

The complaint

Mr and Mrs B say that Barclays Bank UK PLC mis-sold them an interest only mortgage. They've made several complaints about their mortgage in the past, and they now complain that Barclays has failed to comply with its obligations, has lied to them, and obstructed their complaints.

What happened

Mr and Mrs B have a mortgage with Barclays, taken out in 2008. The mortgage is secured over a property Mr and Mrs B bought as a new-build property in 2004 – they initially had another mortgage, taking this one out in 2008.

Barclays lent £251,000 on interest only terms, with a term of just under ten years. Barclays valued the property at £326,000, though this was an index valuation with no physical inspection of the property. An index valuation is where a valuation is derived from the initial purchase price plus house price inflation in the local area since purchase.

Before completion the solicitor instructed to do the legal work noted that there was no building control completion certificate for the property. Both Barclays and Mr and Mrs B agreed to proceed with the re-mortgage. An insurance indemnity policy was also put in place to protect Barclays as local authority search information wasn't available.

Mr and Mrs B have experienced significant problems with the property, which they believe are related to defects in its construction. They tried, without success, to take action against the local authority which signed off the project. They did obtain compensation from the developer, but not enough to remedy all the defects. They also made a claim on the NHBC warranty, but without success – a complaint to the Financial Ombudsman Service about that was not upheld.

From at least 2015, Mr and Mrs B have complained to Barclays about their mortgage and what they consider to be Barclays' failings in advancing them a loan over a defective property.

From 2017, Mr and Mrs B asked Barclays to support them in a negligence claim against the conveyancing solicitor. They also asked for an extension of the mortgage term. Barclays refused their application for a term extension.

Mr and Mrs B complained about that, and about Barclays' unwillingness to get involved in their legal action. They said that Barclays had failed to support them – it wouldn't allow them to make a claim against its indemnity policy, it hadn't supported them as they approached the end of the mortgage term and was threatening repossession, hadn't helped them with the issues with the property and had knowingly allowed them to take out a mortgage on an "illegally built property".

That complaint was considered by another ombudsman. She said she couldn't consider anything about the original lending decision, because Mr and Mrs B were out of time to complain about that. She considered the rest of the complaint, and concluded that:

- The indemnity policy was to protect Barclays, not Mr and Mrs B, so they weren't entitled to make a claim under it.
- Barclays didn't consider the conveyancer had caused itself any loss. It considered the likely costs involved, and its view of the prospects of success, and didn't consider there were grounds for it to make a claim against the conveyancer. That was a reasonable decision, especially bearing in mind that Mr and Mrs B had not succeeded in a similar claim themselves.
- Barclays had given fair consideration to their request for a term extension. Although it had been willing to allow them some time to carry out works to the property, it didn't agree to a longer extension. In the five years since the term ended, it had shown forbearance and given Mr and Mrs B chance to pursue their claims against other parties and get the property into a saleable condition. It had acted fairly and reasonably. Barclays wasn't responsible for Mr and Mrs B's problems with the property, or their financial difficulties, and had shown appropriate forbearance. It wasn't unreasonable that it now expected the mortgage to be repaid.
- Barclays didn't handle their mortgage or their complaint inappropriately, and involved specialist staff members where needed. It's beyond the scope of a complaint to the Financial Ombudsman Service to give a detailed explanation of every action Barclays took at every step. But overall, it hadn't acted unfairly.
- For those reasons, she didn't uphold their complaint.

In 2023 Mr and Mrs B made a further complaint. They said that this complaint was about Barclays' failure to comply with its regulatory obligations and its duty to prevent fraud. In their complaint letter to Barclays they said they had received contradictory letters on the same day, the first telling them that their mortgage was being referred to Barclays' solicitors and the second telling them what they needed to do to prevent a referral. They said that they'd had trouble contacting Barclays staff and that it hadn't replied to a letter they'd sent in May, received by Barclays on 1 June 2023. They said they believed they had a payment arrangement in place.

Barclays said it had acted appropriately in telling Mr and Mrs B that it would refer the mortgage to its solicitors, and what they needed to do to avoid legal action being taken. But it accepted it hadn't replied to the May letter, and offered £100 compensation for that.

Mr and Mrs B then made a further complaint to us. They said that their complaint concerned breaches of Barclays' regulatory obligations, and how it had handled their previous complaints.

In particular, Mr and Mrs B referred to material they'd obtained from us following a subject access request made at the conclusion of their previous complaint. They said this showed that Barclays was colluding with, or directing, our investigator to withhold relevant evidence from them. They were concerned that Barclays may have put improper pressure on the investigation in other ways too, with the result that their complaint wasn't properly investigated and matters relating to the taking out of the mortgage ruled out of time. They were also unhappy with the two letters sent in July 2023. And they raised a further issue regarding a request Barclays had made for a letter of authority in 2020, which they believe was related to an endowment policy.

Our investigator said that the complaint about the letter of authority was a separate complaint which would need to be raised with Barclays before we could consider it. The investigator thought Barclays' offer of £100 compensation for any confusion arising from the

July letters was fair. And the investigator said that we'd already dealt with the previous complaint, and that the subject access material didn't change the outcome of that complaint.

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.

It's part of the rules of the Financial Ombudsman Service that we can only consider a complaint that a firm has had the chance to resolve first. That doesn't mean that every individual argument or complaint point must be addressed, but it does mean that the firm must have had the chance to understand, consider and respond to what its customer is unhappy about. We can only look at a complaint once that's happened, if the customer remains unhappy.

Applying that to this case, I agree that the complaint about the letter of authority isn't something that would be appropriate for me to consider here. It wasn't part of, and isn't related to, the complaint Mr and Mrs B made to Barclays and referred to us. So Mr and Mrs B will need to raise that matter separately with Barclays – as I understand they've now done – and come back to us if they're unhappy with its response. I therefore make no findings about this part of their complaint here.

I'll therefore turn to the complaint about the evidence Mr and Mrs B received from their subject access request following the previous ombudsman's decision. They're concerned that it's evidence that Barclays improperly pressured our investigator, or colluded with our investigator, to withhold evidence, and that their complaint hadn't been properly investigated. But I don't agree.

The material Mr and Mrs B refer to is an exchange of emails between the investigator who dealt with the previous complaint and a case-handler at Barclays. Mr and Mrs B had asked for copies of evidence the investigator had relied on so that they could review it and make any comments before their complaint was considered by an ombudsman. The investigator notified Barclays of that and explained what material Barclays had provided that he was minded to share with Mr and Mrs B.

Generally speaking, where a party requests copies of the evidence we've relied on, we'll provide it. It's fair and reasonable, and in accordance with the principles of natural justice, to allow parties to a complaint access to relevant evidence and the opportunity to comment on it.

However, it's not an absolute right – there may be occasions when it's appropriate for us to not do so. Our rules therefore allow us to receive evidence in confidence where appropriate, and not disclose that evidence to one or other party – only providing an edited version, summary or description of it.

When he received Mr and Mrs B's request for evidence, our investigator reviewed the file and compiled the evidence he'd relied on. One of the pieces of evidence was a copy of Barclays' contact notes – its internal record of its discussions with Mr and Mrs B and other notes relevant to the conduct of their account.

The investigator explained to Barclays that he intended to disclose the document to Mr and Mrs B. Barclays objected. It was entitled to object. But that wasn't the end of the matter; as the investigator explained at the time, it's up to us – not Barclays – whether to disclose evidence. But in making that decision we would take into account any reasons why Barclays didn't think it should be disclosed. The investigator was therefore consulting with

Barclays to take into account its views – not offering Barclays a veto on disclosure.

This was not improper. This was what was supposed to happen. It's not evidence that Barclays obstructed our investigation, or influenced it. It's not evidence that the investigator colluded with Barclays. It's evidence that the investigator – properly – considered Mr and Mrs B's request for disclosure alongside Barclays' comments on whether a particular document should be disclosed.

Mr and Mrs B have pointed to particular phrases used in the email exchange. But I don't think they change my conclusions. For example, Barclays said it wanted to "be on the same page" as the investigator. But, in context, I don't think this is evidence of collusion between them, it's merely that the Barclays complaint handler wanted to ensure that they and the investigator were discussing the same document.

Barclays did object to part of the document being disclosed – specifically, a section where it had recorded the legal advice it was given by its own solicitors. Our investigator agreed to redact that section before disclosing the document to Mr and Mrs B. Barclays did object to that being disclosed in strong terms. But the investigator made clear it was for the Financial Ombudsman Service, not Barclays, to make the final decision on what would be disclosed. And it's not unreasonable to expect legal advice to remain confidential, as the investigator concluded.

All these matters were considered by the previous ombudsman when she made her final decision. She had satisfied herself that the requirements of our rules and natural justice were complied with when she issued her final decision. She took the full – unredacted – version of the contact notes into account in making her decision, saying

"I've considered the notes of Barclays' contact with Mr and Mrs B and can't see that they were misadvised or misinformed by Barclays. I can see that it got specialist teams (e.g. its legal team) involved in complex/specialist matters. This is what I would expect it to do."

An ombudsman's decision is final. Once a decision is issued, that's the end of a complaint and it can't be looked at again, except in very limited circumstances – such as where there's material new evidence likely to affect the outcome of the complaint.

I'm satisfied that's not the case here. There's no material new evidence about the underlying substance of the complaint. The contact notes, in their unredacted form, were considered by and taken into account by the ombudsman at the time.

And while Mr and Mrs B didn't see the email exchange between the investigator and Barclays until afterwards, when they made their subject access request, the ombudsman would have seen it at the time as it was part of the complaint file she reviewed before making her decision – and she confirmed in her decision that she'd taken everything into account. So it's not material new evidence.

And even if it was material new evidence, for the reasons I've given I'm satisfied that the email exchange is not evidence of improper conduct either by our investigator or by Barclays. So it's not something likely to impact the outcome of the previous complaint.

I also note that Mr and Mrs B complained to the Independent Assessor following the previous decision. The Independent Assessor also would have considered the entire complaint file, including the emails disclosed as part of the subject access request. She said:

"I have no concerns of any instances of collusion with the business in deciding the

outcome of your case based on what I have seen.”

Strictly speaking, we don't have the power to consider a complaint about the handling of a complaint, since complaint handling isn't a regulated or other activity in its own right that falls within our rules. But in this case, given that Mr and Mrs B's complaint is that Barclays has acted unfairly in withholding evidence or colluding to affect the resolution of problems with their property and mortgage, I've considered that complaint as being ancillary to the mortgage itself, which does fall within our jurisdiction.

Having done so, as I've already said, I'm not persuaded that there's evidence that Barclays acted fairly or improperly, so I don't uphold this part of the complaint. And I'm not persuaded that there's material new evidence likely to affect the outcome of the previous complaint, so I won't revisit the findings reached by the previous ombudsman because of this email exchange.

Mr and Mrs B say that Barclays hasn't complied with its regulatory obligations, or taken action it should have done to prevent fraud. I think this is another way of making the same complaint they made before – that they believe Barclays bears at least some responsibility for the problems they've experienced with the property and as a result with the mortgage, and that it hasn't treated them fairly as a result. But as I've said, we won't reconsider a complaint that we've already dealt with, or explained that we can't deal with. I'm satisfied that this is essentially the same complaint that the previous ombudsman addressed (even if expressed in a different way), and so I'm not going to re-consider those matters.

That leaves the third part of Mr and Mrs B's complaint, the two letters sent in July 2023. Barclays explained that it has two standard letters – one to explain that it is referring the mortgage to its solicitors to take legal action, and one to explain what Mr and Mrs B can do to avoid legal action.

The previous ombudsman said that Barclays hadn't acted unfairly in not agreeing to a term extension, and concluded

“I'm satisfied it has shown them considerable forbearance over the years, so I think Barclays was entitled to ask them to sell the property.”

As I've explained, the previous decision was final and I'm not going to re-consider the ombudsman's findings. She said that Barclays had shown forbearance but was now entitled to expect the loan to be repaid. When Mr and Mrs B still hadn't done so by July 2023, it referred matters to its solicitors.

I understand what Barclays was trying to do in sending the two letters – telling Mr and Mrs B it was moving towards repossession action, and telling them how to avoid that. I think that was reasonable and appropriate. But I can understand how they found it confusing to receive those messages in separate letters on the same day. Barclays has offered £100 compensation for the upset caused, which I think is fair.

My final decision

My final decision is that Barclays Bank UK PLC has made a fair and reasonable offer to resolve this complaint and should pay Mr and Mrs B £100 compensation, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 22 May 2024.

Simon Pugh
Ombudsman