

## **The complaint**

This complaint is about a buy-to-let (BTL) mortgage Mrs and Mr B hold with Barclays Bank UK Plc. Barclays recorded adverse data on their credit files by mistake, and they're seeking compensation for the impact this has had on them.

## **What happened**

By way of a provisional decision dated 29 March 2023, I set out my initial 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 detailed. 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.

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.

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.

Our decisions are published and it's important that I don't include any information that might result in Mrs and Mr B 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.

The mortgage was approaching its term end (the date when it would fall due for repayment) so Mrs and Mr B asked for an extension to continue with the mortgage. Barclays turned them down saying they didn't meet its lending criteria, so they applied to another lender (a business I'll refer to here as "IB") to re-mortgage. IB turned them down due to adverse data on their credit file, which on investigation was revealed to be a late mortgage payment marker recorded by Barclays in error in 2021.

Barclays removed the incorrect marker, but didn't tell Mrs and Mr B it had done this, so they complained. In the meantime, Mr and Mrs B didn't make another application to IB (or any other lender) for fear of making things worse. Barclays offered them £500 compensation, which they rejected. When the case came to us, our investigator thought Barclays needed to do more. She recommended the following:

- Barclays should assess an application for a new mortgage, matching the interest rate that IB would have provided;
- if the application doesn't meet its lending criteria, forcing Mrs and Mr B to re-mortgage elsewhere, Barclays should instead reimburse them the difference in interest between the rate IB would have offered and Barclays' actual rate until the new mortgage completed;
- Barclays should reimburse Mrs and Mr B the cost of taking out a subscription with a credit reference agency to monitor their credit files;
- Barclays should pay Mrs and Mr B £750 compensation.

Barclays has agreed to settle on the above terms; Mrs and Mr B are agreeable in principle, but believe the compensation element should be much higher. They're thinking in terms of a minimum of £5,000 each.

### **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. Also BTL mortgages aren't subject to the same rules of mortgage regulation that govern residential mortgages. BTL borrowers are still entitled to fair treatment, but the test of what constitutes fair treatment isn't as onerous as it would be for residential borrowers.

In one sense, this case is easier to determine than it might appear on first glance. That's because I don't have to decide fault. It's not in dispute that Barclays reported the late payment marker by mistake. What I do have to decide is how Barclays should put things right for Mrs and Mr B. That's not as simple as it might first appear, not least because since learning that the adverse marker had been removed, Mrs and Mr B haven't made another attempt to source another mortgage to repay Barclays.

I can understand Mrs and Mr B's reluctance; they're concerned that the rejected application to IB is itself now on their credit record, and could result in further applications being rejected, and reported. But there are steps they can take to mitigate that; credit reference agencies allow consumers to add what is known as a "notice of correction" to a credit file entry to provide context that goes beyond the bald factual information. Mrs and Mr B might want to consider doing that in respect of any entry IB has placed about the rejected application. If they're unsure how to do this, the credit reference agency they've signed up to may be able to offer some guidance.

I've made this latter point because Mrs and Mr B may need to apply for a new mortgage in the foreseeable future. I'm pleased to see that Barclays is willing to consider offering a new mortgage itself, but that doesn't mean it *must* lend. Fair treatment requires that any application Mrs and Mr B make should be assessed against Barclays' lending criteria in the same way as any other application might be.

It's possible their application, if made, will be accepted, but they need to be prepared to apply elsewhere, and maximise their chances of an application elsewhere being successful, in the event the Barclays application isn't.

I agree with our investigator that if an application to Barclays isn't successful, the business should reimburse Mrs and Mr B for the extra interest they incur on the Barclays mortgage (compared with the rate IB would have been charging). But there have to be some date parameters to that. It can't be open ended, otherwise there'd be no incentive to Mrs and Mr B to apply elsewhere (unless of course Barclays commenced recovery action for the now-expired mortgage).

In much the same way, and for much the same reason, in the event the Barclays' application does succeed, there has to be a limit on how long it should charge interest on the new mortgage at a rate matched to IB, rather than a rate of its own. To decide what those time parameters should be, I've had to make certain assumptions about the interest rate deal IB was offering, when an IB mortgage would have started and how long the rate would have run for.

The information we have is that the rate IB was offering was a two-year deal at 2.86%. The term "two-year" generally doesn't mean that the fixed rate will run for exactly two years from the date the mortgage starts. For the vast majority of interest rate products offered by lenders across the industry, it's common practice to offer deals that have fixed end dates approximately two years away, but the exact duration of the deals will depend on the mortgage start dates.

Here, however, I am having to work with assumptions, so for the purposes of assessing fair redress in this case, the assumptions I have made are that if the application to IB had been successful, the mortgage would have started on 1 July 2021 and the 2.86% fixed rate would have run until 30 June 2023. I'll return to this when setting out details of the steps I'm proposing to order Barclays to take to resolve this complaint.

That brings me to the investigator's recommendation that Barclays reimburse Mrs and Mr B the cost of subscribing to a credit reference agency. The first observation I'd make is that a paid subscription isn't always necessary. All credit reference agencies offer a statutory free service, with paid subscriptions for additional features and benefits. It's possible Mrs and Mr B could have obtained everything they needed through a free service, but I won't press the point given Barclays has agreed to pay in any event.

The investigator did ask for evidence of the costs Mrs and Mr B incurred, a request, rather ironically, they told us to direct to Barclays as the payments to the credit reference agencies are apparently paid from a Barclays current account. But it's up to Mrs and Mr B rather than Barclays to provide the evidence that supports their case. From the website of the credit reference agency Mrs and Mr B are using, it can be seen that a paid-for service can be obtained for £6.99 per month, per individual, with the first 30 days being free. For the purposes of resolving the dispute with Barclays, it seems reasonable to me that Mrs and Mr B would want to monitor their credit files for a period of up to six months from June 2022, when they first found out there was a problem.

That being so, I consider it fair and reasonable to direct Barclays to pay Mrs and Mr B a maximum of £69.90 (that is, £6.99 times five times two) to cover their credit file subscription costs for up to six months. However, that is subject to them providing substantive evidence – preferably as part of their response to this provisional decision

– of the actual payments they have made to their credit reference agency. Depending on what information they provide, the final award may be lower.

I accept Mrs and Mr B may have opted for a more expensive service, but they haven't evidenced that (it is up to them to do so) and I'm not persuaded that would have been necessary in any event.

Lastly, I turn to the question of compensation. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment". I've considered everything Mrs and Mr B have said about why they consider £5,000 each is justified. I've also given equal consideration, as I must, to the general approach this service takes when assessing compensation for people's time, trouble and upset. I've also thought about what steps Mrs and Mr B might have taken sooner to try and mitigate the effect of Barclays' mistake once they knew about it. Put all of that together, and I have concluded that £750, in total, is fair and reasonable in all the circumstances.

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 their submissions how strongly Mrs and Mr B feel. They see 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 Mrs and Mr B's favour to the degree they think I should, however much they would like me to."

Both parties were given a two-week time frame in which to make their further comments; that time has now passed, and we've heard from both. Barclays accepted the provisional decision; Mrs and Mr B made a number of further points, which I'll summarise below.

- Barclays has already told them they don't qualify for a new mortgage;
- Barclays sent holding letters between May and September 2002 but didn't tell them it had removed the adverse entry.
- The existing Barclays mortgage expired in September 2022, so the notional IB mortgage would have started in October 2022
- The investigator had been provided with evidence of the credit reference agency subscriptions.
- The compensation I am proposing is too low and not in accordance with our own guidelines.
- They will now have to contact credit reference agencies regarding the application rejected by IB as Barclays won't take responsibility.
- They would like a letter of apology from Barclays.

## **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.

Having considered afresh everything that both parties have said and provided, I won't be departing from my provisional conclusions. However, I will address Mrs and Mr B's further comments.

My provisional decision made it very clear that if a fresh application were made to Barclays, there was no obligation on Barclays' part to accept it, only an obligation to assess the application fairly in accordance with its lending criteria. In any event, my determination of this complaint provides for a situation where a follow-up application is successful *and* where it is turned down. The redress I've set out for each scenario is backdated to take account of the time the relevant one will take to implement.

The notional start date I've used for a mortgage from IB wasn't based on when the Barclays mortgage was due to expire; it was based on when I'd typically expect a mortgage with IB to be ready to begin, taking account of when the application started. I've not seen anything in the available evidence that would cause me to think that Mrs and Mr B would have delayed starting the mortgage with IB if, as seems likely, it would have been ready to start before the Barclays mortgage expired. Aside from that, any offer IB issued in 2021 would have expired within six months and if that had happened, they'd have had to apply all over again.

I've now seen the evidence of the payments Mrs and Mr B made to a credit reference agency. They add up to more than the maximum of £69.90 I was proposing to award. However, I remain of the view that any sum over that amount would not have been necessary, for all the reasons I explained in the provisional decision, so I won't be awarding more than £69.90.

I set out in the provisional decision how I arrived at the award of £750 (in total, not each). Amongst the factors I took into account were the initial delay on Barclays' part in telling them what it had done to resolve the complaint, and that Mrs and Mr B may choose to place a notice of correction on their credit files to provide some context to the rejected application to IB. Barclays didn't place the credit file entry about the unsuccessful application they made to IB, so can't be held responsible for altering it in any way. I've noted what Mrs and Mr B have said about the compensation in their response, but overall, it doesn't persuade me that I should increase the award.

Finally, on the subject of an apology letter, I'm always disinclined to order a business to apologise as part of my award in a final decision. That's because, if Mrs and Mr B accepted my final decision, Barclays would be bound by the rules of our scheme to comply with the decision and implement the award in full. However, an apology given under duress has no value. That said, I'd like to think that Barclays realises it has much to apologise for, and will do so of its own volition, especially in the absence of a formal final response to the complaint.

## **My final decision**

My final decision is that I uphold this complaint in part by ordering Barclays Bank UK Plc to take the following steps:

- Assess an application from Mrs and Mr B for a new BTL mortgage to repay the existing one, the term of which I understand has now expired. In the event the mortgage is granted, Barclays should:

- charge interest on the new mortgage at 2.86% from the start date until 30 June 2023. The rate chargeable thereafter should be Barclays' normal follow-on rate for mortgages of this type, unless Mrs and Mr B apply for, and are accepted for, a new rate deal from Barclays' interest rate product range at the relevant time; and
- reimburse Mrs and Mr B all interest charged over and above 2.86% on the existing mortgage between 1 July 2021 and the closing date of the existing mortgage.
- If the application for a new mortgage with Barclays is rejected, reimburse Mrs and Mr B all interest charged over and above 2.86% on the existing mortgage between 1 July 2021 and 30 June 2023, or (if sooner) the closing date of the existing mortgage before 30 June 2023, if Mrs and Mr B have successfully re-mortgaged elsewhere.
- Reimburse Mrs and Mr B £69.90 to cover credit reference agency subscriptions.
- Pay Mrs and Mr B £750 compensation for their time, trouble and upset.

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 Mrs and Mr B to accept or reject my decision before 22 May 2023.

Jeff Parrington

**Ombudsman**