

## The complaint

Mr H, Mrs H and Mr H are business partners, trading as H. They complain that Barclays Bank UK PLC changed the interest rate on their business loan before it was drawn down without making sufficient effort to notify them.

## What happened

The circumstances of this complaint are well known to both parties, so I won't repeat them all here. In summary:

- H was seeking to take out a business loan with Barclays. In February 2021, they signed a ten-year fixed loan agreement at a rate of 2.68%.
- Barclays required security for the loan and, over the following months, H, together with their advisers, provided the necessary documentation to Barclays. The process took longer than either side expected but, at the end of May, the loan was finally approved.
- The facility agreement signed in February clearly stated that the specified rate was only available for the next 30 days. Therefore, before drawdown of the loan could happen, Barclays needed to recalculate the rate. Barclays says that, on 25 May 2021, it sent a letter to H at their registered address setting out the new rate of 3.22%. However, the partners say they never received this letter. Barclays did not notify H of the new rate in any other way.
- H drew down the loan in early June 2021. However, the first they knew that they were being charged a higher rate of interest than they expected was in September 2021.

These facts are not in dispute. The partners' principal complaint is that Barclays did not make sufficient effort to notify them of the new rate before the loan completed upon draw down. They say that they are now encumbered with a ten-year loan costing 54 basis points more than they thought.

The partners say that the loan interest rate is a vital piece of information which should have been clearly relayed to them, and Barclays should have checked they were aware of it in advance of completion. They highlight that Barclays held contact information for them through several different communication channels which it could have used. The partners explain that, although they were committed to paying legal and valuation fees, they could still, if armed with the full facts before drawdown, have decided not to complete on the loan.

Barclays says that it did nothing wrong. It says that, in sending its letter of confirmation to the partners' registered address in May, setting out the final terms of the loan offer, it acted in accordance with its standard procedures and fulfilled its obligations under the terms and conditions of the loan agreement. Barclays says that H should have been on notice that the

interest rate on drawdown would be different to that provided in February given the multiple notifications it had provided that the initial offer was only available for 30 days.

Not content with this response from Barclays, the partners brought their complaint to our service.

Our investigator considered the partners' complaint. He said that he didn't doubt H when they said they never received Barclays' letter in May, but he also didn't doubt that Barclays had sent it. For this reason, he said that Barclays had fulfilled its obligation to notify H of the new rate applying to the loan prior to drawdown. He said that, while he had sympathy for the partners, he could not reasonably require Barclays to take any further action.

H didn't agree so asked for an ombudsman's decision.

I issued a provisional decision on this complaint in January 2023, saying that Barclays could have done more to ensure H was aware of the new rate. Both Barclays and H responded, and I have reflected their comments below. However, having considered their submissions very carefully, I have not changed the outcome of 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.

While I have read carefully the full correspondence between H and Barclays, and considered all the evidence submitted, I have focussed my decision on the matters which I consider central to this complaint. I believe the key question is whether Barclays made sufficient effort to notify the partners of the new rate which would apply to their loan before the loan completed upon drawdown in June 2021. I consider this first below before going on to consider a couple of other complaint points.

#### ***Notification of the new loan rate***

With regard to whether Barclays did enough to notify H of the new rate which would apply to the loan, the following points are relevant:

- The loan agreement signed by H in February 2021 states:

*The fixed interest rate is available provided that the Facility is drawn in full within 30 days of the date of issue of the Key Terms.*

Barclays had also previously communicated this to H both in discussion and in the Fact Sheet, supplied to H prior to the loan agreement.

- The loan agreement also states:

*26.1 Every notice, request or other communication shall: (a) be in writing ... by prepaid first class letter...; (b) be deemed to have been received by the Borrower, in the case of a letter ... 48 hours after it has been sent by first class post ...; and (c) be sent ... to the Borrower at the address advised to the Bank.*

- While the partners say they didn't receive the letter sent on 25 May 2021 setting out the new rate, Barclays says that it was sent, complying with the terms set out above. I have verified the address held on file by Barclays, which is correct.

- Between Barclays' approval of the loan on 24 May and the drawdown of the loan on 4 June, there were conversations between Barclays' Business Manager and H, but there was no mention of the revised rate. The letter from Barclays on 25 May, which the partners say they never received, states that the revised rate will have been discussed between the partners and their Barclays Business Manager, but this never happened. When there had been previous changes in the rate between October 2020 and January 2021, prior to the signing of the facility agreement, Barclays' Business Manager had each time communicated these changes promptly to the partners.
- At the point of drawdown in June 2021, no documentation was provided to the partners confirming the final terms of the loan; and at no point did Barclays seek a statement of consent from the partners to proceed at the revised rate.

H queried how Barclays could fairly claim it had satisfied its terms and conditions by sending the letter through first-class post without confirming receipt. H also noted that, in these terms and conditions, communication to the bank was only deemed effective upon actual receipt.

Although I acknowledge the asymmetry highlighted by H, I accept that Barclays satisfied the terms and conditions agreed by both parties in how it shared the new rate information with H, and that it was under no obligation to seek confirmation of receipt. Nevertheless, given the significance of this information, and the close working relationship between H and Barclays, I find it surprising that at no point did Barclays seek to confirm with the partners that they acknowledged the increase in interest compared with that quoted in January and that they were content to continue. Barclays was aware of the substantial value of the loan to the partners and that there had been a significant increase in the interest rate compared with that stated in the January loan agreement.

In the circumstances of this case, I believe Barclays owed H a higher duty of care than demonstrated in the simple fulfilment of their obligations through posting a letter to them with the revised rate using regular first-class post. I believe Barclays should have ensured prior to drawdown that their customer knew the terms of the loan on which they were completing.

However, I also agree with Barclays that H should have been aware that the rate stated in the facility agreement had lapsed and that a new rate would apply at drawdown. So I think the partners also bear some responsibility in not seeking clarity on that rate.

In light of Barclays' error, I need to consider what harm H suffered and decide what is fair and reasonable in the circumstances to put things right.

This is a difficult assessment as, over the four months between January 2021 when the loan agreement was prepared and May 2021 when the revised rate was set, the forward cost of debt had increased. Although the Bank of England base rate was unchanged over the period, there had been a growing expectation of borrowing rates increasing in the future, affecting long-term rates. This is reflected, for example, in the ten-year LIBOR rate increasing by approximately 50 basis points between January 2021 and May 2021, as indicated by our investigator. I've also confirmed that the ten-year interest rate swaps rate increased from 0.6% in January 2021 to 1.0% in May 2021.

Throughout the process of setting out and confirming its offer, Barclays made clear to the partners that the interest rate on the loan was determined by Barclays' 'cost of funds' plus a margin, which they specified at 2.25%. This is confirmed in the loan agreement signed in February, which states:

*Margin: 2.250 per cent per annum.*

*Fixed Rate Period: 10 years from the date of first drawdown of the Facility.*

*Interest Rate Basis: The fixed interest rate will be 2.680 per cent per annum. The rate consists of the Margin and an underlying fixed interest rate [cost of funds].*

Barclays has confirmed that its margin within its revised rate of 3.22% in May 2021 remained the same as in its offer rate of 2.68% in January 2021, with the increase due entirely to an increase in the cost of funds.

The cost of funds to Barclays priced into the loan rate was therefore 0.43% in January 2021, which together with the margin of 2.25% made the offer rate of 2.68%; and this increased to 0.97% in May 2021, which together with the margin of 2.25% made the revised rate of 3.22%. I believe this increase in the cost of funds is consistent with the changes in the market at this time, as indicated by the benchmarks above.

Moreover, although I'm sure the partners would have compared the new rate offered by Barclays against alternative lenders, I do not believe they would have switched to another provider for only a marginal interest rate benefit given the material costs they had already incurred in legal and valuation fees, which would not have been recoverable.

For these reasons, had Barclays made more effort to ensure H was aware of the revised rate prior to drawdown, I do not believe it is likely that H would have cancelled its loan agreement with Barclays and taken out a loan elsewhere at a lower rate.

In response to my provisional decision, Barclays said that it agreed it could have communicated the final rate change via other means. However, given that it also agreed with my provisional view that the same outcome would have been reached, Barclays said it believed the business was unaffected, so no redress was due. It said the outcome had actually saved H a pointless exercise of comparing Barclays' offer to other options.

However, H said that it is possible that, at the higher rate, it might not have taken out the loan at all. Although it had sought to consolidate its loans and fix the rate for ten years, it could have decided not to continue once the rate increased.

In my view, although this is an alternative possible outcome, the cost to H of remaining with its existing borrowing would also have increased in line with the market – though, over the full ten-year term, it is impossible to know whether remaining with its existing loans would have resulted in a gain or loss to H compared with the fixed rate it secured with Barclays.

Overall, on the balance of probabilities, I continue to believe that it is unlikely that Barclays' error caused H a financial loss, though I acknowledge that there is no way to be sure this is the case.

Nevertheless, I do believe that H lost something valuable by Barclays' actions, which was the opportunity, in the knowledge of the higher rate from Barclays, to properly evaluate their options. By not being made aware of the new interest rate, they could not compare Barclays' offer with others, including with their existing loan terms, to find the best option for their business.

It is impossible to quantify the value of this lost opportunity but, given the substantial value of the loan and its importance to the business of H, I believe that, as compensation, Barclays should pay H £1,000.

I acknowledge that the interest cost over the life of the loan for H will now be substantially more than indicated in the offer the partners received from Barclays in January 2021, and

more than they expected. But I believe this increase was principally a result of there being four months between offer and completion, and the underlying cost of borrowing having increased significantly in that period. As disappointing as it is for H, I cannot hold Barclays responsible for this.

### ***Other complaint points***

H has also complained that, to reach the loan agreement and provide the necessary documentation, Barclays required it to use lawyers which Barclays approved; but, when H began disputing matters with Barclays, these lawyers said they couldn't represent H as they represented Barclays in other work. H said this indicated a clear conflict of interest, which Barclays should have foreseen.

While I can appreciate the partners' concern at being told that their lawyers, selected from Barclays' 'approved' list, also worked for Barclays, I do not believe this is unusual or caused H any loss. I believe it is possible for these lawyers to represent H's interests with regard to the loan application and to represent Barclays on other work. It appears that the issue arose when H sought to use the same lawyers to represent it in its dispute with Barclays. But I can appreciate that this is a different task, and one which would then put those lawyers in conflict. I don't believe I can reasonably expect Barclays to have anticipated the dispute or that H would wish to appoint the same lawyers to represent it in that situation. Therefore, I do not require Barclays to take any further action about this.

H has also expressed concern about the length of time it took for the loan to be made available. The partners said that, in October 2020, when they began discussions with Barclays, they were told that it would take about three months for the loan to be made available so, when the agreement was signed in February 2021, they expected drawdown to be quick, within the 30 days in which the specified rate was available.

However, having looked carefully at the correspondence between H and Barclays throughout this period, and the process through which Barclays requested documentation from H and which H then supplied, I do not believe that either side delayed matters unduly. It appears to me that the process was conducted effectively from both sides, with only minor occasional delays from both parties. While I can appreciate why H might have expected the loan to have been available more quickly, I have seen nothing to indicate that Barclays did anything materially wrong in how it processed H's loan application. Therefore, I do not require Barclays to take any further action about this.

Overall, I acknowledge that this will not be the answer H was hoping for but, for the reasons set out above, I believe this is a fair resolution of this complaint.

### **My final decision**

I uphold this complaint and require Barclays Bank UK PLC to pay H £1,000.

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

Andy Wright  
**Ombudsman**