

The complaint

This complaint is about a buy-to-let (BTL) mortgage Mr L and Mr M hold with Barclays Bank UK PLC. There are several strands to the complaint, which I will summarise in bullet point form in the next section, but all are related to how Barclays communicates with Mr L and Mr M over the administration of the mortgage account.

Both borrowers have joined the complaint, as required under our rules, but our dealings have predominantly been with Mr M, on behalf of himself and Mr L.

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 L and Mr M 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 L and Mr M's BTL mortgage runs on a legacy computer system which has limited functionality and is administered by a small, dedicated team. Although UK-resident when they took the mortgage out, Mr L and Mr M now live overseas. As the majority of their dealings with Barclays are by telephone, this makes communication costly and prone to breakdown.

By way of a email dated 5 August 2024, our Investigator confirmed to Mr L and Mr M that the extent of my remit to look into this complaint was confined to the points covered in two final responses issued by Barclays, on 14 November 2023 and 16 April 2024 respectively. Those points, summarised in my own words, are set out below, along with Barclays' response, again summarised in my own words.

The 14 November 2023 final response

- Barclays changed the interest rate product on the mortgage, and when Mr L and Mr M tried to find out how and why this happened, the bank didn't call them back as promised.
- They've been trying to get tax information for the first three months of 2023; the staff member and manager to whom they spoke were unhelpful and discriminatory towards

them.

- Two complaints they made were closed down without notice.

Barclays explained the interest rate change on the mortgage as being the result of a variation in the Bank of England Base Rate (BoEBr), and confirmed it had written to inform Mr L and Mr M of the change. It had also written on 10 August 2023 to let them know a payment arrangement had been cancelled and notifying them of the new monthly payment going forward. It had sent the tax information out under separate cover. The two complaints weren't correctly logged so a new one had been registered, correctly linked to the BTL mortgage. The bank didn't agree that it had acted in a discriminatory fashion, but accepted that the service it had provided had been poor. To put this right, Barclays apologised and offered £450 compensation.

For the most part, our investigator considered Barclays' position to be fair; the exception was that he considered the service failings to be sufficiently serious to justify a higher award of compensation; he recommended £600. But what his investigation also revealed was that the mortgage had moved from being pre-paid to accruing some arrears over time. Mr L and Mr M told us they knew nothing about this.

The Investigator updated his view of the case to say that if Barclays had told Mr L and Mr M about the arrears during the numerous phone calls during August and September 2023, they would probably have brought the account up to date. He said the bank should refund the interest the arrears had attracted since August. Mr L and Mr M weren't happy with that, and nor was Barclays, not least because this was a new complaint which, thus far, it had not been asked to look into; plus, at that point, the arrears were still outstanding.

The 16 April 2024 final response

Barclays set up a new complaint to review the position regarding the build-up of arrears, but rather than issue its findings in a separate final response, it sent Mr L and Mr M a final response on 16 April 2024 saying it was closing down the separate complaint and treating the arrears as part of the current complaint. Mr L and Mr M made payment of a little under £720 to bring the account fully up to date. Meanwhile, the Investigator dealing with the case moved departments, and the case was transferred to a new Investigator.

On 1 May 2024, Barclays informed the new Investigator of its findings on the arrears complaint. It explained that the mortgage had been subject to a payment arrangement since 2020 under which a fixed amount was paid by direct debit. This amount was initially higher than the contractual monthly payment (CMP) but when interest rate began to rise, the CMP went up in stages, to the point where the fixed amount no longer covered it.

Meanwhile, quirks in the legacy system meant that the rate change notification letters sent to Mr L and Mr M wrongly told them they didn't need to take any action, and they weren't informed when the arrears reached the equivalent of one month's CMP. To remedy this, Barclays told us it would remove all of the interest that the arrears had generated.

Mr L and Mr M and Barclays asked for the complaint to be reviewed by an ombudsman. When the case came to me, I noted that Mr M had told us that the phone calls he had made to Barclays – the cost which the first Investigator had recommended Barclays reimburse – had been made on a company phone rather than a personal one. At my direction, the Investigator explained that we would need to see documentary evidence to show that the company had recovered the call costs from Mr M, otherwise the costs were not a loss suffered by Mr L and Mr M and the award would not stand. Mr M has stated that he reimbursed the company the costs of the calls, but not provided the corroborative evidence necessary for me to award their reimbursement.

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 functionality affected Mr L and Mr M.

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 account in accordance with Mr L and Mr M's instructions, not to manage the account for them. It's Mr L and Mr M's responsibility to monitor and manage the mortgage but of course, they're entitled to expect a reasonable level of service and reliable information to help them do that.

Turning to the specific heads of complaint, I'll start with the changes in interest rate. The mortgage started life on a fixed rate, but since 2014, has been on a variable rate comprising a fixed margin over BoEBR. For several years BoEBR was largely static, but it began to increase in late 2020. Accordingly, the rate chargeable on Mr L and Mr M's mortgage rose too. I'm satisfied Barclays sent out letters telling Mr L and Mr M about the rate changes. It's possible not all of these letters reached them, but problems with mail deliveries, especially overseas, aren't something for which I can fairly hold Barclays responsible.

The rate changes themselves were fair and reasonable, but it's now known that there were problems with how Barclays' legacy system administered changes to the CMP that flowed from the rate changes. The limitations of the legacy system meant that when the CMP went up to reflect increases in the interest rate, Barclays continued to collect the same amount under the direct debit. To compound the problem, the rate change letters conveyed the message that Mr L and Mr M didn't need to take any action themselves.

The effect of successive rate increases was that the CMP eventually exceeded the fixed amount being collected under the direct debit. The result of this was that incremental amounts of arrears accrued each month, that Mr L and Mr M weren't aware of. Barclays had the opportunity to alert them to the arrears during the telephone dialogue that took place during the summer of 2023, but didn't do so. Had Mr L and Mr M been told about the arrears, and the reason why they'd accrued, I'm persuaded on balance that Mr L and Mr M would most likely have brought the account up to date sooner than they did.

The first investigator recognised this and recommended Barclays waive the interest that had accrued on the arrears, albeit only since August 2023. That limitation is one of the reasons Mr L and Mr M asked for the case to be reviewed by an ombudsman. However, events have overtaken the first Investigator's recommendation, because Barclays has, rightly in my view, agreed to waive all of the interest that accrued on the mortgage from the moment the arrears first began to accrue. Mr L and Mr M have been made aware of this new offer from Barclays, and that I consider it to be a fair and reasonable resolution to the specific issue of the arrears.

We asked Mr L and Mr M to confirm whether the offer from the bank to resolve the arrears element was acceptable or not. We gave them an extended period of time to respond as Mr M had indicated he was going to be away on business. However, the extended period hasn't been needed because he's responded already. Given how long the case has already been with us, I think it is in the best interest of both parties that it be concluded without any further delay.

Mr M asked to see the email from Barclays, as he wanted to know if it quantified the arrears, the amount of the interest rebate, and whether there was any provision to ensure there'd be no repetition in future.

I'll deal with that here. When we recommend an offer to a consumer as being fair, we don't always know the quantum involved, as that will not necessarily be known until the redress has been calculated and carried out. Also, we don't necessarily need to know the quantum if the principle behind the offer is fair. In my view, that's the case here.

I don't need to know the exact amount of arrears that accrued; I'm aware Mr L and Mr M have paid a lump sum to clear the arrears. If they aren't confident the amount they paid was correct, it is open to them 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 L and Mr M would have to meet the cost of the audit, albeit if errors were found that were to their detriment, they could reasonably expect Barclays to reimburse any 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 their satisfaction, Mr L and Mr M would still have the opportunity to refer that complaint to us.

Nor do I need to know the exact amount of extra interest that has accrued and is due to be refunded under the proposed settlement. What I'm deciding is whether the *principle* of the offer is fair. All I need to know is that Barclays has agreed to remove any additional interest those arrears accrued above and beyond the normal amount of interest that would otherwise have accrued. I appreciate Mr L and Mr M might *wish* to know the quantum, but insofar as

an offer has been made on fair principles, I'm satisfied that neither I nor Mr L and Mr M *need* to know the quantum before my decision is finalised.

Lastly on this point of the complaint, I understand Mr L and Mr M would want some reassurance that a similar problem can't happen again going forward. That's a perfectly normal sentiment, but in reality, not one that I can deliver here. A final decision on a current complaint cannot ever "future-proof" a consumer against the possibility of something going wrong again.

That brings me to the level of service Mr L and Mr M received when they attempted to engage with Barclays about their various issues, and the accusation of discriminatory treatment. The dialogue was almost entirely by telephone, during August and September 2023, and was beset by connectivity problems, and the fact that very few of the bank's staff are sufficiently aware of the limitations of the legacy system to be able to deal with questions about it.

First of all, being promised a call back in two days and then being compelled to call again four weeks later when no return call has been made is not acceptable. I've no doubt that Mr L and Mr M will have felt very worried about what was going on with the mortgage, and annoyed that their efforts to find out were being frustrated by Barclays' failure to reply. I also agree that suggesting they write in with their concerns, from overseas, was unhelpful. There are other examples I could pick out, but those I have listed are enough to show why there's no doubt the service Mr L and Mr M received fell well short of what they could reasonably expect to receive.

I understand how strongly Mr M feels that in one call in particular, the person to whom he was speaking, who I'll call S, treated him in a discriminatory fashion. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment", when subject to the stresses that are inherent in dealing with a problem when communication is difficult. One person's seemingly innocent comment or vocalisation is another's insult, and it's not easy to say that one party's reaction is any less valid than the other's.

The simple fact is that I have to take a step back and assess things objectively. When I do that here, I'm not persuaded of any intent on the part of Barclay's staff member to treat Mr M differently from other customers or otherwise knowingly discriminate against him on the grounds of any protected characteristics.

Taking everything into account, I consider £600 to be fair compensation for the shortcomings in the service Barclay provided, when Mr L and Mr M tried to engage with it over the problems with the mortgage. I've already explained why my award doesn't include reimbursement of call costs.

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 L and Mr M feel. 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.

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* conclusion which both parties can accept in a spirit of conciliation, I've done that here.

All I can do further is express the hope that both parties can move on from here without recrimination over what has gone before, and somehow find a way to maintain future dialogue in a way that mitigates the difficulties that arises from the combined effect of Barclays' legacy system and Mr L and Mr M's location.

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:

- rework the mortgage account from the date it first went into arrears up to the date Mr L and Mr M made the lump sum payment to clear the arrears, on the basis that all monthly payments made between those dates had been the full amounts due, such that no arrears had accrued, and therefore removing all interest accrued on the arrears;
- provide Mr L and Mr M with a copy of its re-working of the account so that they have a permanent record of the amounts involved; and
- pay Mr L and Mr M £600.

I make no further order or award. 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 L and Mr M to accept or reject my decision before 15 October 2024.

Jeff Parrington
Ombudsman