

The complaint

This complaint is about two buy-to-let (BTL) mortgages Mrs and Mr S hold with Barclays Bank UK PLC. Both were approaching the end of their respective current interest rate product, and Mrs and Mr S wanted to arrange a new rate for both, and to discuss possible term extensions and additional borrowing.

However, one of the mortgages was operated on a legacy accounting system. This required them to re-mortgage, still with Barclays, but onto a new loan running on its mainstream accounting system. This led to multiple problems and delays, one result of which was that the new interest rate product Mrs and Mr S wanted was withdrawn.

What happened

By way of a provisional decision dated 7 February 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision, altered slightly to remove a typographical error in the original.

“In what follows, I have set out events in rather less detail than they have 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 S being identified. Instead I’ll give a summary in my own words (and rounding the figures where appropriate) and then focus on giving the reasons for my decision.

Both BTLs were on rate products that were approaching their expiry dates. To start the process of securing new rates, Mrs and Mr S contacted Barclays in August 2022. The deal they were aiming for was a five-year fixed rate of 3.1%. The new rate for the mortgage operating on the mainstream accounting system (I’ll call that “BTL1”) was arranged online and went ahead without any problem.

This couldn’t be done with the account on the legacy system (I’ll call that “BTL2”). The only way around this was for Mrs and Mr S to apply for a new mortgage to repay BTL2. Mrs and Mr S were also interested in borrowing more money and extending the mortgage term. As the latter two constituted material changes, Barclays said an affordability assessment would be required, which meant Mrs S providing evidence of her income, something she considered unnecessary because the original lending decisions had relied solely on Mr S’ income.

The application for a new mortgage (I'll call that "BTL3") was submitted on 31 August 2022; however, the five-year fixed rate of 3.1% had been withdrawn on 15 August 2022. The application for BTL3 was approved in mid-October 2022, but further problems arose when it came to redeeming BTL2 from the proceeds of BTL3, most notably over the redemption statements. Multiple statements were issued, the first of which, on 27 October 2022, was for the wrong account – Mrs and Mr S' residential mortgage. It took until 28 November 2022 for BTL2 to be repaid, and the balance included a final redemption charge (FRC) of £80, which Mrs and Mr S also weren't happy with.

Mrs and Mr S complained to Barclays, and whilst it did engage with them over the complaint, Barclays didn't address it in what they regarded as a reasonable time. Mrs and Mr S referred the complaint to us; the meantime, Barclays rejected the main thrust of the complaint, but apologised and offered £25 compensation for poor service.

One of our investigators looked at the case; She didn't think it was unreasonable of Barclays to require an affordability assessment for more borrowing and/or a term extension. This in turn meant she wasn't persuaded Barclays unduly delayed the application for BTL3 beyond the point the 3.1% fixed rate was withdrawn, so it wouldn't be fair to order it to honour that rate.

As far as the problems with redeeming BTL2 were concerned, the investigator thought Barclays was responsible. Although it was the solicitors that had requested a statement for the wrong mortgage, they were acting as Barclays' agent at the time. She recommended Barclays reimburse Mrs and Mr S for interest charged on BTL2 during the delay period.

The investigator thought the £80 FRC was fairly charged in accordance with the terms and conditions of BTL2, so didn't recommend that be refunded. But she recommended Barclays pay £300 compensation for Mrs and Mr S' time, trouble and upset, rather than £25.

Barclays agreed to this but Mrs and Mr S asked for the complaint to be reviewed by an ombudsman, as is their right under our rules.

What I've provisionally decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

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. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I'm aware that separately from asking for the complaint about Barclays to be reviewed by an ombudsman, Mrs and Mr S have also raised a complaint about the service they've received from us and how we've handled the complaint investigation ourselves.

That's an entirely separate and discrete process from the complaint against the business, and it has been addressed by a member of our management team. For the avoidance of doubt, I'm not revisiting that in any way; it's not in my remit. My decision here deals solely with the underlying dispute between Mrs and Mr S and Barclays. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

With one exception which will become apparent later in this narrative, the conclusions I've reached aren't materially different from those the investigator arrived at. But there is a lot more detail to my reasoning, not least to try and clear up some of the questions that have arisen about the proposed interest refund. Accordingly, I'm issuing this provisional decision to allow the parties to comment on it first, if they wish to before I finalise my decision.

Having no regulatory power means it's not open to me to direct Barclays on how it runs its business at the operational level. So the fact that the legacy system had limited functionality that resulted in BTL2 having to be treated very differently from BTL1 isn't part of my remit. What is in my remit is how that different treatment affected Mrs and Mr S.

Replacing BTL2 with BTL3 was a necessary solution to the constraints imposed by the legacy system. I can't say how soon the application for BTL3 could have been submitted if no material changes were being contemplated, but the point is moot in any event. Mrs and Mr S *did* want to make material changes and Barclays was justified in asking for the information about Mrs S' income needed for an affordability assessment. By the time the application was ready to be submitted, the five-year fixed rate of 3.1% had already been withdrawn. In those circumstances, Mrs and Mr S haven't been unfairly deprived of the 3.1% rate product on BTL3.

I agree entirely that responsibility for the mix-up over redemption statements and the resulting delay in completing BTL3 and repaying BTL2 lies with Barclays. The error itself may have been made by the solicitors rather than Barclays itself, but it amounts to the same thing. Arranging for an existing mortgage to be redeemed from the proceeds of a new one is an activity solicitors carry out on behalf of the lender.

It's reasonable to conclude that, but for the solicitors' error, BTL3 could have completed and BTL2 been closed on 27 October 2022. Instead, it took until 28 November 2022. At first glance it might seem appropriate to use those dates for the purposes of calculating the interest refunded due to Mrs and Mr S. However, Barclays has pointed out that the rate product on BTL2 ran until 2 November 2022, which would have resulted in an early repayment charge (ERC) being due if the mortgage had been redeemed on 27 October 2022.

I've concluded from this that even though the re-mortgage transaction could have gone through on 27 October 2022 – but for the problems with the redemption statements – it would actually have gone through on 2 November 2022. Accordingly I consider it fair that this be the start date for calculating the refund, with 28 November 2022 as the end date.

There's more to consider though; just as the redemption of BTL2 was delayed until 28 November 2022, so too was the start of BTL3. So the refund to which Mrs and Mr S are entitled is not simply the interest charged on BTL2 between 2 and 28 November 2022. It's the *difference* between the interest charged on BTL2 and BTL3 between those dates. Additionally, to compensate Mrs and Mr S for having been deprived of the funds in the meantime, they should also receive compensatory

interest on the refunded amount, at 8% simple, from 28 November 2022 up to the date of settlement.

Although it would clearly be helpful, it is not essential that Barclays provide the relevant calculations as part of its response to this provisional decision. At this juncture, the parties are being asked to agree to the principle on which the complaint should fairly be resolved. If they do agree, then the calculations will flow from that principle, and Barclays will of course be expected to provide Mrs and Mr S with the calculations when implementing the settlement.

As far as the £80 FRC is concerned, under the terms and conditions agreed at the outset, this was fairly due in the event BTL2 was repaid. The only exception to this would be if redemption took place during the final six months of the mortgage term. As that wasn't the case, the £80 FRC was due under the contract. Again, however, there's more to consider. The only reason Mrs and Mr S were redeeming BTL2 was because Barclays told them they needed to, in order to move away from the legacy system. If BTL2 had been on the mainstream system, the changes could all have been made without redeeming the mortgage. In the circumstances, the fair thing for Barclays to do is to refund the FRC.

That leaves the question of compensation for the time, trouble and upset Mrs and Mr S experienced. Assessing compensation isn't an exact science; everyone's reaction to events is unique to them. It's clear from their testimony that Mrs and Mr S have found this episode hugely upsetting, and I appreciate that. But I have also to keep in mind that Barclays hasn't made *all* of the mistakes they attribute to it. Only some of what happened, and how long it took to happen, can be put down to acts or omissions on Barclays' part. Clearly, £25 was never going to be enough, and Barclays really should know that. Taking everything into account, I agree with the investigator that £300 is fair in this case.

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 how strongly Mrs and Mr S feel. That's a natural, subjective reaction, and entirely understandable.

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, focussing on the broader picture. That's what I've done.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate legal conclusion; sometimes it's about compromising to reach a *fair* conclusion. In my view, I've done that here."

I gave the parties two weeks to comment on the provisional decision; that time has now passed. Barclays accepted the provisional decision; Mrs and Mr S made further representations, which I will address next.

What I've decided – and why

Before I get to addressing the underlying case against Barclays, I begin with an apology to Mrs and Mr S for having inadvertently used a different initial to refer to them during the narrative of the provisional decision. That has now been corrected in the extract reproduced above.

They're also unhappy that I mentioned them having raised a service complaint with us about how we've handled their case. I'm sorry they think that portrays them as serial complainers; that was not my intention. The reference to the service complaint was simply to eliminate any possible ambiguity about my remit.

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'm not persuaded to depart from my provisional conclusions. To be clear, that's not because I'm unsympathetic towards Mrs and Mr S after their experiences with Barclays.

Rather, it's because Mrs S' email comments of 8 February 2023 don't add anything materially new for me to consider. What they do, in essence, is reinforce points they had already made to us in their earlier submissions, and which I'd already taken into account when I arrived at my provisional decision.

My final decision

My final decision is that I uphold this complaint in part, by ordering Barclays Bank UK PLC to:

- refund Mrs and Mr S the difference between the interest charged on BTL2 from 2 November 2022 to 28 November 2022 and the interest that would have been charged on BTL3 between the same dates;
- refund the £80 FRC charged on redemption of BTL2;
- pay interest on the refunded amounts, at 8% simple per annum*, from 28 November 2022 to the eventual date of settlement; and
- pay Mrs and Mr S £300 compensation.

*In the event Barclays considers it should deduct basic rate income tax from this component of the award, it must then provide Mrs and Mr S with the relevant tax certificate to allow them to reclaim the tax from Her Majesty's Revenue and Customs if their circumstances allow.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr S to accept or reject my decision before 25 March 2024.

Jeff Parrington
Ombudsman