

The complaint

Mr and Mrs L's complaint is about a mortgage they have with Barclays Bank UK PLC. They have complained that they were not kept informed and responded to during the months before Barclays started, in May 2023, legal action to repossess their home.

In settlement of the complaint Mr and Mrs L want the legal costs associated with the repossession action to be refunded and for Barclays to update and improve its processes.

What happened

Mr and Mrs L took out their mortgage with Barclays in 2006 and took two further advances at later dates. The mortgage was administered on a repayment basis as three sub-accounts, which had different end dates. Unfortunately, Mr and Mrs L's financial situation deteriorated toward the end of 2020 and they were unable to afford the monthly mortgage payments (CMP). Barclays entered into payment arrangements thereafter, which allowed Mr and Mrs L to pay significantly less than the CMP. However, by the beginning of 2023, as Mr and Mrs L's situation had not improved, Barclays was no longer willing to enter into further arrangements where they paid less than the CMP, as there was no sign of the situation improving and the arrears being dealt with.

Later in January 2023 Mr and Mrs L informed Barclays that they were no longer making payments to an unsecured creditor. At this point Barclays did a new income and expenditure exercise and concluded that Mr and Mrs L were in a position to make the CMP payments again and start to pay something towards the arrears. Mr and Mrs L were told that due to the number of plans that had previously been put in place, the plan would have to be escalated for approval and Barclays would call them back.

Barclays contacted Mr and Mrs L three days later and informed them that as the term of one of their sub-accounts was close to its end, the plan had not been approved. This was because the end of term team wanted to speak to them to discuss if there were any other options (such as a term extension) available to help. Until they were able to speak to the end of term team, Mr and Mrs L were told to pay as much toward the mortgage as they could afford.

On 18 January 2023 Mr and Mrs L called Barclays and told it that they wanted a term extension of 20 years. They were booked in with a mortgage adviser. Unfortunately, when they spoke with the mortgage adviser the following week, they were told that due to the level of arrears on the account, they couldn't have a term extension. Mr and Mrs L were directed back to the team that deal with financial difficulties.

Mr and Mrs L called Barclays a few weeks later to discuss both paying off the arrears and a term extension. In summary, Barclays said that if the arrears were paid off, it would arrange for Mr and Mrs L to speak to a mortgage adviser again and it would see what could be done. Unfortunately, the call disconnected and when Barclays tried to call back, Mr L didn't pick up.

Later in February and on 13 March 2023 Mr L called again about repaying the arrears. By this point he told Barclays they were looking to pay off the arrears on one of the sub-accounts where the interest rate product was due to expire in April 2023, as they thought this would mean they could obtain a new product. Again, Barclays' records show that the call was cut off and when Barclays called back, the call went through to a voicemail system. Mr L appears to have immediately called back, which is why his phone went to voicemail when Barclays tried to call him back.

In the second call, Mr L confirmed that he was back at work and they were looking to pay off the arrears on one of the sub-accounts. Barclays said that while Mr and Mrs L could pay off the arrears on that account, they still needed arrangements in place to address the rest of the arrears or there was the risk of the account going to litigation. Mr L confirmed they were paying the CMP and an amount towards the arrears each month. Barclays responded positively to this, but it confirmed that any arrangement needed to be formally agreed to avoid legal action. Mr L was asked when they would be making the payment to the arrears he'd mentioned, and he responded that it would be towards the end of April 2023. Barclays confirmed that, given the amount of time before that payment was going to be made, an arrangement would need to be entered into before in order to avoid litigation.

An income and expenditure exercise was done, and the ultimate outcome was that Mr and Mrs L could afford to pay the CMP plus an amount towards the arrears. However, the amount they could afford to pay would not clear the arrears before the end of any of the sub-account terms, whether one sub-account was paid off or not. There was then a discussion about any economies Mr and Mrs L could make in order to be able to pay more toward the arrears. At this point Mr L introduced the concept of paying off the entire balance of the sub-account previously discussed in order to avoid having to pay a much higher interest rate when the fixed rate ended. Barclays confirmed that in order to avoid paying a higher variable interest rate on that sub-account, they could either clear the arrears on all the accounts, so they could have a new fixed rate, or wait until they were on the reversionary rate and pay off the whole balance.

Barclays said it could not agree a payment arrangement, but it recommended that Mr and Mrs L seek independent advice to discuss the payment they were thinking of making and see if something could be done to clear all of the arrears. It was left for Mr and Mrs L to look into their options and revert to Barclays.

Following a request from Mr and Mrs L, they were sent a redemption statement for the sub account previously discussed on 5 April 2023.

By 21 April 2023, having heard nothing further from Mr and Mrs L, Barclays wrote to them. It explained that as an agreement for the arrears of over £25,000 hadn't been reached, it was planning to instruct solicitors to start repossession proceedings. Barclays asked that Mr and Mrs L contact it in order to avoid legal action. The letter then set out what would happen if Mr and Mrs L didn't contact it, including setting out the costs that Mr and Mrs L would be responsible for.

At the end of April 2023 Mr and Mrs L repaid the sub-account previously discussed and in early May 2023 Mr L called Barclays to discuss the arrears on the other two sub-accounts. Mr L told Barclays that they would be able to pay £3,000 towards the arrears at the end of that month and would then pay the CMP plus a few hundred pounds. Barclays asked Mr L to complete an income and expenditure exercise to ensure that the proposals were affordable. Mr L declined to do so over the phone and told Barclays nothing had changed since the last exercise had been done in March 2023. Barclays sent an income and expenditure form out for Mr and Mrs L to complete and return. It was not returned.

Later in May 2023, Barclays decided to take legal action to repossess Mr and Mrs L's home. Barclays' solicitors wrote to Mr and Mrs L on 19 May 2023 and told them that it had been instructed to contact them to, effectively, give them a last opportunity to address the situation before legal action was started. Mr and Mrs L didn't contact Barclays or the solicitors.

On 21 June 2023 Barclays' solicitors wrote to Mr and Mrs L again and told them that, as they had failed to clear the arrears on the mortgage, it had been instructed to start possession proceedings. It said it would confirm the date of the court hearing in due course. Two days later the solicitors confirmed a hearing date of 31 July 2023.

It was not until 5 July 2023 that Mr L contacted Barclays again. In light of Mr and Mrs L responding, Barclays agreed to postpone the court hearing. It also discussed with Mr L the possibility of a term extension. This would increase the term of the main mortgage account to match the slightly longer term of the other sub-account. Mr and Mrs L were required to pay more than the CMP for two years to clear the arrears. The term extension was dependent on the payment for July being made and a direct debit being set up for the ongoing payments.

Mr L didn't contact Barclays about making payments under the arrangement until 7 August 2023. He called the general mortgage department and it was unable to transfer him to the litigation department. Barclays' records show that an email was sent to the litigation team informing it that Mr L wanted to set up a direct debit mandate and wanted to know what he needed to pay. The payment for July 2023 was subsequently made, and Mr L was told he needed to make another manual payment for August 2023 and set up a direct debit mandate for September 2023. The latter actions were not completed.

As Mr and Mrs L didn't do what they were asked to and so the payment arrangement did not appear to be going ahead, Barclays applied to the court for a new hearing date. It was set for 25 September 2023. Mr L called Barclays on 7 September 2023 about the new court date and they also put forward proposals to address the situation with the mortgage, which Barclays didn't agree to. However, Barclays postponed the hearing again. Mr and Mrs L were informed of this on 12 September 2023.

Mr and Mrs L complained to Barclays after being sent an arrears statement in October 2023, which detailed the addition of legal fees to the account. They said they had been unaware of the charges and didn't consent to them being added to their account. They were also dissatisfied at what they considered to be Barclays having not supported them appropriately. Mr and Mrs L were also unhappy that when they called the litigation team that day to complain, they'd been cut off and they had to call back.

Barclays responded to the complaint in a letter dated 16 November 2023. Mr and Mrs L were told fees were part of the litigation process and correspondence was issued prior to the solicitors being appointed that confirmed this. As such, Barclays was not willing to refund the legal fees it had added to the mortgage balance. However, it accepted that the service it had provided had not been what it should have been and so Barclays offered Mr and Mrs L £125 compensation. Barclays also asked Mr and Mrs L to email it with details of the issues they didn't think had been dealt with in previous complaints, as they had mentioned this in their exchanges with Barclays.

Mr and Mrs L were not satisfied with Barclays' response and asked this Service to consider their complaint. One of our Investigators considered the complaint, but she didn't recommend that it be upheld. She thought the offer of compensation Barclays had already made was fair.

Mr and Mrs L didn't accept the Investigator's conclusions. They said it was not the case that they had not completed income and expenditure exercises whenever requested. Each time it was done, they said Barclays had said it would call them back within a day or two, but it constantly failed to do so. In light of Barclay's behaviour, they didn't think it could be considered reasonable for litigation to have been started or for them to be charged the costs of that action. They said they did everything Barclays asked them to do, at every stage. They asked that the complaint be referred to an Ombudsman when the Investigator didn't change her conclusions.

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.

Mr and Mrs L have said that one of the things they want their complaint to achieve is a change in Barclays processes. It is not our role to dictate what a financial business' internal processes are 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. As such, what Mr and Mrs L have said they want to partially achieve from their complaint is not something I can order.

Mr and Mrs L have asked that the legal fees are refunded because they were not told this would happen and didn't consent. I would firstly comment that mortgage contracts across the industry will allow the lender to add certain costs to the balance of the mortgage when they are incurred. Included in those costs are those associated with legal action. There is no requirement for the borrower to consent to charges being added to their mortgage balance each time they are, as they have already consented to this happening by accepting the mortgage offer and the associated terms and conditions.

While Mr and Mrs L may not have been told the amounts of the charges that would be added to the mortgage, I am satisfied that they were made aware in April 2023, before legal action started, that they would be liable for costs if legal action went ahead. They were also told more than once in March 2023 that, irrespective of whatever payments they made to reduce the arrears and overall mortgage balance, they needed a formal plan in place for the arrears to avoid legal action being taken. As such, if I find that Barclays acted reasonably when it decided to start legal action in May 2023, I won't be able to conclude that the legal charges should not have been added to their mortgage account balance.

Initially, I would explain that the Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only or deferring interest for a period, term extensions or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable. The requirement for a lender to try to help a borrower doesn't mean that a consumer should be given whatever they ask for, but rather the lender needs to determine if it can put forward any proposals that will actually help the consumer and not just postpone the inevitable if the mortgage isn't and won't be affordable going forward.

Mr and Mrs L have told us that they called Barclays on a regular basis and asked to be

called back in the months preceding legal action starting. They have said they consider these omissions led to the situation that meant Barclays started legal action. I have reviewed the call logs from Barclays and the contemporaneous notes of the discussions and actions undertaken. There were times when Barclays said it would call Mr L back, and while the call backs were sometimes later than I think Mr L expected them to be, they were made. In addition, it is clear that calls between Mr L and Barclays were cut off unexpectedly. However, in all those cases there appears to have been an attempt from Barclays to call Mr L back. Although it doesn't appear that any of those call backs were successful, there was at least an attempt.

Mr and Mrs L had stopped paying the CMP to their mortgage at the end of 2020 and Barclays supported their situation with forbearance measures of reduced payments for the following two years. However, when they requested a further extension of such arrangements, Barclays said no. This was because there was no indication that Mr and Mrs L's situation had, or was likely to, improve; so it didn't look like they would be able to pay the CMP going forward or clear the arrears. I don't think this was unreasonable; as I have said above, forbearance measures need to actually help, rather than delay a borrower dealing with the fact that they simply cannot afford their mortgage. In this case, after two years of support, Mr and Mrs L still couldn't afford their mortgage and there was no sign that they would be able to in the future. All that providing further forbearance would have done at that time was increase the amount Mr and Mrs L owed and reduce the equity they had in their property, in the event they needed to sell.

Overall, I am satisfied that Barclays provided Mr and Mrs L with appropriate support in their financial difficulties with forbearance measures up to the point where the bank reasonably concluded that it would no longer, in material terms, benefit them further.

When Mr L told Barclays shortly thereafter that the situation had improved, in that they were no longer making a payment to another debt, Barclays reassessed its position. It was at that time willing to offer further forbearance and was willing to explore whether it could make provisions that would improve the longer-term situation with a term extension. That ultimately was not possible because of the level of arrears on the mortgage. I don't consider that was unreasonable, but I do think Mr and Mrs L could have been told this earlier in the process. Mr L was told at that point he had to initiate contact with the financial difficulties team again; effectively go back to the position they were in before they were told to explore the option of a term extension. It is clear that the service Barclays provided at that time was not what it should have been.

Barclays decided to start legal action in May 2023. Prior to that, Mr L had been in touch with Barclays about the arrears. Mr and Mrs L also reduced the arrears by around £9,000 during that time and repaid the balance on one of the sub-accounts. Prior to that happening, Barclays was very clear with Mr and Mrs L that it couldn't put in place a new payment plan as the amount they could pay over the CMP each month was not sufficient to repay the arrears before the end of either of the sub-account terms. While a hold was placed on the account for 30 days, Mr and Mrs L were told that they needed to look at alternative options for resolving the arrears situation in order to prevent legal action starting. Mr and Mrs L didn't contact Barclays again during, or shortly after, that 30-day period.

Starting legal action to repossess a property is always meant to be a last resort. Barclays decided to start legal action around four months after it initially told Mr and Mrs L that it didn't think it could do anything in the way of forbearance that would help them, so they needed to look at alternative options. This message was repeated more than once before Barclays started legal action. I don't consider that it was inappropriate or unfair of Barclays to have moved to start legal action when it did, given no real progress in resolving the issues with the mortgage had been made. In light of that, I am satisfied that it was appropriate for Barclays

to add the initial legal costs to the mortgage, as it was able to do under the terms and conditions.

Two further legal costs were added to the mortgage – those for postponing/adjourning the court hearings in July and September 2023. The July 2023 hearing was set at an early stage and postponed when it was subsequently established that Mr and Mrs L were in a position to be able to enter into a payment arrangement that would allow the arrears to be repaid over a couple of years, alongside a term extension. An agreement was entered into that required Mr and Mrs L to make an initial payment of around £1,300 in July 2023 and to set up a direct debit mandate for payments to be made from August 2023. However, they didn't do that. It was not until it was too late to do the latter activity that Mr L contacted Barclays again to ask for clarification as to what they needed to do.

While they were not immediately able to speak to the relevant team, the fact that they made the July 2023 payment would indicate they were able to do so and Barclays' notes show that Mr L was also told that another manual payment for the August 2023 payment would need to be made, along with a new direct debit mandate being set up. Again, these actions were not completed. In light of that, I am satisfied that Barclays didn't act unreasonably when it applied for another hearing date from the court. While that hearing was also adjourned, I don't consider that means it should not have been arranged in the first place. As such, I am satisfied that it was reasonable for Barclays to add the costs of postponing/adjourning the two hearings to Mr and Mrs L's mortgage account.

I note that Mr and Mrs L have said that the payments under the arrangement agreed in July 2023 were missed because Barclays didn't get back to Mr L. I am not persuaded that is the case. Initially I would comment that Mr and Mrs L had arranged various payment arrangements and had been able to set up the appropriate payments on time, which would indicate they understood what they needed to do in such situations and were capable of doing so. Furthermore, the process Barclays used to assess how much Mr and Mrs L were able to pay was methodical and would have required Mr L to have confirmed they could afford the amount proposed. I also note that following having failed to make the August payment manually and setting up a direct debit mandate, as they were requested to, Mr and Mrs L put in alternative proposals for addressing the situation with their mortgage. That combination of events would not indicate the payment arrangement failed due to any actions or lack of action on Barclays' part.

As I have said above, the service Barclays at times provided to Mr and Mrs L was not what it should have been. However, having considered the events carefully, I am satisfied the compensation Barclays has already offered Mr and Mrs L is fair in the circumstances.

My final decision

Barclays Bank UK PLC has already made an offer to pay Mr and Mrs L £125 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 £125 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to

accept or reject my decision before 15 October 2024.

Derry Baxter
Ombudsman