DRN-4213871

The complaint

Mr H complains that Barclays Bank UK PLC didn't provide him with the information it should have when he took out a loan, paid the loan funds to an account it shouldn't have and didn't inform him about what was happening with the loan.

What happened

Your text here In 2003 Mr H took out a loan facility of £216,057 with Barclays to fund his subscription to a film partnership – Micro Fusion 2003-2 LLP ("the partnership"). He complained to Barclays about various matters relating to the loan through 2020. Barclays didn't uphold any of the complaints he made and he referred his complaint to our service. The investigator who looked into the complaint identified the following six issues Mr H had raised with Barclays.

1. He wasn't made aware that the loan was subject to a fixed rate and he wouldn't have agreed such a punitive fixed rate if he had been made aware of it. Barclays made no attempt to ensure the loan was affordable or offer alternatives.

2. The Loan Agreement failed to quantify the fixed rate.

3. Barclays haven't provided any statements for the loan and haven't recorded it on his credit file.

4. The purpose of the loan was to fund the film partnership but the loan monies weren't paid into the partnership bank account but amalgamated with others and paid to a third-party bank (ABN Amro) and he should have at least been told of the divergence from what was originally agreed.

5. In 2010 Barclays replaced ABN Amro as the provider of the second-string security and he should have been notified of this and his approval sought.

6. Since replacing ABN Amro, Barclays has informed others that it has received no lease or other payments from the distributor, thereby putting the loan into default and causing his security to be called upon.

The investigator decided that the first three complaint issues had been referred to our service too late and as Mr H didn't agree the matter was referred to me to decide if we had jurisdiction to consider all of the issues raised by Mr H.

I issued a decision on our jurisdiction in which I agreed with the investigator that the first three issues had been referred to us too late - save I thought we could consider the complaint that the loan had not been notified to credit reference agencies. I also thought we could consider the remaining three issues.

The investigator thereafter issued his opinion on the merits of the issues that were within our jurisdiction but didn't think the complaint should be upheld.

Mr H didn't agree with the investigator so the matter was referred to me for a decision. I

issued a provisional decision explaining why I didn't think the complaint should be upheld and I set out my findings below with one amendment in the fifth paragraph which I have underlined to correct an obvious typographical error.

"I think it is important to make clear that my role is to make a fair and reasonable decision based on the information provided by the parties taking into account relevant; law and regulations; regulators' rules, guidance and standards; codes of practice; good industry practice where appropriate. My findings are made on a balance of probabilities – what is more likely, than not – and it is for me to decide how much weight to give any piece of evidence.

Mr H has raised several issues regarding the loan but has not provided any supporting evidence beyond his own statements. I note that he has suggested to the investigator that it would help if he was able to explain the position in person to him and/or me. I can't see that this is necessary or appropriate. His explanation as to what he thinks Barclays did wrong is clear enough, it just isn't persuasive.

I can hold a hearing if I am of the view that a complaint cannot fairly be determined without one, but I don't think I need a hearing in this case to fairly determine the complaint. Both parties have had the opportunity of providing written representations and documentation in support of what they have said and I am satisfied I can fairly determine this complaint on the information already provided.

I note that Mr H has referred to not receiving account statements in support of what he has said in response to the investigator's opinion. In the circumstances I want to make clear I am only considering those issues that I decided we had jurisdiction to consider and considered by the investigator. I have already found that the complaint about the statements not being provided has been made too late, so will not make any findings in relation to that in this decision.

Turning to those issues that I can consider, the first of these is that Barclays didn't record the loan on his credit file. However, I am <u>not</u> satisfied that Barclays had a duty to Mr H to notify credit reference agencies of the loan. In the absence of any explanation from Mr H as to how such a duty arose I am not satisfied it did anything wrong in not providing such notification.

In any event, there is no way of knowing what the consequences would have been if such notification had been given. I note Mr H has suggested he would have been able to monitor the ongoing repayment of the loan. However, this wouldn't have told him anything he didn't already think was the case - namely that interest payments were being made and he wasn't in default.

His credit score may well have been positively impacted if the loan had been recorded, as he has suggested would have been the case. But what this might have resulted in, insofar as other borrowings and more advantageous credit terms are concerned, is completely speculative in my view.

Furthermore, Mr H's arguments suggests he would have checked his credit file regularly to see what was happening with the loan, in which case my finding in my jurisdiction decision that this complaint has been made in time – which was based on him having no reason to check his credit file more than three years before he complained – was wrong and this complaint has been made too late in any event.

The second complaint issue is Mr H's assertion that Barclays didn't utilise the loan monies as intended. I am mindful that he signed a Power of Attorney dated 12 August 2003 appointing Future Films (Partnership Services) Limited as his attorney and giving it authority

to do all acts and things and complete all documents in connection with his entering into the facility letter in respect of the loan facility. So, his direct involvement and knowledge of what happened in relation to the loan is likely to be limited.

Mr B has referred to the loan 'appearing' not to have been used for the purpose specified in the facilities letter and to 'understanding' the loan monies were paid direct to ABN Amro and sat on deposit. However, he hasn't provided any evidence to support what he has said and his statements of themselves aren't persuasive.

The facilities letter includes the following:

"The borrower wishes to utilise the Facility to fund in whole or part the Borrower's initial capital contribution to the partnership and to fund interest payable on the first two years of the Loan. The Partnership will utilise such capital contributions in order to fund the production of the Film and to pay certain other costs of administration of the Partnership."

And:

"The Loan is to be utilised by the Borrower to fund, in whole or in part, a partnership capital subscription to the Partnership (the "Investment") in return for which the Borrower will acquire an interest in the Partnership."

Wherever Barclays made payment of the monies due under the facilities letter to, I have been provided with no persuasive evidence that such payment wasn't made in accordance with the purpose set out in facilities letter – namely to fund his capital subscription to the partnership.

I can't see how Barclays would be responsible if the partnership didn't then use the loan monies as intended. In other words, Barclays' obligation was to make the loan monies available to Mr H, as part of his capital contribution to the partnership. What the partnership then did with the money was a matter for the partnership, not Barclays.

In any event, from the limited information I have seen, the monies appear to have been used as intended. The guarantee agreement between ABN Amro and the partnership refers to a distribution agreement dated 30 September 2003 with Daughter Productions LLC. through which that company was appointed to distribute the master print of a film entitled "the Untitled Mandy Moore Project".

The accounts for the partnership refer to its principal activity being acquiring and exploiting films and the accounts to 5 April 2005 show that it owned the rights to the film 'Chasing Liberty' – a 2004 film starring Mandy Moore. So, it appears the partnership capital was used in the production of a film, as intended.

Mr H has also complained he wasn't informed when ABN Amro stopped being the guarantor of the loan payments and that Barclays replaced ABN Amro without justification. The guarantee agreement dated 30 September 2003 was between ABN Amro as guarantor and the 'Beneficiary' - which was the partnership along with any permitted assignee. Barclays was the assignee of the guarantee and therefore was entitled to exercise the rights under the guarantee as Beneficiary.

Those rights included the right to request, on the fifth anniversary of the guarantee - or at other times if certain conditions were met - that ABN Amro pay to an account at Barclays in the name of the distributor, an amount equal to the net amounts payable by the distributor. Barclays exercised its right under the relevant clause of the guarantee agreement and payment was made by ABN Amro and the guarantee was then terminated as a result.

I note that Mr H has said that Barclays replaced ABN Amro as the 'second string' security and did so without justification. Firstly, Barclays didn't replace ABN Amro as guarantor – the guarantee ended on payment of the net amount payable by the distributor into an account at Barclays. Secondly, Barclays doesn't need to justify what it did, given it was exercising its rights under the guarantee.

Mr H has said that the receipt by Barclays of the monies from ABN Amro calls into question the interest payable on the loan and therefore the tax relief he has been claiming. I have seen nothing that suggests Barclays exercising its rights under the guarantee to ask for payment of the amount remaining due from the distributor brought the loan agreement to an end or affected Mr H's obligations under it.

Barclays has explained, and I accept, that the payment of the net amount remaining due was to meet the distributor's payment obligations as and when these arose. I am therefore not satisfied payment of the interest set out in the facilities letter is called into question or that the payment means the loan was repaid in full as Mr H has said he has been told is the case.

Given the payments currently being made to meet the interest payments are from the monies held by Barclays for that purpose I don't accept that Mr H is more exposed under the loan agreement as a result, such that Barclays needed to inform him that ABN Amro weren't providing a guarantee any more. In other words, I am not satisfied that Barclays were required to notify Mr H of what it was doing, as it didn't affect his obligations under the loan in my view.

For the reasons I have explained above, I am not satisfied that Barclays did anything wrong insofar as the complaint issues the subject of this decision are concerned."

I gave both parties the opportunity of responding to my provisional decision and providing any further information or evidence they wanted me to consider before making my final decision. Barclays didn't respond but Mr H disagreed with my findings. In short he made the following key points:

- He reluctantly accepts but doesn't agree with my comments as to the out of time complaint issues but those issues and the ones I have addressed are damning proof that Barclays has failed in its duty of care him as a retail customer, which he doesn't believe I have addressed.

- If the loan had been accurately recorded on his credit file he would have been able to ascertain the punitive interest rate which he maintains he wasn't aware of. Surely that is the purpose of banks recording loans on credit files.

- As the partnership's bankers Barclays would have been fully aware that the loan monies were not paid, in whole or in part, to the studio/distributor. As no lease payments were ever paid under the lease agreement then clearly the loan monies weren't sent to the studio/distributor.

- He should have been told that Barclays called back the deposit from ABN Amro as this would have alerted him to the fact that the deposit was the loan monies which had clearly not been paid to the studio/distributor and he would have been able to ask Barclays to justify how they presented a better credit risk that ABN Amro.

- He has been told that from a legal perspective when Barclays called back the guarantee it meant matched funds lent and deposited which he has been told means the loan has been repaid. If the loan has been repaid there is no justification for the

deduction of qualifying loan interest (QLI) against any deemed or actual film partnership income.

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.

As I made clear in my provisional decision, my findings are made on a balance of probabilities – what is more likely, than not – and it is for me to decide how much weight to give any piece of evidence. I have taken account of everything that Mr H has said in response to my provisional decision but he has not provided any new information or evidence that would lead me to change the findings set out in my provisional decision, which form part of this final decision.

Mr H has said that the issues he has raised - including the ones I am unable to consider because I have found they were raised too late and so are outside our jurisdiction - are damning evidence that Barclays failed in its duty of care to him as a retail client and that I haven't addressed this. I don't accept his argument. I have addressed whether Barclays did anything wrong in respect of those issues raised by Mr H which I am able to consider and have concluded it didn't – in other words I have found it didn't fail in its responsibilities to him as a retail client in respect of those issues.

I will briefly comment on the points he has made, although these largely repeat arguments previously made by him which I have already considered when making my provisional decision.

Mr H has provided no evidence that would support a finding that Barclays had a duty to him to provide information to credit reference agencies and I am not satisfied any such duty existed, as I have previously said.

There is no persuasive evidence that the loan monies weren't used as intended as set out in the facilities letter - namely to fund Mr H's capital contribution to the partnership which then acquired film rights licensed to the distributor named in the guarantee. The fact that ABN Amro made payments due from the distributor to the partnership doesn't in my view provide evidence that the loan monies weren't used as intended, contrary to what Mr H has said.

Mr H has also said that he should have been informed that Barclays had 'called back' the deposit from ABN Amro as this would have alerted him to the fact that the deposit was the loan monies and that these hadn't been paid to the studio/distributor. I have already found that there is no persuasive evidence that the loan monies weren't used as intended. In any event, even if this information would have led Mr H to conclude differently, I am not persuaded that Barclays had any obligation to inform him that it had exercised its rights under the guarantee through which ABN Amro was required to pay to it the maximum amount payable under the guarantee at that time.

The effect of this was that the monies payable by the distributor to the partnership and used to make the loan payments have been made from the Barclays account in the name of the distributor instead of by ABN Amro. Mr H's position so far as his loan is concerned didn't change as a result of this. I note he has once again referred to being able to ask Barclays to justify why it was a better credit risk than ABN Amro but it didn't have to justify to him the exercise of its rights under the guarantee.

Mr H has said he has been told that the payment by ABN Amro to Barclays means that the loan has been repaid. He hasn't provided any further information or evidence to support this.

It is Barclays' case that the loan hasn't been repaid and the money paid by ABN Amro is held in an account in the name of the distributor with payments being made as and when these are due, as I have already referred to. The payment by ABN Amro to Barclays brought the guarantee to an end but this doesn't mean the loan was also brought to an end and in the absence of any persuasive evidence this was the case I am not satisfied that it did.

My final decision

I don't uphold this complaint for the reasons I have explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 October 2023.

Philip Gibbons
Ombudsman