

The complaint

Mr and Mrs S complain that they were mis-sold two commercial mortgages by Barclays Bank UK PLC (Barclays)

What happened

The background to this complaint is well known to the parties, so I won't repeat it in detail.

Briefly:

- Mr and Mrs S are in partnership. Together, they operate a property business, which I'll refer to as T.
- In 2020 Mr and Mrs S approached Barclays to discuss the refinancing of T's £196,000 borrowing with another lender.
- After submitting their application, Barclays approved it and issued two facility letters offering loans on the following terms:

- Loan A - Facility Amount: £100,000.

"Repayment Instalments:

The term of the Loan is 2 years. 23 instalments of principal and interest of £566.79 will be payable monthly commencing 1 month after the date of first drawdown of the Facility.

There will be a lump sum repayment sufficient to repay the Loan in full on the Final Repayment Date. The repayments have been calculated on the basis of a 20 year repayment profile, effective from the date of first drawdown

Final Repayment Date:

The date falling 2 years after the date of first drawdown of the Facility."

- Loan B - Facility Amount £96,000.00

"Repayment Instalments:

By a single repayment of the Loan in full on the Final Repayment Date.

Final Repayment Date:

The date falling 2 years after the date of first drawdown of the Facility"

- Both Loans A and B were drawn down on 30 September 2020.

- On 6 September 2022, Barclays sent two reminder letters to T in connection with Loan A and Loan B confirming that final repayments of £97,366.53 and £95,418.05 respectively would become due on 30 September 2022.
- Mr and Mrs S didn't redeem the loans but submitted another application to Barclays to refinance the facilities.
- But Barclays declined the application. They wrote to T on 17 November 2022, saying that after assessing the affordability of further borrowing, based on its cash flow, they didn't think T could afford the requested borrowing.
- T has since refinanced elsewhere.
- Mr and Mrs S then complained to Barclays saying the loans were mis-sold to T. In particular, they said the loans should have been structured over a 20-year term rather than for two years, and for that they believed Barclays were at fault.
- They were unhappy also that when the two-year term came to an end Barclays were unwilling to refinance the loans. They said this, therefore, meant T had to incur further costs and expenses through being forced to refinance elsewhere.

Barclays didn't think they'd done anything wrong. They maintained that they discussed the loans with Mr and Mrs S and their reason for only being prepared to offer T terms of two years. In addition, they said the term was stated clearly in the facility letters which were provided to Mr and Mrs S as well as their solicitors and later signed confirming T's acceptance.

Mr and Mrs S were not satisfied with Barclays' response. And since the complaint remained unresolved, they referred it to this service to look into.

One of our investigators looked into the complaint but didn't uphold it. He said – in summary:

- The terms of the bank's lending were clearly explained to Mr and Mrs S. And an email dated 2 September 2020 from T's solicitors to Mr S said: "we have the cumulative £196,000 loans x 2 at 2.9% margin for a 2 year loan period".
- There was never a guarantee that Barclays would refinance the loans at the end of the two year initial term and in any case we have no power to influence the bank's lending decisions.

Mr and Mrs S weren't satisfied with the investigator's conclusions and have asked for an ombudsman to review this case. They said - in summary:

- The investigator has been selective in his analysis of the case as demonstrated by his statement that they signed a legal document and should have known the term of the loan. Whereas the fact is that they didn't.
- Barclays through their bank manager should be held responsible for failing to make sure they knew the position. Although, as the investigator observed, Barclays communicated with their solicitor, it should be noted he is a conveyancing solicitor, rather than a legal or a financial advisor. They, on the other hand, had put their trust in Barclays as a leading bank in the country to be fair, honest and trustworthy. Their

manager came to their home but made no attempt to make sure they knew the implications of what they were entering into.

- If, for example he had told them that by accepting the loans, in two years' time the bank would likely cancel them, they wouldn't have gone ahead with the loans bearing in mind the substantial cost associated with refinancing.

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 start by saying I can see how strongly Mr and Mrs S feel about this complaint. They've made quite extensive submissions both to the bank and to this service.

I want to assure them that I have considered all the points they have made both in their initial and subsequent submissions. I mean no discourtesy in saying this, but my decision won't address all the points that have been made by them. That is because in keeping with our role as an informal resolution service, and as our rules allow me to do, I will focus on the issues I find to be material to the outcome of this complaint.

Where I've omitted to comment on any specific point, it's not because I haven't considered it – I assure Mr and Mrs S that I have. The reason I haven't is because I don't think I need to in order to reach what I think is the fair and reasonable outcome in this case.

Having now considered Mr and Mrs S' case more fully, I agree with the investigator's conclusions and for much the same reasons - in the sense that I do not find that Barclays had made an error or acted unreasonably towards them. I'll explain why.

I've set out key elements of the facility letter above. I cannot reasonably say Mr and Mrs S were not provided with sufficient information about the term of the two loans before they accepted them. In that respect therefore, I'm satisfied that Barclays did what they were reasonably expected to do. In other words, they highlighted the term of both loans in the facility letters and having read them carefully, I can't reasonably say there was scope for any misunderstanding.

And even if there was, - and that is not my finding - Mr and Mrs S had solicitors acting for them. I do not think it's relevant as they have argued, that their solicitors were conveyancers rather than financial advisors. They were instructed to act for Mr and Mrs S - including making sure the loan amounts and term were correct. I do not agree with Mr and Mrs S' submission that this was also the role of Barclays' manager.

Mr and Mrs S agreed to accept the loans. I've been presented with no persuasive evidence to indicate they didn't know what they were agreeing to.

I fully appreciate how disappointing it was for Mr and Mrs S that in September 2022 they were unable to refinance the loans with Barclays. But I can see no evidence that Barclays made any promises that at the end of the two-year term they would extend further borrowing to T. More to the point, it is no part of Mr and Mrs S' case that they did. In any case, lending decisions are a matter of commercial judgement on the part of the bank concerned. Generally speaking, it's not my role to interfere with that judgement or to second guess a decision whether or not to lend where that judgement has been fairly exercised after a proper consideration of the application.

What I can do is assess whether a lender has exercised its discretion fairly and taken

reasonable steps to comply with the obligations placed on it by relevant law, regulation, and good industry practice.

In this case after considering T's application for further re-financing, Barclays had concerns about its ability to sustain its repayment of the loans. I cannot fairly say the bank's judgement was unfairly exercised.

I note T was able to re-mortgage elsewhere. But that does not in my view, indicate Barclays acted unfairly when they decided against extending further lending facilities to T. It isn't unusual for lenders to have different lending criteria and the level of risk they are willing to assume will also vary. In all likelihood that was the case with T's new lender.

I am pleased to learn as Mr and Mrs S have mentioned, that the good thing that has come out of these events is that they are pleased with this new lender.

I know this will come as disappointing news to Mr and Mrs S but I don't consider that in 2020 they were misled by Barclays regarding the term of the two loan facilities they were prepared to extend to T. And neither do I consider they acted unfairly when after the expiry of the two years Barclays treated them unfairly when they declined their application for refinance

My final decision

For the reasons I've explained above, my final decision is that I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 23 April 2024.

Asher Gordon
Ombudsman