

The complaint

Mr and Mrs M complain that Barclays Bank UK PLC recorded a mortgage default on Mr M's credit file in January 2020. They'd like it to be removed.

What happened

Mr and Mrs M had a mortgage with Barclays. They entered individual voluntary arrangements (IVA) in mid-2016. They say their credit files no longer show adverse data related to this. However, Barclays recorded a default on Mr M's credit file in January 2020 when it took possession of the property. This will remain on Mr M's credit file until 2026. Mr M says this has an ongoing impact and is preventing him getting a preferential mortgage product.

I sent a provisional decision to the parties explaining why I intended to uphold this complaint. In summary, I said Barclays should have recorded the default on Mr M's credit file in late 2018. I said it should adjust his credit file accordingly and pay compensation of £200.

Mr M said the compensation didn't represent the effort needed to resolve this or put him into the position he might have been in. He said he only raised this as he'd been asked for his view and would leave the award for the ombudsman to determine. Otherwise, Mr M was happy with the outcome.

Barclays said it would send comments. But despite allowing it additional time, it hasn't done so.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. While Barclays might have intended to send further comments and evidence, we allowed it extra time to do so and the further comments and evidence haven't been provided. Our rules allow me to proceed with the evidence that is available – and which I think is sufficient to reach a fair decision. Issuing a final decision without further delay is consistent with our aim of resolving complaints quickly and with minimum formality.

Although this was a joint mortgage, at times I've referred only to Mr M as the complaint is about the default recorded on his credit file.

In August 2016 Mr M entered into an IVA with his creditors. The IVA concluded in September 2021.

Secured debts aren't usually included within an IVA. Barclays would have had to consent to this, which it seems it didn't do. As a secured lender Barclays was entitled to recover its debt

from the sale of the security. It didn't have to stop applying interest, record a default or take possession of the property simply because Mr and Mrs M entered into IVAs. However, any shortfall following the sale of the security would be an unsecured debt and could potentially fall within the IVA.

As required by the relevant rules Mr M's IVA stated how he intended to deal with secured creditors, including Barclays:

I propose that the [property] will be sold by agreement with the secured creditor or failing such a sale it will be surrendered to the secured creditor. Any resultant shortfall for the secured creditor will be able to rank as an unsecured claim in the agreement.

Mr M proposed that any unsecured shortfall arising from the sale of the property was to be included in his IVA.

Mr M says the security property was in negative equity. The insolvency practitioner (IP) asked Barclays to consent to an agreed sale at a shortfall. After receiving a valuation and financial information for Mr and Mrs M, Barclays agreed. It held recovery action to allow the sale to complete. Barclays was told by the IP in April 2018 the sale had fallen through. The IP told Barclays that Mr and Mrs M would voluntarily surrender the property. Barclays process for this is to ask the borrower to complete and return voluntary surrender forms.

Barclays says these forms were returned incomplete or not at all. It says it didn't receive completed forms until December 2019. There were legal issues related to the charge on the property and until these were resolved Barclays was unable to take possession of the property without Mr and Mrs M's agreement.

There's some dispute about the cause of the delays in the forms being returned. Mr M says Barclays sent the forms to the security property (they were no longer living there) and to an incorrect address it had for Mrs M. Barclays notes say the IP told it Mr and Mrs M wanted to surrender the property in 6 to 8 weeks to allow time to remove their furniture – which suggests they had access to the property even if they weren't living there.

Barclays says it sent the voluntary surrender forms to the addresses it had in its records. It sent forms to the security property and to Mr M's correspondence address (which is the same as the address he used in his IVA proposal). It provided evidence to support this. Barclays' notes say when it contacted Mrs M she refused to discuss the property or provide her correspondence address.

The property was taken into possession in January 2020 and sold in December 2020. There was a shortfall debt of about £225,000. Barclays received about £25,000 from the IVA.

When should the default have been recorded?

The mortgage wasn't within the IVA so I don't think Barclays had to record a default on the mortgage account simply because Mr M entered into the IVA in 2016. And this isn't itself a reason for Barclays to take possession.

Barclays says it records a default when it takes possession of a property. I have to consider if that was fair in these particular circumstances.

I don't think Barclays was responsible for all of the delays with the property being taken into possession. It held recovery action to allow the sale of the property to proceed in 2017. And it held recovery action to allow Mr and Mrs M to return the completed voluntary surrender

forms. I think that was fair. I don't think it would have been fair for Barclays to take legal action in mid-2018 (with the related costs) when it had been told by the IP that Mr and Mrs M intended to surrender the property.

But at some point in 2018 Barclays ought reasonably to have become aware that it wasn't going to receive completed forms from Mr and Mrs M within a reasonable timescale. Mr and Mrs M hadn't made a payment into the mortgage account since late 2015 and their arrears were increasing. They proposed to sell the property, but didn't manage to do so. And they didn't return the necessary forms to surrender the property within a reasonable timeframe. I think it would have been reasonable and fair for Barclays to proceed with legal action to take possession of the property. Barclays was unable to do this due to legal issues.

It's difficult to say exactly when Barclays would have proceeded with legal action (if it had been able to do so) and when it would have taken possession. It would have had to allow time for Mr and Mrs M to complete and return the forms (especially as the IP said they'd been issues with them receiving the forms). I think in the circumstances, it would have been fair for Barclays to wait until August 2018 before starting legal action for possession. It seems unlikely the IP or Mr and Mrs M would have challenged this. If it hadn't had legal problems with taking possession, I'd expect Barclays to have been in a position to take possession by October 2018. I think this would have been the point at which Barclays would have recorded a default.

A shortfall debt would usually be recorded on the borrower's credit file and later updated to show the account as settled or partially settled. Barclays says it recorded the account as settled in March 2021. As Mr M hasn't raised any concerns about this I won't look into or make any findings regarding this.

Lastly, Mr M says no default is shown on Mrs M's credit file. Mrs M hasn't made a complaint about her credit file and I must be clear that I'm not looking into or making any findings about this. I don't think it's fair and reasonable to require Barclays to remove the default from Mr M's credit file due to it being inconsistent with Mrs M's credit file.

Putting things right

I think Barclays should have recorded the default on Mr M's mortgage account in October 2018. It should update the information recorded with the credit reference agencies accordingly.

Mr M says the default has had an impact on him and prevented him securing a preferential rate for a mortgage. As I don't think it was wrong for Barclays to record the default, I don't think it's fair and reasonable to require it to pay compensation for this. I can't see that it would have had a substantially different impact up to now if the default had been recorded in October 2018 rather than January 2020.

Our investigator had said that Barclays should refund some of the interest applied to the mortgage account. I don't think it's fair and reasonable to require this. In fairness, I need to take into account that Mr and Mrs M could have reduced the time it took for Barclays to take possession and sell the property by updating their addresses with Barclays and returning the voluntary surrender forms. And, given the amount of the shortfall that was not recovered, any interest adjustment is unlikely to result in a refund to Mr and Mrs M.

The default was recorded by Barclays later than it ought to have been. This was in part due to Barclays being unable to proceed with recovery action from mid-2018 to late 2019. I don't think the default would have had a significantly different impact on Mr M if it had been recorded in October 2018 rather than January 2020. And I think it's likely matters would have

moved on more quickly if Mr and Mrs M had completed and returned the voluntary surrender forms in mid-2018.

I do appreciate that this must have been a stressful and worrying time for Mr and Mrs M. Barclays' error wasn't responsible for their difficult circumstances. However, Mr M had to contact Barclays to ask for the default to be corrected and this was at a time when he'd hoped to put the IVA and the debts that were part of it behind him. In the circumstances, I think it's fair and reasonable to require Barclays to pay compensation of £200 for the additional upset and inconvenience this caused.

My final decision

My decision is that I uphold this complaint and order Barclays Bank UK PLC to:

- update the information provided to the credit reference agencies as if it had recorded the default in October 2018; and
- Pay £200 to Mr and Mrs M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 24 May 2024.

Ruth Stevenson
Ombudsman