

## **The complaint**

Mr H complains that Barclays Bank UK PLC hadn't updated the charge for his buy to let mortgage on his deeds, when that mortgage transferred from another lender. And when he alerted it to the problem, it repeatedly failed to put things right.

## **What happened**

Mr H owns a leasehold property, which he has rented out. At the time of his complaint to our service, he had a buy to let ("BTL") mortgage with Barclays. That mortgage was initially taken out with a different lender, then sold to Barclays as part of a bulk transfer of that old lender's mortgage book.

Mr H was thinking of selling his property. It had a shorter period left on the leasehold, so Mr H negotiated the purchase of a lease extension with the freeholder. He said in January 2021, his solicitor approached Barclays to get its consent to the lease extension. And at that point, his solicitor noticed that the charge registered on the title still included a reference to the old lender. That needed to be removed.

Mr H said all the letters he'd received from Barclays at the time that it took over his mortgage said it would take care of everything, and he wouldn't need to do anything. So this change to his title deeds should really have been completed some time ago. But he assumed Barclays would sort this out promptly once he alerted it to the problem.

Mr H said that unfortunately, Barclays hadn't done that. It just hadn't seemed able to sort this out, so Mr H said he was now many months further on, with no progress.

Mr H said this had cost him a considerable amount of money. His fixed rate mortgage deal had ended, and he'd stayed on Barclays' Standard Variable Rate ("SVR") rather than set up a new fixed term deal, because he didn't want to further muddy the waters. He'd been paying a solicitor to write back and forth to Barclays. He'd now had to let the property out again for another year, rather than sell it, which might end up impacting how much he would eventually realise from the property.

Mr H said Barclays hadn't even replied to his complaint. So he wanted us to look into things. He wanted someone at Barclays to be put in charge of sorting this out. And he wanted compensation for the additional expenditure he'd incurred because of the delays Barclays had caused. He also wanted Barclays to apologise.

Although Mr H apparently hadn't received this letter, Barclays said it had responded to Mr H's complaint. It said the title to Mr H's property included reference to the old lender, and this hadn't been changed when the mortgage moved to Barclays. But Barclays said the title should have been amended by Mr H's solicitor when he took out his current mortgage with it. Barclays said this was the fault of Mr H's previous solicitors, so it wasn't responsible for what had gone wrong. But it had worked within a timely manner to release the documents requested so the amendment of the title could take place and to give consent for Mr H's lease extension.

Barclays didn't think it had done anything wrong.

Our investigator thought that only a small part of this complaint should be upheld. He thought it was the responsibility of the previous lender to remove its old charge. He didn't think this was Barclays' fault. And our investigator said Barclays had showed us it had replied to Mr H's complaint, made in August 2021, within the eight week deadline it has for a response. Our investigator understood that Mr H hadn't received that, but he said that wouldn't be Barclays' fault. It was Barclays' fault that it hadn't responded within a shorter timescale which it gave to Mr H, and our investigator said Barclays should pay Mr H £100 to make up for that.

Barclays agreed. But Mr H didn't. He said that for a mortgage transfer like this one, it would be up to Barclays to sort out the title. And he said although Barclays had written to him to say it wasn't its responsibility to sort this out, it also continued to try to resolve this with the Land Registry. Mr H said if this was something he could do himself, he would already have done it.

Mr H said he didn't really believe Barclays had written to him on the date on its letter. He said that on the same date Barclays claimed to have issued their final response, it also sent him a letter stating it was still processing his complaint.

Mr H said he was sending us some of the information he and his solicitor had been pulling together for a possible legal case (although he was clear he wanted our service to reach a decision first). He wanted this complaint to be considered by an ombudsman, so it was then passed to me for a final decision. I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I only proposed to uphold it in part. This is what I said then:

Firstly, I'd like to deal with one small point from our investigator's view. He thought Barclays had promised to provide Mr H with a reply to his complaint no later than 10 September. But I don't think it did. It promised to revert to him by that date. And on that date, it wrote to say it was still looking into things for him. So I don't think that Barclays unreasonably raised Mr H's expectations about when he would receive a full response to his complaint. I don't think it has to pay compensation because of that.

I know Mr H doesn't believe that Barclays did reply on the date of its letter, because it also wrote to him on that date to say it was still looking into things. But I can see on Barclays' internal complaint records that both of these letters – the automated response saying Barclays hadn't been able to reply yet, and its actual complaint response letter – were sent on the same day. So I do think Barclays' reply was sent.

But that doesn't mean I think this complaint should be dismissed. I've also reached a different conclusion to our investigator on what's gone wrong with the charge recorded against Mr H's property.

I note that Mr H's mortgage wasn't transferred from the old lender to Barclays because of anything he did. It was a bulk transfer of his old lender's mortgage book. So I don't think Mr H or any solicitor working for him, was responsible for having updated the charges on the title of Mr H's property at this time. Indeed, there was no solicitor working for Mr H at the time of this transfer – he wasn't involved in the transfer at all.

I think Barclays ought to have amended the charge on Mr H's title. And given that this transfer appears to have been planned since late 2012, and achieved sometime in

2014, I think the title should have been amended well before Mr H planned to extend his lease in 2021.

Barclays didn't do that before Mr H approached it, and it doesn't appear to have been able to resolve this issue afterwards either. Mr H has shown us an email from the Land Registry which appears to say Barclays' efforts to amend the charge repeatedly failed because it just wasn't filling in the relevant form in full. So I think it's also Barclays' fault that this wasn't resolved promptly, after Mr H made it aware of the problem.

Mr H has told us that since this complaint was registered, he has paid off his mortgage. He said he hadn't been planning to do this, but felt it was the only practicable way of dealing with the problem of an incorrect charge on his property title – to pay off the mortgage and get it removed altogether. So he did that, on 24 March 2022.

I do think it's Barclays' fault that Mr H wasn't able to move ahead with his plans to extend his lease in early 2021. I think that, in failing to resolve this issue, as well as denying responsibility for it, Barclays has provided poor service to Mr H over an extended period. I think Barclays should pay Mr H some compensation for that. I think Barclays should pay Mr H £500, to say sorry for the stress and trouble that this has caused him.

However, it's been more difficult to see what additional costs Mr H has incurred, which could reasonably be attributed to the mistakes I think Barclays has made here. Our service has written to Mr H twice, asking him to break down the costs he's told us about, and setting out what it might and might not be fair and reasonable for our service to ask Barclays to pay.

I've explained to Mr H that when I'm deciding whether to uphold his complaint, I also need to decide how that complaint should be upheld, and what Barclays should do to put things right. So I've also explained that if he isn't able to set out his losses for us, then I can't reasonably ask Barclays to pay them.

I'll deal with each of the areas of expenditure Mr H has raised, under a separate heading.

*Additional mortgage costs* – Mr H said he was paying more on his mortgage from February 2021 onwards. He's sent us his mortgage statement from the time, which shows his monthly payments were much higher from February 2021. Mr H said this was an extra £1,274 in interest alone, before the mortgage was paid off.

I don't think that's quite right. Any loss wouldn't be the difference between Mr H's old mortgage payments and the payments he made when he was on the SVR. It would be the difference between the payments he made when on the SVR, and a different mortgage deal he could otherwise have taken up in February 2021. So I need to think about whether Mr H would have been better off taking up a different mortgage deal then, and if so, whether it's Barclays' fault that he didn't do so.

Mr H said he stayed on the SVR because his fixed rate mortgage deal had ended, and he didn't want to tie himself in to a further fixed rate deal while he was still hoping to complete his lease extension and sell the property. He also said he was already concerned about the charge on his property, and he didn't want to give Barclays any other reason to revisit this.

A new fixed rate mortgage deal will often attract both a setup fee when they start, and an early repayment charge ("ERC") if the mortgage is redeemed within the fixed rate

period. I think it was reasonable for Mr H to decide in February 2021 that he didn't want to take out a fixed rate deal. But that's not because of the difficulties Mr H was facing with Barclays. It's because it's not at all clear to me that Mr H would have been better off taking out such a deal in February 2021, given that he was planning to sell the property, and he in fact decided to redeem the mortgage in March 2022.

It's possible, though, that Mr H might have been better off from February 2021 if he had chosen to take up a tracker mortgage, with somewhat lower interest, and no fee or ERC, rather than simply paying Barclays' SVR at the time. And Mr H doesn't seem to have explored at all whether he could move to such a mortgage. I think it would have been reasonable for Mr H to have taken this step, if he was concerned about the interest he was paying. And I don't think it would be reasonable now to ask Barclays to rework Mr H's mortgage, so that he was on such a deal between February 2021 and March 2022 (if indeed, Barclays could have offered this at that point) when Mr H could have taken this step himself at the time. So I won't ask Barclays to rework Mr H's mortgage in this way now.

*Legal costs* – Mr H wanted Barclays to make a contribution to his legal costs. I can see that Mr H's solicitor has written to Barclays a number of times. And I don't think this matter should have taken so much legal work to resolve. However, Mr H hasn't separated out for our service the costs that this incurred. He's told us he's paid around £4,100 in legal fees so far, and a standard lease extension should cost about £1,500 in legal fees. But Mr H hasn't fully evidenced either of these sums. And what Mr H has sent us, shows that over a third of the legal fees he's paid so far seem to have been incurred before the problem with the deeds was even discovered.

Mr H has also said he's had to change solicitors in this time. I think this always leads to some duplication of work, and costs. And I have not been able to attribute this to Barclays.

For these reasons, I don't think I can fairly and reasonably ask Barclays to pay the difference between the amount of legal fees that Mr H said he was expecting, and the amount he's paid. But I do think it's reasonable to assume that Mr H has paid something for the letters I can see, sent by his solicitor to Barclays. In the absence of further evidence specifying these exact costs, I think it's reasonable to ask Barclays to pay £250 towards that.

*Extension of the lease* – Mr H hasn't yet completed the extension of his lease, and he says that he doesn't know if this will cost more, or not. As Mr H has since rented out the property again, it's not clear whether or not he is still proceeding with this.

Mr H said any additional costs of the lease extension would, if they occur, form part of a separate claim. I think I should make Mr H aware that our service won't usually reconsider an issue that we have already issued a decision on. So I can offer Mr H no reassurance that we would be able to reconsider this matter in future, and add to any redress.

*Other costs* – Mr H has mentioned the loss of interest on savings which have been used to pay off this mortgage early, and a possible change in the value of the property itself. Mr H said that he couldn't evidence the loss of interest, as the money had been lent to him by someone else. And he couldn't show a change in the value of the property at the moment. So he accepted that these things wouldn't be included in this claim. I would only pause here to note again that if these items aren't included now, I can offer Mr H no reassurance that we would be able to look at them in future.

In summary, my decision is that Barclays should pay Mr H £500 in compensation, and £250 towards his legal costs.

Whilst this decision is provisional, and subject to change following further argument or evidence from either side, on the basis of what I have seen to date, I think this would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Neither side replied before the deadline, although Mr H contacted us after the deadline to ask if I would shortly be finalising my decision.

### **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.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that Barclays Bank UK PLC must pay Mr H £500 in compensation, and £250 towards his legal costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 January 2023.

Esther Absalom-Gough

**Ombudsman**