

## The complaint

This complaint is about a buy-to-let (BTL) mortgage Mr V held until recently with Barclays Bank UK PLC. The core of the complaint is that monthly payments Mr V made to the mortgage weren't correctly credited to the account, leading to adverse reporting on Mr V's credit file. This has, in turn, led to his Barclays credit card limit being reduced to a nominal amount. Mr V says he's also been hindered in his attempts to complete a new mortgage with a different lender and raise money to help a family member redeem their own mortgage.

## What happened

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Our decisions are published and it's important that I don't include any information that might result in Mr V being identified. Instead I'll give a summary in my own words (and rounding the figures where appropriate) and then focus on giving the reasons for my decision.

Mr V's BTL mortgage ran on a Barclays legacy computer system which has limited functionality. The mortgage offer from 2014 included a special condition requiring the payments to be made by direct debit. However, Mr V has explained that he paid by bank transfer, with the bank's blessing. In the account statements, Barclays recorded the credits with the narrative "cash received".

In July 2022, Mr V complained when a monthly payment wasn't correctly allocated to his account. Barclays answered in a final response dated 5 August 2022. It said that the payment had been applied as a lump sum reduction in the capital balance – in effect, a part-redemption – instead of being treated as the regular monthly payment. Barclays said this was a known issue with the legacy system which it was trying to fix; in the meantime, it had re-applied the payment correctly and removed the reporting of a month's arrears from Mr V's credit file. It apologised and offered (not credited) Mr V £300 compensation for his time and trouble.

Unfortunately, a similar problem occurred with the payment for December 2022, prompting Mr V to complain again in January 2023. It happened again in February 2023 and March 2023. In addition to the complaint, Mr V made a data subject access request (DSAR) of Barclays under the General Data Protection Regulation (GDPR). Barclays responded on 18 April 2023 in similar vein to the previous complaint; an apology, a

promise to remove the arrears reports from his credit file, and compensation, this time by way of a credit of £400 to his account.

In May 2023, Mr V noted that his credit file still showed missing payments for December 2022, February 2023 and March 2023. With no satisfactory resolution in sight on the complaint or the DSAR, Mr V contacted this service and the Information Commissioner's Office (ICO). In July 2023, Barclays issued another final response, in which it apologised for the delay in cleansing Mr V's credit file, assured him this had now been done, and offered (not credited) a further £350 compensation.

Mr V didn't think this was good enough and asked us to investigate. He told us of the problems the adverse entries on his credit file caused; these included:

- a reduction in his credit card limit from £7,000 to £250;
- being discouraged from applying for other mortgage credit, during a climate of rising interest rates, for fear that the adverse reporting would result in a rejection, and that the reporting of the rejection itself would cause further damage to his credit rating; and
- being unable to borrow to help a family member clear their mortgage, with the result that the family member had to sell the mortgaged property for less than its true value in order to repay their mortgage.

Mr V asked us to look into the complaint; he also sent a letter before claim to Barclays, setting out grounds for potential legal action. We explained to Mr V that we would not look into a complaint that is also the subject of simultaneous legal action. Mr V said he'd hold the legal action in abeyance in order for us to proceed. Under cover of an email dated 11 August 2023, he sent us a timeline of events going back to 2019.

The investigator to whom the case was allocated, in addition to investigating the underlying complaint, attempted to explore potential "workarounds" to try and mitigate the impact of the system limitations going forward. These included Mr V possibly changing his payment method to direct debit, and/or Barclays switching the mortgage onto its new computer system. She also asked what the likelihood was of Barclays being able to resolve the limitations with the legacy system.

Barclays said the migration of all accounts from the legacy to a current system had begun but could not give a timeframe for when it would be completed. An alternative would be for Mr V to apply for an internal re-mortgage, which would involve a discussion with a mortgage advisor, appointment of a conveyancer to register a new legal charge and vacate the existing one, and the application must meet Barclays' current BTL lending criteria.

It explained that the process of crediting payments received by transfer took up to three working days, and with Mr V making transfers close to the end of the month, sometimes the credit was applied in the following month. It suggested Mr V pay earlier in the month to allow plenty of time for the credits to be applied. The investigator floated the latter idea with Mr V, but he was resistant to making any changes to his payment arrangements.

Mr V decided to pay the mortgage off altogether. This did not go smoothly; Mr V complained that the redemption statement was wrong, and there was delay in getting the right information. Barclays issued a final response on 6 March 2024, apologising and paying Mr V £100.

Meanwhile, on 30 April 2024, Barclays issued a final response in relation to the late payment from February 2024. Here, it referred to Mr V making payments by standing order (rather than bank transfer as he had said) and said he had been informed in July 2021 of a change in how payments were processed on BTL mortgages. He had apparently been

recommended to pay no later than the 25<sup>th</sup> of each month, and in February 2024, had done so on the 26<sup>th</sup>. The letter concluded by acknowledging that Mr V had since redeemed the mortgage altogether, informed him that a refund of just under £38 was due to him, and credited him with a further £300 for his time and trouble.

In June 2024, the investigator issued her view of the complaint. I won't repeat the detail of her findings here, not least because much of the content of the view was an examination of the potential workaround to stop the problem reoccurring. Events have overtaken that by virtue of Mr V having repaid the mortgage in full. Accordingly, I'll simply summarise the steps the investigator recommended Barclays take to resolve the complaint; these were;

- ensure any remaining adverse credit reporting be removed from Mr V's credit file;
- to rework the mortgage account to identify all additional interest charged due to the delayed credit of the affected payments;
- refund any extra interest not yet already refunded, with interest at 8% pa simple on the refunded amount(s); and
- pay Mr V a total of £1,500 compensation, to include those sums already paid as distinct from those that had just been offered.

Barclays responded to say that all adverse entries had already been removed, and that there was no extra interest to refund because that had been adjusted for when each delayed payment was manually reconciled. The bank also asked for clarification of the compensation award, and the extent to which payments it had already made had been taken into account.

The case was taken over by a new investigator, who confirmed to Barclays that the award only related to events since December 2022, for which £750 had been offered to date. The proposed award therefore represented a doubling of what the bank offered so far, better to reflect the distress and inconvenience caused to Mr V. At this point, Barclays agreed to the proposed settlement.

Mr V remained dissatisfied; he thought the investigator's view was lacking clarity about its terms of reference and scope. He had a number of conversations with the new investigator about the absence of an award to reflect the consequential losses in the form of the opportunity cost to him because he refrained from applying for other mortgage credit during the period his credit file was affected. That prompted a discussion about how Mr V could evidence this (not least when he hadn't been asked to do so up to now) and the standard of proof we would apply when deciding whether any applications he might otherwise have made would have been successful.

Mr V reiterated that a family member had sold his home because Mr V hadn't borrowed money to help him repay his mortgage; he also mentioned not being able to replace his car. The new investigator articulated his thoughts on this issue in a follow-up view dated 31 July 2024. Briefly, the conclusion was that insofar as Mr V hadn't actually made any applications, the investigator said he couldn't safely say on the balance of probabilities whether such applications, if made, would have been successful or not.

Mr V still disagreed, and with no agreement likely, the case was passed to me to review.

### **What I've 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.

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 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, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

Having no regulatory power means it's not open to me to direct Barclays on how it runs its business at the operational level. So the fact that the legacy system had limited functionality isn't part of my remit. What is in my remit is how that limited functionality affected Mr V up to the point he redeemed the mortgage altogether.

Mr V says that how and when in the month he made the payment is far from the core of the complaint. It's for me to decide where the crux of a complaint lies.

Making sure all payments are made in full and in time is not Barclays' responsibility; it's Mr V's. Payment by bank transfer may well have been Mr V's preferred option, and Barclays may well have allowed him to use it, but that was still a departure from strict adherence to the terms and conditions of the mortgage, which required him to pay by direct debit.

Furthermore, where it had become apparent that the problems he was complaining about, even though they arise from limitations in the legacy system, could at least be reduced by him making his payment by a different method and/or on a different date, I don't think it was unreasonable to ask that he at least consider making adjustments to mitigate the situation. Events have now overtaken that issue; Mr V has found his own way to mitigate the problem, by repaying the mortgage altogether. I make the point merely for context.

A BTL mortgage isn't regulated in the same way that a residential mortgage is; it's viewed as a business venture where both contracting parties are acting commercially. Barclays' role is to administer the mortgage accounts in accordance with Mr V's instructions, not to manage the accounts for him. It's Mr V's responsibility to monitor and manage the mortgage but of course, he's entitled to expect a reasonable level of service and reliable information to help him do that.

This complaint is more straightforward than it might appear at first glance. That's because I don't have to decide fault; Barclays has admitted the limitation in the service its legacy system provides, and the problems it caused. What I do have to decide is what a fair

solution to the complaint should be. That means assessing the loss, both financial and non-financial, Mr V has incurred.

Financial loss can be direct and indirect. Here, the direct financial loss was the extra interest charged on the mortgage during the delay between Mr V's payments reaching Barclays and the money being credited to the account. That's why the first investigator recommended Barclays re-work the mortgage to backdate the credits and refund the extra interest to Mr V. However, Barclays has told us the manual reconciliation of each delayed payment included backdating, so that element of the recommended settlement has already happened.

If Mr V isn't confident on that point, it is open to him to arrange for the mortgage account to be audited by a suitably qualified and independent party. The evidence of the audit could then be used as the basis for a new complaint to Barclays, underpinned by the evidence of the finished audit. That would give the bank the opportunity to consider and respond to it.

Mr V would have to meet the cost of the audit, albeit if errors were found in the manual reconciliations that were to his detriment, he could fairly expect Barclays to reimburse the reasonable cost of the audit as well as taking any corrective action the audit revealed to be necessary. And if that wasn't resolved to his satisfaction, Mr V would still have the opportunity to refer that complaint to us.

I'll deal with the indirect financial loss shortly, but first, I'll address non-financial loss; that is the trouble and upset Mr V experienced, and the time he spent trying to resolve matters. Each time Mr V raised a complaint, Barclays issued a final response in which it either offered or paid a sum in compensation for non-financial loss, separate from any other redress for the underlying problems.

Some confusion has arisen at Barclays about which and how many of these awards our investigation took into account when the recommendation of £1,500 in total was made. I can see why; some of the bank's final responses, and the awards they contained, were issued either before or after the sequence of events we're looking at here. Also, some of the amounts of compensation Barclays proposed from time to time were merely offered, but not paid.

In his note of a conversation with our investigator on 26 July 2024, Mr V said the crux of the complaint was *"the sequence of events in 2023 which occurred after a number of payments had not been recorded properly over the years and which had been accepted following a Barclays offer"*.

The complaint about the July 2022 payment isn't part of this investigation; the final response was dated 5 August 2022. That gave Mr V until 5 February 2023 to refer it to us, and he didn't. Nor does this investigation cover the February 2024 payment or the problems with the redemption statement. Although we've been informed of the complaints that gave rise to the final responses of 6 March 2024 and 30 April 2024, Mr V's note of 26 July 2024 indicates that he doesn't consider them to be part of what he wants me to decide.

My assessment of fair compensation embraces what I consider is due for the problems with the December 2022, February 2023 and March 2023 payments.

I've given careful consideration to everything Mr V has said about the impact of these events on him. Our awards of compensation aren't meant to be punitive, and we don't award damages for personal injury, pain and suffering in the way a court would do. In all the circumstances of this case, I'm satisfied that the proposed total compensation of £1,500 is

fair, reasonable and proportionate to the distress and inconvenience caused by Barclays. Of that £1,500, £750 has been offered already (as the second investigator confirmed to Barclays) but only £400 has been paid.

Turning to indirect financial loss, Barclays has already removed all of the adverse data that was posted to Mr V's credit file during the period under examination here. Meanwhile, there's no risk of any further adverse data affecting Mr V's credit profile going forward, because of the action he has taken in redeeming the mortgage.

The sticking point for Mr V, and where he has focussed his request that the case be reviewed by an ombudsman, is that he believes he's due redress for the impact of not engaging in the financial arrangements he would otherwise have undertaken. I agree that this wasn't covered in the first investigator's assessment, but her successor did address it in his follow-up view of 31 July 2024.

I've considered what the investigator said, and what Mr V has said in response. During the period his credit file was adversely affected, Mr V didn't make applications for credit that were rejected. Rather he refrained from making any applications at all. I understand why Mr V took that approach; he was fearful that a rejected application for credit would itself be logged on his credit file, causing further damage. That was his legitimate decision to make; I imply no criticism and none should be inferred.

The difficulty it creates though is that I have nothing to go on when assessing how differently the applications for credit Mr V wanted to make would have been treated by prospective lenders if the only variable had been the state of his credit file. I say that because whilst important, an applicant's credit file is only one component of many in a lender's underwriting process.

Even with a perfect payment record to consider, there are myriad reasons why a lender might still decide an application for credit should not be granted. It might be deemed unaffordable, taking into account the applicant's income and existing credit commitments. In the case of mortgage finance, the property might not be acceptable security. Every lender has different lending criteria, different appetites for risk and differing policies on what types of property they will accept as security.

That's not an exhaustive list, and it's not intended to be. But it illustrates the point that what Mr V is asking me to do goes beyond making an assessment of what is most likely to have happened on the balance of probabilities. It's taking me into the realms of speculation, which is not in my terms of reference.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr V feels. That's a natural, subjective reaction, and entirely understandable.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done. Having done so, for all the reasons I've set out, I can't find in Mr V's favour, to the extent he is seeking.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate legal conclusion; sometimes it's about compromising to reach a fair and pragmatic conclusion. In my view, I've done that here.

If Mr V ultimately rejects my final decision, then subject to any time limits or other restrictions a court might impose, his recourse to a legal remedy of his own against Barclays over the subject matter of this complaint won't have been prejudiced by our consideration of it. But of course he will need to weigh up the likelihood of a successful outcome and the potential cost implications of engaging in litigation.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Barclays Bank UK PLC to pay Mr V further compensation of £1,100, making £1,500 in all.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 16 October 2024.

Jeff Parrington

**Ombudsman**