

## The complaint

This complaint is about a mortgage Mr D holds with Barclays Bank UK PLC. At the core of the complaint is Mr D's dissatisfaction with how Barclays handled his request for its assistance in claiming Support for Mortgage Interest (SMI) after he lost his job and went onto Universal Credit. Mr D says Barclays took too long to fill out the forms, and that when SMI was eventually paid, the bank then mis-applied the money received from the Department for Work and Pensions (DWP). Mr D says this has left him in arrears and with his credit record damaged.

## What happened

By way of a provisional decision dated 20 March 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Mr D and Barclays. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr D being identified.

Instead I'll give a brief summary in my own words, rounding the figures, and then focus on giving the reasons for my decision. 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.

Mr D has a capital repayment mortgage with Barclays. He was late with some payments in 2018, but made them up quickly. A payment was also missed in May 2019. Barclays didn't alert him to this until September 2019, and Mr D didn't take immediate action to make it up; he did so in late 2020.

In 2020, Mr D lost his job; in December 2020, he visited his local branch with form MI12, which needed submitting to the DWP to validate Mr D's claim for SMI. The form was signed by a staff member on 17 December 2020, and stamped with the branch stamp.

What should have happened is that Barclays should have completed the form and sent it directly to the DWP. However, that appears not to have happened, because Mr D didn't receive any SMI. He visited the branch again on 4 November 2021 with a copy of the MI12 he'd retained from the first visit, and that copy was again stamped with the branch date stamp.

Up to this point, Mr D had been making his monthly payments of a little over £500 in full by direct debit, but in January 2022, he cancelled his direct debit. At the beginning of February 2022, the DWP approved a back-dated claim for SMI, and sent Barclays a lump sum of just over £2,100, and thereafter began sending monthly amounts of just under £150 to cover future interest instalments. That monthly sum would increase later, as interest rates varied.

The lump sum was meant to have covered the now-historic interest payments on the mortgage between Mr D first becoming eligible for SMI and the date the claim was paid. However, Barclays applied it differently. It applied just over £500 as a regular payment in lieu of the one that had gone unpaid in January 2022 after Mr D cancelled his direct debit. The residue of just over £1,600 was applied as a part-redemption: that is, a permanent lump-sum reduction in the outstanding balance. Meanwhile, Mr D was under the mistaken belief that the lump sum from the DWP was intended to fund *future* monthly payments.

From March 2022 onwards, the only sums received into the mortgage account were the monthly SMI payments, which meant that arrears began to accrue. In February 2023, Barclays answered the complaint Mr D had made by offering an apology and £300. In April 2023, Barclays took Mr D to court for the arrears. In June 2023, having heard the bank's case and Mr D's counter arguments, the court adjourned the case without making any order, either on the case itself or on the costs of bringing it. In July 2023, Mr D referred his complaint to us.

Our investigator upheld the complaint in part. He considered Mr D should accept responsibility for the consequences of the missed payment from May 2019, and the arrears that accrued after he cancelled his direct debit in January 2022. But he also thought Barclays was at fault in how it had processed the £1,600 residue of the lump sum from the DWP.

He said Barclays should re-work the mortgage account on the basis that this amount had been credited in the normal way rather than as a part redemption. The resulting pre-payment created by the re-working should then be returned to Mr D, with interest, allowing him to then choose whether to pay it back into the account to reduce the arrears. Lastly the investigator said Barclays should pay Mr D £1,000 rather than the £300 it had offered him.

Neither party was happy with the proposed outcome. Mr D said the legal fees from the court proceedings shouldn't be paid by him. Barclays denied ever having received the MI12 to fill in and send to the DWP. It even said there wasn't any evidence Mr D was receiving SMI payments.

The case was passed to me to review and determine.

### **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've considered all the available evidence and arguments in order to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of

what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

To some degree, I can understand Barclays' slightly contradictory position. On the one hand, it has sent us screenshots from its various internal systems, all of which are silent on the subject of SMI, to support its argument that no SMI claim has ever been received or processed at its end. But in adopting that stance, Barclays appears to be disregarding the lump sum of just over £2,100 received in February 2022 and the further monthly instalments received after that, which weren't being made by Mr D because he had cancelled his direct debit. That's hard to ignore.

I've seen extracts from Mr D's benefit payment record with the DWP, where the amounts and dates correspond with sums received into the mortgage account. It is therefore reasonable for me to conclude that the payments, which began in February 2022, are being made by the DWP and flow from a delayed, but eventually successful, claim for SMI. Furthermore, the timing of the claim being approved and the payments beginning are consistent with Mr D's second attempt to get Barclays to fill in the MI12 in November 2021 finally bearing fruit.

Putting all of the above together, my first conclusion is that Barclays most likely received Mr D's MI12 form in December 2020 but failed to do anything with it until November 2021. My second conclusion is that Barclays applied the lump sum SMI payment wrongly in February 2022, and needs to rework the mortgage account to remedy that error.

That re-working exercise will create a pre-payment (around £1,600 but the exact figure will only be known once the work has been done) as at the date of credit in February 2022. The investigator says this should be refunded to Mr D with interest. I'm not persuaded that's appropriate, given the arrears that accrued on the mortgage subsequently. In my view, the fairer approach would be for the pre-payment arising from the re-working to remain on the account to offset the arrears accumulation.

As far as those arrears, and the subsequent court action, are concerned, I'm afraid Mr D hasn't helped himself here. I'm not entirely sure whether his decision to cancel the direct debit was in frustration at Barclays inaction over the MI12 or the mistaken belief that the lump sum from the DWP was intended to fund *future* monthly payments. It may even have been a combination of the two but in any event, it makes no difference either way.

Regardless of the circumstances and/or motivation, it's never a good idea to stop making payments legitimately due under a contract. All that can ever do is make an already bad situation worse. That's the case here because it was Mr D stopping his direct debit – and not the problems with the SMI claim – that was the primary cause of the arrears that were reported on his credit file, and in due course led to Barclays beginning court action and incurring the costs of doing so.

In saying that, I'm mindful that if Barclays had applied the SMI lump sum correctly in February 2022, Mr D's account would have gone into pre-payment; however, that would soon have been dissipated as the amount received into the account in

successive months fell short of what was required. The court action, and the costs thereof, would most likely still have happened, albeit a few months later than it did.

If the remedy I'm proposing is agreed and implemented, the pre-payment arising from the re-work of the mortgage to reflect the correct application of the lump sum SMI payment will change the pattern of arrears accumulation between February 2022 and the date of settlement. If a residual arrears amount still exists at the point of settlement, I'd expect the parties to reach agreement on how that should be managed, mutually and without recrimination over what has gone before.

I'll clarify something Mr F raised regarding the court's conclusion that no order be made as to costs. He has queried whether that means Barclays can't or shouldn't debit its legal costs to his account. The straightforward answer to that question is no.

Barclays' right to debit legal costs to a mortgage account arises from the mortgage contract. If the court had ordered that Barclays not do so in Mr D's case, that would over-ride the contractual position and I would have no power to countermand what the court had decided.

What happened here is that the court made no order either way; it didn't say Barclays could debit the costs (it didn't need to because the contract already permits that) but also didn't say Barclays couldn't.

With the court staying silent on the question of costs, the contractual position remains unaltered; i.e. Barclays *can* debit its legal costs to Mr D's mortgage. But the court's silence also means I can assess whether it's fair for Barclays to do so. Given my earlier finding that the arrears that led to the court action and resulting costs flowed primarily from Mr D's decision to stop his direct debit, and a correct application of the SMI lump sum would only have delayed the court action, I find that the costs were fairly incurred and charging them to Mr D's mortgage account isn't unreasonable.

That leaves the matter of compensation for Mr D's time, trouble and upset. Assessing compensation isn't an exact science; everyone's reaction to events is unique to them. It's clear from his testimony that Mr D has found this episode stressful and time-consuming, and I appreciate that. It also went on for an inordinately long time; it took, to all intents and purposes, a year for Barclays to facilitate his SMI claim. And that's against a backdrop of Mr D being, by definition, in a degree of financial difficulty.

But I have also to keep in mind that Barclays hasn't made *all* of the mistakes Mr D attributes 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. As I have indicated, Mr D contributed to his current situation to some degree. Taking everything into account, I agree with the investigator that £1,000 is fair and reasonable in this case."

I gave the parties two weeks to comment on the provisional decision; that time has now passed. Mr D didn't say anything materially new but reiterated his view that the legal costs were unfair and that the compensation award should be higher.

Meanwhile Barclays said that in order to consider the provisional decision, it needs sight of some of the evidence I had relied on when reaching my provisional conclusions. However, as the investigator pointed out, this was evidence that Barclays already had to hand, either because he had sent to the bank to consider and comment on several months ago, or because it was evidence the bank had supplied in the first place.

## **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.

Having considered afresh everything that both parties have said and provided, I won't be departing from my provisional conclusions.

Starting with the response from Barclays, I am not prepared to allow the bank any further time to consider the provisional decision, or to send it further copies of evidence we first asked it to comment on months ago. I take on board Mr D's ongoing dissatisfaction with my findings on the legal costs and the level of compensation. However, he hasn't said anything materially new that might give me any reason to alter my findings on either.

## **My final decision**

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

- re-work Mr D's mortgage account on the basis that the lump sum SMI payment received in February 2022 was credited as a regular payment *in its entirety*; and
- pay Mr D £1,000 compensation.

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 Mr D to accept or reject my decision before 1 May 2024.

Jeff Parrington

**Ombudsman**