DRN-3950914

The complaint

This complaint is about a buy-to-let (BTL) mortgage Mr S holds with Barclays Bank UK Plc. He's unhappy that Barclays delayed a rate switch by several months in 2020, and then later reported arrears on his credit file when payments weren't made. The credit file was later amended, but Mr S says this delayed his purchase of another BTL property with a mortgage with a different lender. Mr S is represented here by a third party organisation I'll refer to as "C".

What happened

By way of a provisional decision dated 24 January 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

> "The events leading up to, and arising out of, the complaint are complex and the evidence in the case is immensely detailed, running to around 2,500 pages of documents. I've read everything, 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.
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> 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.
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> 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.
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> Our decisions are published and it's important that I don't include any information that might result in Mr S being identified. Instead I'll give a summary in my own words (and rounding the figures where relevant) and then focus on giving the reasons for my decision.
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> Mr S has several BTLs with Barclays. This complaint is about one of them, an account I'll reference as "933". He'd been paying a little over £400 a month on an interest rate deal that was due to end in February 2020. He requested a new rate in good time through his broker but Barclays didn't implement it until June 2020, backdated to March 2020. This created a credit on the mortgage account. In the meantime, the monthly payments had gone up to over £1,000 a month in March 2020, which Mr S was struggling with, so in June 2020 – unaware that Barclays was working with his broker to put the new rate in place – he cancelled his direct debit.

The new monthly payment following the delayed rate switch was around £315, and in the absence of a direct debit, Barclays used the pre-paid credit that was created by the back-dating until it was all used up. Once the pre-paid credit was used up, and with no direct debit in place for monthly payments to resume, the mortgage fell into arrears, and Barclays reported this on Mr S' credit file. This was in the spring on 2021, and unfortunately, it coincided with Mr S trying to get a mortgage from lender P to buy another BTL.

Mr S eventually succeeded with his purchase, but by the time he completed on the transaction, the government rules on Stamp Duty Land Tax (SDLT) had changed and he had to pay additional SDLT of around £4,700 on his new property. Part of his complaint is that if the problem with Barclays reporting on his credit file hadn't happened, he'd have completed before the SDL rules changed, and avoided incurring the extra bill.

Mr S engaged C in his complaint: in December 2021, C provided us with a detailed analysis of the impact on Mr S of what happened; he's seeking redress for losses made up as follows:

- £3,000 lost rent on the new BTL;
- £4,700 extra SDLT;
- Over £7,000 for time Mr S spent on the matter, taking him away from his primary business; and
- £1,000 towards C's bill for representing him in the complaint.

C also said Barclays should compensate Mr S for distress, inconvenience, pain and suffering, and loss of reputation; albeit this aspect of the claim wasn't initially quantified. C later told us that that the full value of Mr S' claim including compensation, was £25,000.

Our first investigator largely rejected the complaint, not least because Mr S had cancelled his direct debit without any prior discussion with Barclays, and knew he didn't have a valid payment mandate in place. But she did agree that Barclays had unduly delayed the rate switch in early 2020, and recommended Barclays pay Mr S £100 compensation. Barclays accepted this, but C didn't.

Early in 2022, the first investigator left the service and a new one took over the case. He issued his own assessment of the case in February 2022, after taking account of all the evidence from both sides, and C's detailed responses to the first investigator's assessment. Other than recommending compensation of £400 rather than £100, his view of the case was broadly the same. Again, Barclays accepted this, but C didn't.

The investigator revisited the case again; in April 2022, he issued another assessment of the case, this time recommending that Barclays remove the adverse entries it had placed on Mr S' credit file. His reasoning was that Barclays hadn't informed Mr S it had been using the pre-paid credit to cover the monthly instalments in the absence of a direct debit, and also didn't warn him in advance when this would run out and that he'd need to set up a new mandate.

Barclays agreed to remove one (out of three) of the adverse entries; it said the others should remain as they reported payments made after Mr S had become aware of the problem and spoken to the bank in March 2021. These were made after their respective due dates, even though the bank had reminded him in the call when payments needed to be made.

Meanwhile, C argued that if Barclays should be required to remove the adverse entries, it followed that it must compensate Mr S for the loss he incurred as a consequence of the adverse entries being there in the first place. Initially, he said that meant paying the full claim of £25,000, but subsequently invited Barclays to settle for a revised sum of £8,000, plus clearance of the credit file. It said that if we required any further submission, that would add £3,500 back to the value of the claim.

C also said Mr S had made a subject access request (SAR) of Barclays, and the case should not be referred to an ombudsman before Mr S had received the results. If it did end up being referred to an ombudsman, the full claim of £25,000 would be reinstated. In the meantime, we put the proposed settlement of £8,000 to Barclays to consider, and the bank declined it. Barclays also made it clear that it would not offer any payment to settle C's bill, as Mr S had chosen to use C rather than bring the complaint himself.

At the end of May 2022, the investigator revised his view again, to say only the first adverse entry should be removed from Mr S' credit file. He agreed with Barclays that the other two entries were justified, because the related to payments made after Mr S had resumed paying, but which arrived later than due. C wanted the case to continue but needed more time to compile information from another SAR made to the bank. In August 2022, it was agreed we would close the case, on the premise that we'd reopen it if C contacted us with a substantive final argument by 7 October 2022. We subsequently extended that to the end of October 2022, due the amount of time Barclays took to reply to the new SAR.

When that new deadline wasn't met, C asked that we include Barclays' handling of the new SAR into the complaint. We explained why we couldn't do that. When the SAR response eventually reached C, it wasn't happy with the content of it, and contacted the Information Commissioner's Office (ICO), Meanwhile, C sent us what it had received from Barclays, which ran to around 220 pages of material.

In November 2022, C made an SAR to this service, which he subsequently cancelled. On 30 November 2022, C made a final submission for consideration by an ombudsman. Much of the final submission covered C's dissatisfaction with the way Barclays handled the two SARs; but it also provided Mr S' perspective on the phone call in March 2021. C also reset the value of Mr S' claim at £11,000, £10,000 for him and £1,000 as a contribution to its fees.

What I've provisionally 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'll start with some general observations. 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 failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

We have no regulatory function; that's the role of the Financial Conduct Authority; nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences. A great deal of what C has said in its submissions is about

Barclays' internal systems and processes, but they're regulatory matters that fall outside my remit.

At one stage, C said to our investigator that "*we are all representing* [Mr S]". That's not true; C represents Mr S; our service doesn't represent either party. We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, C is bringing the complaint on behalf of Mr S.

But I must explain that, although C represents Mr S, it is Mr S that is Barclays' customer. C's role is to bring the complaint on Mr S' behalf, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint. But this does not entitle C to air his own grievances about Barclays, because it is not Barclays' customer; C's role is limited to putting forward Mr S' complaint.

If the available evidence is incomplete and/or contradictory (or simply disputed, as here) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

C has argued that certain evidence supplied by Barclays is inadmissible and should be disregarded. I appreciate the sentiment and the strength with which it has been made, but that's our judgement to make. One side cannot dictate what we should do with evidence from the other side; that goes back to what I said earlier about us not taking instructions from the parties, and not being interfered with in our investigations.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture. Also, we don't, generally speaking, involve ourselves in complaints about SARs, as they are firstly the preserve of the ICO.

It's for me to decide if the arguments and evidence before me are enough for me to determine the complaint fairly. Having read everything that both parties have said and provided, I'm satisfied I have all I need to reach a fair conclusion.

I've considered everything that both parties have said and provided; having done so, it's apparent that the case is much simpler than it has been made to look. I'll explain why.

There are two broad elements to the case;

- the mishandling of the product switch in 2020; and
- the use of the pre-paid credit created by the back-dated product switch to cover monthly payments up the point where it ran out in 2021 followed by adverse reporting on Mr S' credit file.

On the first point, it's common ground, and accepted by all, that Barclays messed up the product transfer. It should have taken effect in March 2020, but didn't go through

until June 2020; albeit when it did go through, it was back-dated. It's entirely appropriate that Barclays should compensate Mr S for the delays and poor communication, and I'll come back to that in due course.

On the second point, C has described Lloyds' use of the pre-paid credit as stealing; if it thinks that's true, it should call the police, as stealing is a crime. The Financial Ombudsman Service is not a part of the criminal justice system and we don't make findings on what is legal or illegal. Only a court can do that.

Our remit is to deal with maladministration and/or unfair treatment in the provision of financial services; as reviewing ombudsman, I have to assess not just what Barclays did - or failed to do – but also what impact that had. Just as importantly, I have to consider what Mr S did – or failed to do – to mitigate that impact.

Whilst the product switch was eventually put through in June 2020; a significant point in the case is about when Mr S knew this had happened. Barclays has indicated that it told Mr S' broker the switch had happened; if it did, then I have no remit here to consider whether the broker did or didn't relay that information to Mr S. This complaint is about Barclays, not the broker.

C maintains Mr S only found out the switch had happened in August 2020, and has attached a high degree of importance to a phone call recording that it says proves this. Regardless of which party is to blame, I'm quite happy to accept that Mr S only knew for the first time in August 2020 that his product transfer had gone through in June 2020. However, and despite C's detailed and forensic arguments, that's not the issue on which the outcome of the complaint turns. Rather, it turns on what Mr S did (or didn't do) after he found out in August 2020 that the product transfer had finally been successful. I say that because Mr S had cancelled his direct debit in June 2020, so he knew (or should have known) – without Barclays having to tell him – that the monthly payments weren't being made in the way they should.

That should immediately have caused Mr S to wonder how the payments *were* being made. I agree Barclays should have done more to communicate what was going on, but when no information was forthcoming from Barclays it was incumbent on Mr S to make his own enquiries. Aside from his primary occupation, Mr S is a portfolio landlord; he's running that portfolio as a business. One of the responsibilities of managing a business is to ensure that any and all business debts are being paid as they should be. C has talked of Mr S being totally reliant, implicitly and explicitly, on professional advisors and his bank. But Barclays is not Mr S' professional advisor and it's not the bank's job to manage his BTL business. Its job is to administer his accounts (here the relevant account being the current account he used for his direct debits) in accordance with his instructions.

The moment Mr S knew the product transfer had gone through, it was his responsibility to contact the bank to effect a new direct debit mandate. No one else was obliged to do that; indeed, no one else *could* do that. The new mandate *had* to come from Mr S, and when he didn't provide one, it was inevitable that the pre-paid credit created by the backdating of the product switch would gradually dissipate over time as each successive monthly instalment was debited but not paid. It was also inevitable that the mortgage would eventually go into arrears if Mr S didn't take any action.

None of that would have happened if Mr S had acted immediately to provide a new direct debit as soon as he knew the product switch had gone through. He had every reason to do so, and no reason not to. C's claim on Mr S' behalf, including the

amending of his credit file, is reliant on there being an unbroken chain of causation between the delayed product switch in 2020 and the arrears that formed (and were reported on Mr S' credit file) in 2021. I appreciate this won't sit well with Mr S, or with C, but the unavoidable truth, however unwelcome it might be, is that due to Mr S not taking the initiative and pro-actively managing the situation in August 2020, that chain doesn't exist.

In summary, Mr S' complaint succeeds on the first point, but fails on the second. That means I can only fairly award him compensation for his time, trouble and upset due to Barclays not processing the product switch promptly.

This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment". But I have to assess things objectively. When I do that, I find an award of £400 compensation to be fair in all the circumstances. As we have explained previously, we don't generally compensate people's time by reference to a professional hourly rate. Nor do we generally reimburse any costs incurred by the use of a third party to present the complaint. We take the view that complainants using a third party do so from choice, and as I've said, this wasn't, in reality, a complicated matter.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from its submissions the intensity with which C has brought the complaint. It sees error or wrong-doing in almost everything the bank has done (or not done).

That's a natural, subjective reaction, and entirely understandable. It's also natural to emphasise individual statements or comments that appear to support a particular viewpoint, whilst at the same time paying less attention to those that support the opposite viewpoint. But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae and focussing on the broader picture. That's what I've done. Having done so, I can't find in Mr S' favour to the degree C believes I should, however much Mr S would like me to."

I gave the parties two weeks two weeks to reply to the provisional decision; both have done so.

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 considered afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusions. However, I will address C's further comments, starting with one about how much Mr S had been paying per month before the rate switch.

When I talked in the provisional decision of Mr S paying around £400 per month, that was clearly a reference to the period before the previous fixed rate ended. I'm aware it went up after the expiry date, and acknowledged as much when I said:

"In the meantime, the monthly payments had gone up to over £1,000 a month in March 2020……..".

I take entirely the point C makes about the impact of the COVID-19 pandemic, the extraordinary circumstances that existed at the time, and that if allowances are to made for changes in Barclays' business behaviour, they should be made for changes in Mr S' business behaviour too. I agree with that latter observation too, but it doesn't really help Mr S' case, because, when his calls weren't answered, Mr S didn't change his behaviour.

I can't be sure if all branch contact was completely ruled out by lockdown restrictions for the entire period there was no direct debit. But even if it was, I don't agree that the phone was the only means at Mr S' disposal to contact the bank to restore his direct debit. When his calls went unanswered, instead of "giving up trying" (C's words) it's quite reasonable to conclude that he could have gone onto Barclays' website, registered to manage his account(s) online, and restored the direct debit that way.

For the most part, C's further comments on how the pre-paid credit was used aren't new. Essentially, they mirror the argument already made, and which I'd already considered when I reached my provisional conclusion. Yes, the credit was created retrospectively as a consequence of action taken to remedy a mistake, but it *was* still a pre-paid credit. And, yes, the bank did say in an email on May 2020 that the pre-paid credit would be refunded, but that was before Mr S cancelled the direct debit. In the end the "hole" in Mr S' bank account that C refers to was ultimately filled by the pre-paid credit being used to over the monthly payments after the direct debit was cancelled and not reinstated.

C says Barclays withheld a reminder that Mr S' direct debit had been cancelled. But if I take what C says about Mr S' many attempts to reinstate the direct debit by phone on face value, he didn't need a reminder, because clearly he already knew. C also questions why Barclays didn't alert Mr S in advance that the pre-payment was about to run out. C believes the bank was obligated to do this, but I'm afraid I have to return to the central point that ensuring the monthly payments were made was Mr S' obligation, not Barclays'.

In summary, whilst C's observation that the devil is in the detail is often the case, on this occasion the reality is more straightforward. There's no dispute Barclays failed to implement the rate switch on time, or did enough to make sure Mr S knew it had been implemented. I've upheld that aspect of the complaint and assessed what I consider to be fair redress for that. The reason I wasn't persuaded to award more was because I didn't consider there was an unbroken chain of causation between the mis-handling of the rate switch and the later arrears. That hasn't changed as a result of C's response to the provisional decision.

Lastly, I explained the limit of my remit in the provisional decision. C has said that the FCA only deals in multiple cases, and that the only real route to a remedy is via this service or the law. My remit is what my remit is, and I can't act outside it by commenting on regulatory matters.

My final decision

My final decision is that I uphold this complaint in part by ordering Barclays Bank UK Plc to pay Mr S £400 compensation for his time, trouble and upset arising from the delayed product transfer in 2020.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 March 2023.
Jeff Parrington
Ombudsman