

The complaint

This complaint is about a mortgage application Miss H made to Barclays Bank UK PLC in 2022. Barclays initially issued a mortgage offer, but then spent several months trying to decide if the shared equity property Miss H was buying, was acceptable security. Miss H eventually completed her purchase with a mortgage from a different lender, but the delays mean she's paying a much higher interest rate than she'd anticipated, which she says Barclays should reimburse her for.

What happened

By way of a provisional decision dated 1 May 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Miss H being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Miss H was a first time buyer, looking to acquire a 70% share in a property at a discounted price under a recognised scheme through her local authority. Barclays issued an offer on 19 April 2022, for a two-year fixed rate deal at 2.15%. which contained a clause requiring the conveyancing solicitor to check that the discounted price wouldn't be binding on it in the event of a sale in possession.

The solicitor initiated the enquiry with the local authority on 12 August 2022, and received a reply within two days confirming the discount price would be binding on Barclays. There then followed several months of to-ing and fro-ing between Barclays, the solicitor and Miss H. This included a request for a revaluation (which was cancelled and then re-instated) and a new offer (which still contained the problem clause along with other errors).

Meanwhile, frustrated by the delay and anxious not to lose her purchase, Miss H had applied to a different lender, which I'll call N. On 29 November 2022, N issued a mortgage offer that allowed for the equity share/discounted price arrangement, on a five-year fixed rate of 5.29%. In early December 2022, Barclays ordered another valuation; Miss H, having reached the end of her tether with Barclays, accepted the offer from N. She completed the house purchase with the mortgage from N and pursued a complaint about how Barclays had handled her application.

In February 2023, Barclays issued a final response apologising for its poor handling of the application. It declined Miss H's request to be compensated for the difference in cost between the aborted mortgage and the one she took with N, but offered her

£450 compensation for her time, trouble and upset. Miss H didn't accept the £450, referring her complaint to us instead.

Our investigator for the most part didn't recommend the complaint be upheld, but he did think that Barclays should increase the compensation from £450 to £600.

On a subsidiary point, he noted that whilst the case had been with us, Miss H had pursued a data subject access request with Barclays in order to obtain recordings or transcripts of phone calls between her and the business. She was unhappy that Barclays was taking too long to deal with the request and felt that the underlying complaint about the mortgage application should be paused until that information was available to us to consider.

He explained that it was for us to decide what information we needed in order to determine a complaint, but if Miss H wanted to make a separate complaint about Barclays' handling of the subject access request, she could do so.

Barclays accepted the investigator's recommendation, but Miss H asked for it to be reviewed by an ombudsman. It's come to me, and having reviewed the casefile, I've reached a different conclusion from the original investigator on how the complaint should fairly be determined. Accordingly, I'm setting out my conclusions in a provisional decision, to allow both parties to comment before the matter is finalised.

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 work within the rules of the ombudsman service and the remit those rules give us. 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's for me to decide what information I need in order to decide a complaint fairly, and also how much weight to attach to the evidence I have. The provisional decision I am setting out here is not reliant on the content of the additional material Miss H obtained from her subject access request.

Miss H is, as the investigator has already set out, free to pursue a separate complaint about the subject access request if she wants to. But it has no bearing on my consideration of the underlying complaint about the mortgage application. I already have all I need to decide that.

The investigator was of the opinion that once alerted to the problem with the clause by the solicitors in August 2022, Barclays then tried its best to find a solution that would enable the mortgage to proceed. But within that, there clearly were mistakes and delays on Barclays' part that made an already difficult situation worse, and justified increasing the level of compensation from £450 to £600.

Broadly speaking, I don't disagree with that, but there's more to consider. The investigator observed that a great deal of the delay in getting to grips with the clause was because the solicitors didn't even begin its enquiries until almost four months after receiving instructions. On first glance, that might indeed appear to relieve Barclays of responsibility for that period, but actually the reverse is true.

In a purchase and mortgage transaction where only one firm of solicitors are involved, the solicitors have two clients, the purchaser and the lender. There are two discrete roles the solicitors carry out. For the purchaser, the solicitors ensure that the

property has good title, and there are no restrictions or hidden claims over the title or occupiers' rights. After completion, they will register the purchaser's title to the property and ensure all fees and taxes are paid.

For the lender, the solicitors have to ensure that the title is suitable security for the mortgage. They will arrange signature of the mortgage deed, prepare the report on title for the lender, obtain any undertakings (binding promises) from the seller's solicitors to safeguard the lender's position, they'll transfer the funds over on completion and register the lender's charge.

Apply that to the case at hand, and the solicitors were acting as Barclays' agent when they made the enquiries of the local authority and eventually reported back to Barclays asking for instructions. That means when we're assessing delay, the time between April and August 2022 is also Barclays' responsibility and therefore relevant to when we conclude it should reasonably have told the consumer it wouldn't lend, allowing her to look elsewhere sooner. What's more, Barclays really should know this without having to be reminded by me.

Miss H received her mortgage offer from N on 29 November 2022. Determining how much earlier she might have applied to N but for the near four-month delay in the solicitors pursuing enquiries with the local authority isn't an exact science. For the purpose of deciding what a fair outcome should be for this complaint, I have proceeded on the basis that if the solicitor's delay is taken out of the equation, and all other things being equal, Miss H would in all likelihood have started her application to N in time for an offer to be issued on 1 September 2022.

We've obtained information from N, in confidence, about the interest rate products it had available at the relevant time. Having studied that information carefully, I've identified that the product available on 1 September 2022 that corresponds to the one offered on 29 November 2022 is a five-year fixed rate at 3.79%.

The amount of the mortgage is £115,000, it's capital repayment, and the interest rate product has a fixed duration of 60 months rather than a fixed end date. Put all that together, and Miss H will pay an additional 1.5% interest on the mortgage for 60 months as a result of an unreasonable delay on the part of Barclays' agent in pursuing enquiries into the clause.

The redress I'm recommending, if accepted, will cover Miss H in part for loss already incurred and in part for loss yet to be incurred. As the latter will exceed the former, I don't propose to award Barclays to pay Miss H interest on the additional interest she has already paid."

I gave the parties two weeks to comment on the provisional decision; that time has now passed. Miss H replied accepting the provisional decision; she also pointed to some minor typos in the decision narrative, which I have corrected in the extract reproduced above. She also expressed concern about how long Barclays would given to arrange settlement. Despite a reminder, Barclays hasn't responded; nor has it asked for more time in which to do so. As the provisional decision was sent to the same email address Barclays has used to correspond with us throughout this case, I'm satisfied the reason for the business not having replied isn't because it hasn't received the provisional decision.

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.

Assuming Miss H accepts my decision within the specified period, it will become binding on Barclays. We generally take the view that four weeks from being notified by us that a consumer has accepted a final decision is a reasonable period for a business to arrange settlement.

If Miss H doesn't hear from Barclays with details of the settlement within four weeks of us informing Barclays that the decision is binding on it, she should let the investigator know.

My final decision

My final decision is that I uphold this complaint, by ordering Barclays Bank UK PLC to:

- calculate and pay Miss H the additional interest she has paid and will pay on her mortgage with H as a consequence of the delay on the part of the solicitors dealing with the clause in the Barclays' mortgage offer; and
- pay Miss H £600 compensation for her time, trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 12 June 2024.

Jeff Parrington

Ombudsman