

The complaint

Mr H's complaint is about a mortgage application be made to Barclays Bank UK PLC. He is unhappy that over three months after Barclays issued a mortgage offer to him, it withdrew it and wouldn't tell him why.

What happened

In early 2021 Mr H had an existing mortgage with Barclays that had a fixed interest rate product linked to it. There was a further three years left on the term of the product. He decided to move. He was selling the existing property and planned to use some of the equity to purchase outright a basement flat in a building. He applied to Barclays for a mortgage to buy the maisonette in the same building as the basement flat he was proposing to buy. The remaining equity from the sale of his existing property was to be used for the deposit for the maisonette. The existing interest rate product was to be ported to the new mortgage.

It was documented by the mortgage adviser on 23 February 2021:

'main property is leasehold [sic] but the basement flat holds the freehold which he will also own – therefore there is no ground rent or service charge.' And

'the house being purchased has 2 deeds, the main property which we are lending on and the basement flat which is on a separate deed. customer is purchasing this cash from the equity in current home.'

Mr H appointed a firm of solicitors to carry out the conveyancing activities for him on both purchases. However, that firm of solicitors was not on Barclays panel and so Mr H agreed that the solicitor Barclays had appointed to work on its behalf (E), could complete the necessary legal work for the purchase of the leasehold maisonette.

On 28 February 2021 Barclays issued a mortgage offer to Mr H. It was for a mortgage of approximately £412,000 over a term of ten years and ten months. The mortgage was to replace Mr H's existing mortgage of approximately £211,000 and the existing fixed interest rate product was to be ported to the new mortgage – there was approximately three years left on its term. The increase in borrowing of approximately £201,000 had a new interest rate product attached to it, which had a term of three years. The mortgage was being advanced on an interest-only basis. The offer was issued based on a system-generated valuation.

There was a delay in Barclays forwarding the offer to E of about two weeks. E then created a document pack and sent it, including the offer, to Mr H's solicitors on 1 June 2021 for completion and return. The necessary documentation was received by E on 29 April 2021. Unfortunately, it then took E around four weeks to review the information Mr H's solicitors had sent.

Mr H's solicitors chased Barclays' solicitors at the beginning of June 2021, as exchange of contracts was set for 16 June 2021, but that wasn't possible until confirmation that Barclays was satisfied with all of the documentation. The information provided was reviewed and additional clarification about the freehold/leasehold situation was requested. The result was

that E raised concerns about situation Barclays as it believed the lease could not be enforced. Barclays decided that it needed to have the property physically valued. However, the valuer initially valued the entire property, including the basement flat, as one. Barclays asked that just the leasehold property be valued, but it then doesn't appear to have provided the valuer with information it requested about the lease, so the valuer told Barclays it couldn't provide a value. However, Barclays concluded that the freehold/leasehold situation meant the property didn't fall within its lending criteria and so the mortgage offer was withdrawn on 21 June 2021.

Mr H complained to Barclays on 22 June 2021. His complaint points were about:

- The timing of the withdrawal of the offer, given the application had started in February 2021.
- Barclays refusal to tell him why the offer had been withdrawn.
- The financial consequences of the withdrawal of the offer.

Barclays responded to Mr H's complaint in a final response letter of 9 July 2021. It set out the events surrounding the application, offer and withdrawal of the offer. Barclays was satisfied that it had acted appropriately. However, it had identified some delays on the part of the solicitors it had appointed to complete legal works and so offered Mr H £200 for any inconvenience those delays caused.

Mr H wasn't satisfied with Barclays response and referred the complaint to us. One of our investigators considered the complaint, but he didn't recommend that it be upheld. Mr H didn't accept the investigator's conclusions and the complaint has been passed to me for consideration.

I issued a provisional decision setting out my conclusions regarding this complaint. Below is an excerpt.

I would firstly explain that at the time Mr H applied for his mortgage, a mortgage offer was considered to be binding on the lender. Binding offers can be withdrawn by the lender, but only in certain circumstances. That is where new information comes to light after the offer has been made, which would have resulted in a different lending decision if it had been available before the offer was made.

Barclays has said that it was not aware of the situation regarding the freehold and leasehold until E started making enquiries after the mortgage offer was issued. However, as I have detailed above, the application notes from the time of the application, and before the binding offer was made, shows that Barclays had been made aware of the situation.

So in this case, Barclays initial error was that it didn't properly assess the information it had at the time of the application. Barclays has provided its lending criteria and I am satisfied that, if the information had been properly assessed, a binding offer would not have been issued.

Barclays said that it withdrew the offer following receiving the valuation report and reviewing the application. Having reviewed the information about the valuer's involvement, I am satisfied that the valuer didn't actually comment on whether the property was suitable security for a mortgage based on Barclays' lending criteria. It asked for more information about the terms of the lease, which doesn't appear to have been given, and so it didn't offer an opinion about the value of just the leasehold property.

The binding offer was withdrawn because of the solicitors' conclusion that the freehold/leasehold issue was a problem and Barclays' realisation that it meant the property didn't fit within its lending criteria. While the legal opinion was expressed after the binding

offer was made, all of the information Barclays needed to reach that conclusion was available before the binding offer was issued. As such, I don't consider that Barclays should have, under the regulations in place at the time, withdrawn the offer. So Barclays' initial mistake was compounded by another.

When considering the redress we aim to place a consumer in the financial position they would have been in, but for the error(s) on behalf of the financial business. In this case, that position would have been that Mr H's mortgage application would have been declined in February 2021. At this point he would have still needed to source another mortgage elsewhere, with the associated costs, and he would have had to pay the early repayment charge on the Barclays mortgage. So Mr H would have had to pay all of the costs associated with those actions. However, due to the stage the mortgage application fell through, I am satisfied that Mr H will likely have incurred additional legal fees. If he evidences any other costs that he wouldn't have incurred but for the delay in having to start the process of looking for a new mortgage elsewhere, he should provide it.

Barclays offered Mr H £200 for the delays in it and its solicitors' handling of information. I think that would have been reasonable had the mortgage offer been correctly made, but that was not the case. That error resulted in Mr H's expectations being raised and the original exchange date being missed for his purchase. The offer was then withdrawn at a late stage of the purchase process and Mr H had to source a new mortgage in a short timescale. It is clear this process was very stressful for Mr H and I consider that a payment of £650 would be appropriate to compensate him.'

Mr H considered that £650 compensation was *'totally inadequate given the stress and inconvenience caused by Barclays and their appointees.'* He highlighted that Barclays had informed him that it was withdrawing the offer on the day he moved out of his previous property, which necessitated his family having to stay with family and friends while a new mortgage was arranged. Mr H listed additional costs he had incurred due to the delay in Barclays concluding the mortgage offer should not have been made and withdrawing it, this included storage costs for his possessions while sourcing a new mortgage and additional stamp duty of £12,500 for each property purchased.

Further investigations and correspondence was entered into regarding the additional costs Mr H had incurred.

I issued a second provisional decision on 16 February 2023 setting out the redress I proposed to award. Below is an excerpt.

'My conclusions regarding the merits of the complaint have not changed due to the further comments from the parties, but I now consider Barclays should reasonably pay additional costs incurred by Mr H. I am currently minded to conclude that Barclays should pay the following:

- Any additional legal fees Mr H incurred because the Barclays mortgage application wasn't declined in February 2021 as it should have been. Mr H's solicitors have given two very different figures for this loss. As such, if Mr H accepts my final decision when it is issued, Mr H will need to provide Barclays with an itemised statement from his solicitors setting out the additional work it completed due to Barclays' error and the cost of each item. In addition, Mr H will need to provide a copy of the invoice he received from the solicitors confirming the total amount he was charged and evidence of the date of payment. Interest* should be paid on this sum from the date Mr H paid the solicitor to the date of settlement.*
- Mr H submitted that if Barclays had declined his application in February 2021 he would*

have completed on the purchases before 30 June 2021 and so would have paid less stamp duty than he did. Given the original date set for the exchange of contracts, I consider it's entirely plausible that the purchase would have completed before the change to the stamp duty holiday. Barclays has also acknowledged this to be the case. As such, Barclays should reimburse Mr H for the additional stamp duty he paid. I am also satisfied that Barclays should pay this loss on both properties as it was reasonable that the purchases were completed at the same time. Interest on this sum should be added from the date of payment to HM Revenue & Customs (HMRC) to the date of settlement. Mr H will need to provide Barclays with evidence of both payments.*

- *The storage costs incurred from the date Mr H sold his original property to the date his purchase completed. Interest* should be added from the date Mr H paid these costs to the date of settlement.*
- *Any additional removal costs Mr H incurred because his contents were placed in storage. Interest* should be added from the date Mr H paid the removal company to the date of settlement.*

I have considered again the matter of compensation, taking into account Mr H's further comments. However, I have not been persuaded to alter my conclusions and remain satisfied that £650 is the appropriate sum in the circumstances.

**Interest is at a rate of 8% simple per year and paid on the amount specified and from/to the dates stated. If Barclays considers that it's required by HMRC to deduct income tax from any interest due to Mr H, it should tell him how much it's taken off. It should also give Mr H documentation showing this for use with HMRC.'*

Barclays said that it agreed with my provisional decision on the basis that the further evidence from Mr H was provided.

Mr H didn't comment on the content of the provisional decision, but rather provided a letter from his solicitors. The solicitors explained why there had been such a difference in the figures previously provided and its understanding of what my award should cover, i.e. that it should not include any work completed during the Barclays application that was then used during the later mortgage application, such as searches. On that basis, the solicitors confirmed that the first figure provided was the relevant one. In addition, Mr H provided land registry documentation and submission certificates for the payment of stamp duty to HMRC. The evidence of the payment to Mr H's solicitors and the itemised breakdown of the additional costs was not provided.

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 have reviewed the file again in its entirety and I have revisited my provisional decisions. Having done so, and in light of the lack of any further substantive evidence from the parties, I see no reason to alter my conclusions.

I would, however, confirm that Mr H's solicitor's understanding of my award regarding the legal fees appears to be correct. It is not the cost of all of the work completed during the period of the Barclays mortgage offer, as the product of some of that work would have been used in dealing with the subsequent lender.

Our investigator will forward to Barclays the evidence of costs that Mr H has provide to date. However, Mr H will need to provide the remaining evidence documented above to support the amounts being claimed. If it is not provided, Barclays will not be required to settle the related items.

My final decision

My decision is that I uphold this complaint. In full and final settlement, I require Barclays Bank UK PLC to settle the complaint as detailed in my above findings.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 31 March 2023.

Derry Baxter
Ombudsman