

The complaint

This complaint is brought by Ms A as representative of a partnership. Mr and Mrs J are the partners and I will refer to the partnership as JAJ throughout for ease of reference.

JAJ has complained about the poor service they received from Barclays Bank UK PLC. In particular, JAJ says that Barclays lost the title deeds to some land the partnership was selling, that the customer service they received from their business account manager was poor, and that Barclays unreasonably declined further lending.

To settle the complaint, JAJ wants Barclays to pay compensation for distress and inconvenience caused to Mr and Mrs J, and for the bank to provide them with support, particularly in relation to revisiting their application for further borrowing. Mr and Mrs J also want their business account manager to be held accountable for the lack of support given to JAJ when it was needed.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, Barclays has accepted it made mistakes, so there is no need for me to analyse the events in detail in order to determine whether or not the bank is at fault. All I have to decide is whether the redress already offered by Barclays is sufficient, or if there is anything further the bank needs to do.

Finally, our decisions are published, so it's important I don't include any information that might lead to JAJ or Mr and Mrs J being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

JAJ have a commercial mortgage account with Barclays, on which is owed about £100,000. In 2022 JAJ had fallen into financial difficulty and were struggling to maintain the repayment of a mortgage with another lender, KD, which had instructed receivers, P, to sell the property. The mortgage to KD was secured on a registered title over a parcel of land comprising about 90 acres.

In order to try to recover their position, in July 2023 JAJ had identified some land they could sell, about 55 acres, which would not materially impact their business. This was unregistered land which formed part of the security held by Barclays for its mortgage. JAJ had initially asked Barclays for a £340,000 mortgage, which was refused.

JAJ approached a consultant, who drew up a business plan looking at potential borrowing as a short-term measure whilst JAJ sold the land.

In mid-2023 JAJ were also exploring the option of borrowing from another lender to pay off the secured loan to KD as well as the mortgage to Barclays, and were granted an extension

from P to allow the new loan to be put in place. However, in order to proceed with this JAJ needed the unregistered title deeds, which were stored with Barclays.

Barclays wasn't able to locate the deeds. At this point, P was going ahead with an auction of the 90 acres. Barclays' records showed it had sent the deeds to JAJ's previous solicitors in September 2022. It later transpired that those deeds had been returned to Barclays in November 2022.

The deeds were finally located and sent to JAJ's solicitors on 7 August 2023. However, some documents were missing, which caused further delay and required some deeds to be reconstituted. Barclays acknowledged it had made a mistake and paid compensation of £7,805 to JAJ's solicitors for legal costs and disbursements.

The 90 acres secured by the mortgage to KD were sold at auction to a third party on 13 September 2023.

JAJ complained to Barclays. In addition to the above issues, JAJ were unhappy at the bank's customer service. In particular, JAJ say that the bank stopped responding to them, failed to answer calls, and refused to provide any support to their business by way of additional lending.

In its final response letter, Barclays acknowledged its customer service should have been better. The bank offered £750 compensation for distress and inconvenience, in addition to the £7,805 paid for the legal expenses. Barclays explained why it hadn't been able to offer any further lending.

JAJ didn't accept this and the complaint was raised with our service. An Investigator looked at what had happened, and overall thought the compensation offered by Barclays was fair and reasonable in all the circumstances.

Ms A disagreed and made some further points, which I summarise below.

- JAJ is content with the bank's response to the loss of the title deeds and the redress paid for this, but there are other losses which haven't been taken into consideration.
- The secured land was being sold for significantly less than market value – 90 acres at £3,555 per acre. This is relevant, as JAJ would not have had to sell 90 acres to redeem the loan to P if JAJ had been able to sell other parcels of land or continue with the new secured loan to another lender. The new owner is marketing the land at £10,000 per acre, and has sold a 4-acre plot for £75,000. It is feasible, therefore, that JAJ would only have needed to sell approximately 20-35 acres to settle the loan to P. JAJ has therefore lost 55-70 acres of land, which will directly impact annual income, because government subsidies will reduce by 11-14%, resulting in a loss of income to the partnership.
- JAJ will have to erect new buildings to run the business, which will cost tens of thousands of pounds.
- Mr and Mrs J have suffered significantly in terms of wellbeing and mental health.

The Investigator considered these further points. He wasn't persuaded that Barclays was responsible for the price at which the land had been sold, or the way in which the partnership had to rearrange its business operations after the sale. He wasn't persuaded that the new secured lender had guaranteed the new loan pending receipt of the title deeds. The Investigator remained of the opinion that the £750 offered by Barclays for distress and inconvenience was fair.

Ms A responded, reiterating the points she'd previously made about potential future losses, and estimated these to be at least £827,501.28. Ms A sent approximately 50 emails containing documentation she wanted the Investigator to consider.

The Investigator reconsidered the complaint, but wasn't persuaded to change his opinion. He was sympathetic to Mr and Mrs J's position, as he was aware this had been a very difficult and stressful time for them. He acknowledged Barclays' delay in providing the deeds had caused some problems, but thought there were multiple variables involved in the potential sales of other parcels of land or the re-financing of the secured loan relating to third parties unconnected with the bank. He therefore didn't believe that Barclays was at fault for those sales or re-financing not proceeding to completion.

Ms A didn't agree and asked for an Ombudsman to review the complaint. She reiterated that the only thing holding up the re-financing was that the deeds had been lost. Ms A also said that £750 is not enough to compensate Mr and Mrs J for the impact Barclays' actions have had on them.

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.

The evidence in the case is detailed, running to about 1,500 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.

I will not be addressing each and every point raised by JAJ. 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.

However, I confirm I've read everything provided by Ms A and Barclays, including all the emails Ms A sent us about what happened. I will begin by explaining that, whilst I note Ms A's and Mr and Mrs J's comments about various staff members at Barclays, we consider complaints against the bank as a corporate entity. We have no power to punish, fine or sanction Barclays, or take any action against individual staff members. So whilst I note Ms A and Mr and Mrs J's strength of feeling about certain members of staff at the bank, I will not comment on individuals, but will instead refer to Barclays as a corporate body.

I note that Ms A acknowledges that JAJ probably didn't meet Barclays' lending criteria for additional borrowing. Barclays has explained that it wasn't able to agree to an overdraft or a re-mortgage, because of an Individual Voluntary Arrangement and County Court Judgements. Barclays is entitled to set its own lending criteria and decide the level of risk to which it is prepared to be exposed in relation to its commercial lending.

I'm satisfied that, because JAJ had been in default on the loan to KD for some time, and because of the IVA and CCJs, Barclays' decision not to extend further credit to JAJ was a reasonable exercise of the bank's commercial judgement.

I also note that, JAJ were aware that in order to sell the 55 acres they would need Barclays' consent to the release of security. It doesn't appear that was formally requested by JAJ.

Barclays has acknowledged that the deeds were mislaid. The land secured by Barclays' mortgage was unregistered (whereas the land secured by the mortgage to KD was registered). With unregistered land, it is necessary to provide the Land Registry with the historic documents showing the 'root of title' upon first registration. Barclays provided what it thought were the correct documents, but there were still some missing documents.

The crux of the complaint is that Ms A considers Barclays to be responsible for the consequential losses incurred as a result of JAJ being unable to re-mortgage their entire borrowing (both to KD and Barclays), or, alternatively, to sell 55 acres of unregistered land. Ms A says this is entirely due to the delay in locating the deeds. Ms A says that it took Barclays over nine months to admit it had mislaid the deeds.

However, I see from the email from JAJ's mortgage broker dated 30 August 2023 that in June 2023 the broker told Ms A that the deeds would be needed, and Ms A *"said she would get the deeds from Barclays, whereupon she was eventually told that they are missing/lost"*.

I'm not persuaded, therefore, that the urgency in relation to the issue with the deeds took place over a period of nine months. I note that the deeds had initially been requested in about October 2022 in relation to a new mortgage, but there doesn't appear to have been any progress in relation to that mortgage, nor any significant follow-up chasing the deeds, until the summer of 2023. Rather, the evidence of the broker suggests that the urgency arose over a much shorter period of time, between June 2023 and mid-August 2023, when the deeds were eventually sent to JAJ's solicitors. This is borne out by Barclays' notes, which show the complaint about the missing deeds first being raised on 26 June 2023.

In addition, Barclays didn't hold a charge over the land that was mortgaged to KD and being sold by P; that land was registered and so there was no legal impediment preventing JAJ from taking out a new mortgage secured only on the registered title in order to repay the mortgage to KD.

I acknowledge JAJ were in a difficult position and had to make some hard choices over what to do. Their broker confirmed he had an agreement in principle for a £430,000 re-mortgage of the entire borrowing, broken down as approx. £320,000 plus £20,000 costs owed to KD, where the title was registered, and approx. £90,000 owed to Barclays secured on the unregistered land. I agree the unavailability of the deeds meant that the entire re-financing to pay off both KD and Barclays couldn't be done in time. However, I think it ought to have been feasible for the broker to have arranged a mortgage of £340,000 on the 90 acres of registered land in order to pay off the KD mortgage. It's not clear why the broker didn't explore this option; that's something JAJ will need to raise with the broker.

The sale of the 90 acres by P wasn't a consequence of any act or omission on the part of Barclays; it was as a result of the default on the mortgage to KD. Whilst JAJ might have preferred to sell the 55 acres that wouldn't impact their business (which was part of the unregistered land), I'm not persuaded that this was their only option, given that the 90 acres was registered and could more easily have been re-financed.

In the circumstances, whilst I have sympathy for the position JAJ found themselves in, I am not persuaded the financial losses claimed of over £870,000 are reasonably foreseeable losses that flow from the missing title deeds. Given this, I am satisfied that the redress Barclays has already paid for the reconstitution of the title deeds – £7,805 – is fair and reasonable.

Putting things right

I am glad that Barclays has acknowledged that its customer service fell short of the standard JAJ should have received, particularly in relation to a lack of communication. I think the £750 Barclays has offered for this is fair and reasonable.

I know this was a very stressful time for Mr and Mrs J, and I don't underestimate the impact that the repossession and sale of the 90 acres mortgaged to KD had on them. But in relation to the mistakes made by Barclays, I'm satisfied that £750 for distress and inconvenience is fair and proportionate to the errors and poor customer service from Barclays.

My final decision

As well as paying JAJ's solicitors costs of £7,805, Barclays Bank UK PLC has already made an offer to pay JAJ £750 to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that Barclays Bank UK PLC should pay £750 in full and final settlement of this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask JAJ to accept or reject my decision before 28 May 2024.

Jan O'Leary
Ombudsman