

The complaint

Mr and Mrs S complain that Barclays Bank UK Plc has treated them unfairly in relation to their mortgage account. They are unhappy with the way Barclays has, or hasn't, communicated with them and that it won't accept their payment arrangement requests.

What happened

Mr and Mrs S took out an offset mortgage with Barclays in 2008. They borrowed £245,000 on a capital repayment basis, to be repaid over a term of 18 years. This mortgage included a linked Mortgage Current Account ('MCA') reserve facility with an initial credit limit of £25,000 – which Mr and Mrs S could use to borrow further funds, up to the limit, without requiring further approval from Barclays. As the mortgage balance reduced, the MCA reserve limit increased which Mr and Mrs S used to borrow further funds.

By 2013 Mr and Mrs S were experiencing financial difficulties linked to ill health. In the years that followed, arrears accrued on the account as the agreed payments were not always made in full or on time.

By May 2022, Barclays has said Mr and Mrs S's mortgage had arrears of around £88,000 and, alongside this, Mr and Mrs S owed almost £136,000 on their MCA reserve facility. I know Mr and Mrs S dispute the amount of arrears (they say around £46,000 should be removed), but whether this amount is correct is not something I will comment on in this decision – I'll explain why this is later in my decision. What is clear though, is that the mortgage has been in arrears for many years. And the mortgage balance and MCA will need to be repaid by March 2026, when the agreed term ends.

In October 2022 Mr and Mrs S raised a complaint with Barclays. They complained that Barclays had ignored several letters, some of which included details of their income and expenditure and others included complaints they wished to raise. They also said they intended to take legal action to recover money they feel is owed to them by Barclays, to arrange for the previously requested changes to be made to their mortgage, and to be compensated. Barclays responded on 3 March 2023 and said it wouldn't deal with the complaint again as it had previously been considered and responded to – both by Barclays and by this Service.

Mr and Mrs S didn't agree, so they referred their complaint to the Financial Ombudsman Service and raised further concerns. They said Barclays had contacted them with correspondence of a threatening nature 136 times in the preceding three weeks. Mr S said he'd called Barclays seven times, had been hung up on four times and had been told it won't accept his money to resolve the matter. He also said Barclays won't do what they should and correct issues with the mortgage.

Our investigator, in his initial review of Mr and Mrs S's complaint, said that it wouldn't be appropriate for us to re-consider any concerns this Service had previously considered and decided on. He felt that the information provided in this complaint doesn't add substance to Mr and Mrs S's previous complaints which had been considered by an Ombudsman in their decisions dated 10 September 2021 and 30 September 2022. He said the Ombudsman had

considered correspondence up to 8 March 2022. So, we wouldn't re-consider what happened prior to that.

Ultimately, our investigator found that we could only investigate some parts of Mr and Mrs S's complaint. Mr and Mrs S and Barclays both initially accepted our Investigator's findings and so he investigated the merits of the complaint. He found that Barclays could have provided better service to Mr and Mrs S and that this resulted in them experiencing distress and inconvenience. He recommended Barclays should pay Mr and Mrs S £150 to compensate for that. He also thought that both parties need to cooperate with each other going forward to establish a reasonable repayment plan if possible.

Mr and Mrs S didn't agree with the Investigator's outcome. They reiterated their concerns that Barclays has ignored their correspondence and said it continues to refuse to speak to Mr S. They also said there's new evidence available that wasn't available to the Ombudsman at the time of the previous final decisions. They asked that this evidence be considered, and the previous complaint re-opened. Mr and Mrs S also raised concerns that they don't know how much to pay to the mortgage and that the balance has increased without explanation.

A short time later, Mr and Mrs S provided a further response, and further evidence. Many of the points Mr and Mrs S raised related to what our Investigator had already considered, or concerns that an Ombudsman has previously considered when making a final decision.

Because Mr and Mrs S disagreed with our Investigator's view, they asked for the complaint to be reviewed by an Ombudsman. An Ombudsman colleague issued a decision on 1 July 2024 in which they decided Mr and Mrs S's complaints about the issues this Service answered in the final decisions dated 10 September 2021 and 30 September 2022, should be dismissed without further consideration. They also said this Service can consider the following complaint points that Mr and Mrs S had raised:

- Mr and Mrs S's concerns about the customer service they'd received, including being contacted in a threatening nature. But only from 8 March 2022 until this complaint was referred to our Service.
- Mr and Mrs S's concerns about call recordings where Mr S has said he was hung up on several times and was told Barclays had no intention of taking his money. But only in relation to calls that took place between 8 March 2022 and when Mr and Mrs S referred this complaint to our service.
- Whether Barclays received and appropriately responded to Mr and Mrs S's correspondence they'd sent from 8 March 2022 until Mr and Mrs S referred this complaint to our service.
- They have made several requests for Barclays to disclose information to them under subject access requests. And when Barclays did provide information, it provided 5,000 pages of documents in several boxes which were jumbled up and needed sorting.

Our Investigator then reviewed Mr and Mrs S's case again, including their concerns about the subject access requests they'd made. He maintained his previous view relating to Mr and Mrs S's concerns about the communication and correspondence they'd had with Barclays. But he felt that, on balance, Barclays had caused inconvenience to Mr and Mrs S in the way it had responded to Mr and Mrs S's subject access request. He recommended that Barclays should pay a total of £250 to Mr and Mrs S in recognition of the poor service he felt Barclays had provided overall.

Barclays accepted our Investigator's recommendations. Mr and Mrs S didn't. So, as a resolution couldn't be reached, the case has now been referred to me to decide.

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.

I'm very sorry to hear about the difficult circumstances Mr and Mrs S have faced in relation to their health. And I have kept this, and the wider circumstances, in mind when deciding on this complaint.

For avoidance of doubt before I set out my decision on the merits of this complaint, I agree with my Ombudsman colleague in terms of the parts of Mr and Mrs S's complaint this Service will and won't be considering. And so, in this decision I will only make a finding on the merits of those points we have said we will consider. But I may comment on the background of what's happened overall, to provide context.

I will also add that the Consumer Duty, which Mr and Mrs S have referred to, was implemented in July 2023. This was after Mr and Mrs S made their complaint to Barclays, and after they referred their complaint to this Service. The Consumer Duty is not retrospective and so it does not apply to the events being complained of. However, I have considered – among other things – the relevant rules in place at the time of the events complained of to help me decide what I consider is fair and reasonable in all the circumstances, when reaching my decision.

Customer service and payment proposals

The crux of the complaint issues I'm deciding on are about the customer service Mr and Mrs S have received from Barclays since 8 March 2022. Mr and Mrs S are concerned about the contact they've received from Barclays, which they feel has been of a threatening nature, its conduct during phone calls, and its lack of response to requests or information sent by Mr and Mrs S.

It doesn't appear to be in dispute that Barclays has contacted Mr and Mrs S several times since 8 March 2022 in relation to the position of their account, which has been in arrears for many years. It's not unusual, or generally unfair, for a lender to attempt to make regular contact with a consumer where an account is in arrears, so that it can try to work with the consumer to find a way to bring things back on track – for example, by agreeing a plan to repay the arrears.

I can see Barclays has contacted Mr and Mrs S several times to discuss their account and the arrears position – as I've said above, it's not generally unfair for a lender to do this. But there are occasions Barclays contacted them despite it having agreed to place a "hold" on Mr and Mrs S's account, under which it agreed to stop contacting them for a set period about the arrears. This is because the hold wasn't correctly applied. For example, Barclays agreed to apply a hold for 30 days on 6 April 2022, but when Mr S spoke with it on 13 April 2022, he told it that they were still receiving contact. So, by Barclays not applying the hold correctly, it led to it continuing to contact Mr and Mrs S, despite it telling them this wouldn't happen. At the time Barclays was making some of these contact attempts, Mr S has said he was attending the funeral of a family member. And I consider receiving contact from Barclays when they'd been told they wouldn't, particularly in those sensitive circumstances, unnecessarily caused Mr and Mrs S some avoidable trouble and upset.

I can see that Mr and Mrs S have asked Barclays several times to correspond with their

representative, who I'll refer to as "Solicitor M". But I am not persuaded Barclays has properly responded to Mr and Mrs S's requests around this. It ought to have clearly explained the steps that need to be taken – including completion of a third-party authority form – for it to correspond directly with Solicitor M, and I can't see it has done this. If it had done so, while I'm not persuaded it would have significantly impacted the overall course of events, I think it could have helped alleviate some of the stress experienced by Mr and Mrs S, and I will keep this in mind when deciding what Barclays should do to put things right. Barclays has told us it accepts there has been a missed opportunity to correctly inform Mr and Mrs S about the process that would need to be followed. If it hasn't already done so, it should write to Mr and Mrs S with clear details of what they need to do, including the third-party authority form that needs to be completed – so that Solicitor M can represent them in their communications with Barclays.

Some of the letters Barclays have sent to Mr and Mrs S have set out, in summary, that if agreed payments aren't met, further collections actions may be taken. And they include a warning that their home may be repossessed if they do not keep up repayments on their mortgage. But this is factually correct information about what will happen if Mr and Mrs S's account can't be brought back on track. And I'm not persuaded it was intended to be threatening. Rather this information was to make Mr and Mrs S aware of the situation and what might happen next – something Barclays is required to do in line with mortgage regulation.

I've also listened all the available call recordings of the phone calls between Mr S and Barclays and I don't consider Barclays' agents acted in a threatening way towards Mr and Mrs S. Mr S has said that he has been hung up on several times, but the call recordings don't support that. In fact, in the call recordings I have listened to, there are occasions where Mr S terminated the call before Barclays' agent was able to respond to the points being made. It's possible that other calls Mr S had with Barclays may have been cut off, perhaps due to a technical issue or due to a poor connection, for example. But I am not persuaded that Barclays intentionally ended calls Mr and Mrs S had with it during the period I've considered.

There's no indication within the call recordings I've listened to or in the other correspondence between Barclays and Mr and Mrs S, that it had "no intention of taking their money". I do consider some of the conversations could have gone better, but this was often because Mr S directed the conversation towards past issues, on some occasions being followed by him ending the call. Ultimately, Mr and Mrs S were free to pay more to reduce the arrears if they wanted to do so – something they have alluded to within correspondence they've sent to Barclays about increasing their standing order to pay £1,800 per month. The issue here is that Mr and Mrs S wanted Barclays to agree to a payment arrangement as a forbearance measure, and it didn't. So I've thought further about that.

Mr and Mrs S sent details of their income and expenditure to Barclays several times, both in the post and by email. They've provided a copy of postal receipts and emails showing their correspondence being sent. And evidence, such as "signed for" postal records, of their correspondence being received. Despite this, Barclays told Mr and Mrs S they hadn't received that information at the time. But I'm not persuaded by that. I think it's most likely that at least some of the correspondence was received by Barclays but wasn't added to their system to be reviewed. This is further supported by Barclays' acknowledgement that it did receive some correspondence from Mr and Mrs S in May 2022, including details of their income and expenditure, but it wasn't considered. So, I've asked myself; would anything have happened differently if Barclays had responded to the correspondence it had received?

In May 2022, Barclays has said Mr and Mrs S's mortgage had arrears of around £88,000 and, alongside this, Mr and Mrs S owed almost £136,000 on their MCA reserve facility. The

amount of the arrears is disputed by Mr and Mrs S, but I've already explained why I won't be commenting on that. Ultimately, the mortgage has been in arrears for several years and there is a balance outstanding, including the MCA, with a short remaining term left on the mortgage – due to end in March 2026. Mr and Mrs S's proposal in May 2022 was to pay £1,500 a month and their later proposals, prior to their complaint being referred to this Service, were to pay £1,800 per month. But these proposed payments would not have cleared the outstanding arrears within the remaining mortgage term. And I've not seen anything to suggest there was a realistic exit strategy alongside this at the time, that would have led to their mortgage being brought back on track.

For these reasons, I don't think it would be reasonable for Barclays to have agreed to the payment proposals Mr and Mrs S had made as those proposals had no prospect of repaying the arrears and bringing things back on track by the end of the mortgage term. To be clear, although Barclays wasn't required to agree to this as an acceptable way of moving forward, there was nothing to stop Mr and Mrs S paying this amount each month to reduce their arrears. I don't think refusing a proposed payment arrangement as a resolution to outstanding arrears is the same as refusing to accept payment.

Even if Barclays had agreed to these payment arrangements, I'm not persuaded it would have altered the position of the mortgage. Based on Mr and Mrs S's payment history since March 2022, I'm not persuaded they would have maintained payments at the proposed level, even if Barclays had agreed to an arrangement. They have made several payments since March 2022 that have been higher than the contractual monthly payment, so they knew they could pay more than the contractual monthly payment and how to do so. And I'm satisfied Mr and Mrs S knew this amount wasn't enough to repay what they owed in time. They also said, in an email dated 30 March 2023, that they'd be increasing their standing order payment to £1,800 per month for this reason, but they didn't in fact do so. I consider it's reasonable to conclude that if Mr and Mrs S could afford to increase their monthly payments to this level, knowing as they did that they needed to pay more to help improve the position of their mortgage, then they would have done so. It isn't in their best interests for them to have a higher balance accruing interest, where that balance – and therefore the associated interest – could be reduced. I'm not persuaded that there's any evidence Barclays refused to accept any payments of any sum, or told Mr and Mrs S that it would do so.

For these reasons, I'm not persuaded Barclays providing better service would have changed the overall situation in the individual circumstances of this case.

Mr and Mrs S have said they've been unable to sell their property because they don't agree with the arrears position of their mortgage. But I haven't seen anything during the period I'm considering that persuades me Barclays has done anything to stop Mr and Mrs S selling their property if they want to do so. Instead, this is a choice Mr and Mrs S have made and any potential loss Mr and Mrs S feel they have incurred – or might incur – because of this, is not something I can fairly hold Barclays accountable for.

I know Mr and Mrs S would also like me to re-consider issues that have previously been decided by this service, but for the reasons I've explained above it wouldn't be appropriate for me to do that.

Data subject access requests

Mr and Mrs S also have concerns about how Barclays responded to their data subject access requests ("DSAR"). They have said they received 5,000 pages of documents in several boxes which were jumbled up and needed sorting. And they've asked several times for the minutes of Barclays' internal panel meetings and haven't received that information.

In summary, UK General Data Protection Regulation (“GDPR”) gives people the right to find out what personal information a business holds about them – it doesn’t entitle them to receive all information – for example, information that is commercially sensitive. The Information Commissioner’s Office (“ICO”) says:

“Personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.”

The ICO goes on to provide guidance on whether an individual can be identified directly or indirectly (together with other available information) from the information a firm has. It explains that “information must relate to the identifiable individual to be personal data”. And that, “this means that it does more than simply identifying them – it must concern the individual in some way.” In summary, Mr and Mrs S are entitled to personal data about them, but they’re not entitled to wider information about how Barclays might manage accounts, for example.

Mr and Mrs S are concerned Barclays hasn’t sent them a copy of internal panel meetings, during which their situation was discussed. Barclays has provided evidence showing that Mr and Mrs S have made more than 20 DSARs since 2022. It has said that it has provided all possible personal information relevant to their requirements on various occasions. In relation to the panel meeting minutes, it has a record of this being requested. However, it has not been able to locate any information relating to panel meetings. And it’s said it previously wrote a letter to Mr and Mrs S explaining this.

It’s unclear if any panel meetings that took place would have contained personal information about Mr and Mrs S. It is possible details such as Mr and Mrs S’s name and mortgage account number would have been included, but it does not necessarily follow that this would entitle Mr and Mrs S to see the entirety of those panel meeting notes. Mr and Mrs S would only be entitled to personal data about them. In any case, I’m persuaded Barclays did respond to Mr and Mrs S’s request for this information previously. And I cannot direct Barclays to provide information it doesn’t have.

Mr and Mrs S have also raised concerns about the format in which Barclays provided information to them following their DSARs, in that it was jumbled up. I note the ICO’s guidance says firms “...should provide the information in an accessible, concise and intelligible format.”

My interpretation is that information provided by Barclays following Mr and Mrs S’s DSAR needed to be clear enough to be understood. I consider that providing a large amount of information that was jumbled up, wouldn’t be clear enough for a consumer to understand, without first spending time to sort the information into, for example, date order or document type. I note that, following our Investigator’s view in relation to this, Barclays didn’t dispute that the information it provided was jumbled up. And so, I’m satisfied it’s most likely this was the case when also considering Mr and Mrs S’s testimony. Therefore, I consider this caused Mr and Mrs S some inconvenience that could have been avoided.

Putting things right

I know Mr and Mrs S would like me to make a new determination in relation to the issues they raised previously. But, as explained above, I won’t be doing that. In this case, I’ve found there are some things Barclays could have done better in terms of its communication with Mr

and Mrs S, including with their DSAR. And I think it's clear that this caused a lot of frustration to Mr and Mrs S, who were making attempts to reach an arrangement to bring things back on track – even if it was the case that there were limited options available to them.

I consider a fair way to recognise the distress and inconvenience caused by Barclays is to pay Mr and Mrs S a total of £250. As such, I direct it to pay this amount to Mr and Mrs S on receipt of this decision (if they accept it).

Barclays should also write to Mr and Mrs S with clear details of what they need to do so that Solicitor M can represent them in their communications with Barclays.

Going forward, I would encourage both parties to draw a line under what's happened previously and to engage meaningfully to find an amicable way forward. Ultimately, this mortgage will need to be repaid, and it's best if that can be done in a sustainable way by mutual agreement.

My final decision

My final decision is that I uphold this complaint. Barclays Bank UK Plc must:

- write to Mr and Mrs S with clear details of what they need to do so that Solicitor M can represent them in their communications with Barclays; and
- pay Mr and Mrs S £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 6 January 2025.

Keith Barnes
Ombudsman