly explain how the process would work, I haven't found that the lending was mis-sold or that the terms of the loan agreement were unfairly altered.

However, I think Barclays should make a payment of £500 to R to apologise for their misleading communications and the inconvenience they caused for R.

To be clear, the award I'm asking Barclays to make is to reflect the inconvenience this unexpected additional administration and negotiation had on R at the five-year point. It is not to reflect the fact that R went elsewhere for finance, as I think the offer Barclays made to R following these negotiations was fair and it was R's choice to go elsewhere.

### **My final decision**

I direct Barclays Bank UK PLC to make a payment of £500 to R.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 27 October 2023.

Tara Richardson  
**Ombudsman**