

The complaint

Miss H's complaint is against Barclays Bank UK PLC and can be summarised as follows.

- There was a delay by Barclays in replying to her Data Subject Access Request (DSAR) during the course of a separate complaint she'd raised both with Barclays and with the Financial Ombudsman Service. Miss H says that *"the DSAR evidence was desperately needed by her for the Ombudsman to have all the information"* in relation to that complaint.
- Miss H says that because she didn't have the result of the DSAR by the time the Ombudsman came to decide that case, her position, and that of the Ombudsman who decided the case, were prejudiced by not being in possession of all the relevant information, leading to an outcome on that complaint which did not take into account all the relevant facts of the case. As a result, Miss H believes that if the Ombudsman had been in possession of all the information, the award of compensation would have been higher.
- Miss H is unhappy at the way Barclays dealt with her complaint about the delay in providing the DSAR.

To settle the complaint, Miss H wants Barclays to be held accountable, and to pay her substantial compensation.

All submissions and representations have been made by Miss H's father on her behalf, but for clarity I will refer to Miss H throughout.

What happened

Briefly, in 2022 Miss H applied for a mortgage with Barclays. The application didn't go smoothly and ultimately Miss H applied for – and was granted – a mortgage loan with another lender. She complained to Barclays about what had happened. As part of the complaint, in December 2022 Miss H made a request for information, but made this under the Freedom of Information Act 2000 (FOIA). Because Barclays isn't subject to FOIA, it didn't treat this as a DSAR and so didn't take any action on this.

The complaint about the mortgage application was escalated to the Financial Ombudsman Service. In September 2023 Miss H asked for the complaint to be put on hold, pending Barclays providing the information requested under a DSAR. Miss H argued that the version of events put forward by Barclays on her mortgage complaint didn't correlate with what she was saying had happened.

Miss H said to our Investigator, in relation to that complaint, that she *"cannot understand how any complaint process and eventual fair and equitable judgement can be made when there is doubt cast (in this case by the complainant) that all the facts have been made known to your organisation"*.

Miss H said that phone transcripts would be the “*smoking gun*” against Barclays and “*If you don’t wait and rush to a judgement, that judgement will be based on an incomplete file and evidence and will be more likely unsound.*”

In April 2024 Miss H told our service that she’d received a USB stick from Barclays containing information, but not the call recordings or transcripts where she’d been told by Barclays that her situation was remarkable in relation to the length of time taken by underwriters to give her an answer on her mortgage application.

Miss H asked “*that the Ombudsman now takes into account the fact that Barclays have had a ridiculous amount of time to supply the full transcripts or recordings and have failed to do so. As such it is hoped that the ombudsman does not take the approach of this simply means there is no new evidence to consider but instead gives [her] a ruling that Barclays have failed to co-operate and as such should be penalised as they have not taken the opportunity to disprove [her] allegations...*” (sic)

On 1 May 2024 the Ombudsman issued a Provisional Decision in which he explained he was proposing to uphold Miss H’s complaint. In that provisional decision the Ombudsman said:

“...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...”

and

“...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...”

The Ombudsman also explained that Miss H could, if she wished, begin a fresh complaint about the delay in responding to the DSAR.

In response to the Provisional Decision Miss H said she had “*lodged a formal case with the FO concerning Barclays inability or unwillingness to provide accurate and complete phone records as requested in Dec 2022 (which [she understands] is no longer relevant to the determination of the complaint)...*” (sic)

On 15 May 2024 the Ombudsman issued a final decision on the mortgage complaint, which he upheld. Miss H accepted the decision, making it legally binding on her and Barclays.

In the meantime, this current complaint about the delay in dealing with the DSAR was considered by an Investigator. He thought that when Miss H made her initial FOIA request in December 2022, Barclays should have treated this as a request for information.

The Investigator noted that Miss H had wanted the information under a DSAR from Barclays in order to assist her with her complaint about the mortgage application. He noted that the Ombudsman had been able to determine that complaint without this information. But he

thought the way Barclays had dealt with the complaint about the DSAR had caused Miss H upset and inconvenience. He asked Barclays to pay compensation of £200 for this.

Barclays agreed with this but Miss H didn't. Further detailed representations have been made on her behalf, and I summarise the relevant points below:

- Miss H requests that we break with *“whatever conventions or any past understanding”* and link the calculation of compensation on this complaint to the outcome reached on the previous complaint.
- The cumulative effect of Barclays' actions have resulted in considerable upset, hurt, fear and psychological damage which justify a *“record amount”* of compensation to be paid, not only to reflect the serious and ongoing damage caused to her, *“...but also in the hope that Barclays may start to understand the human cost to their willful negligence...”*. Therefore other cases our service has dealt in which nominal compensation has been awarded cannot be considered a suitable benchmark for the final award of compensation that should be made in this case.
- If the DSAR had been supplied in early 2023, Miss H *“would have had both material evidence of Barclays conspiracy to deceive the ombudsman office and peace of mind that she had done all she could to help the ombudsman find for her claim of almost £15,000... So please do carefully calculate the suffering... in NEVER receiving the requested evidence and data that she knew would prove their guilt...”*
- Whilst Miss H has fully accepted the previous ombudsman's decision, she *“and the previous ombudsman have never seen the requested evidence... And if you have not seen and assessed something a) you can't say that the absence of that evidence made no difference to the decision (perhaps if all evidence and internal messages were supplied [Miss H] would have received 100% of the costs she now faces) and b) that [her] hopes of a full 100% compensation did, and always have, relied upon obtaining the fruits of the DSAR...”*
- She is struggling to understand why the importance of the DSAR data *“can not and will not be taken into account as regards the seriousness of the errors. This was needed in regards to a £15,000 claim... The impact of non-supply was very foreseeable. That deserves further compensation...”*

Because the matter wasn't resolved by the Investigator, it has been referred to me to make a decision.

Provisional decisions

In my first provisional decision of 15 October 2024, I didn't think this was a complaint we could consider. That is because my initial conclusion was that the complaint wasn't about a regulated activity, but was instead about complaint-handling.

After Ms H made further representations, I reconsidered, and issued a second provisional decision on 18 November 2024 in which I reached the following findings.

I remain of the opinion that the complaint about the impact Miss H believes the DSAR had on her previous complaint – an outcome that she considers resulted in an award of compensation which was significantly less than she was expecting – is not

something I can consider as it is outside the scope of our rules. This part of the complaint relates wholly to complaint-handling.

The Ombudsman who considered that complaint decided that he did not need the DSAR in order to make a decision on the complaint. I have no power to second-guess that decision or interfere with it by re-visiting the findings reached by the Ombudsman. In any event, Miss H accepted the decision and the redress, and so that is a closed issue.

Therefore the complaint about how the bank's failure to respond to a DSAR impacted the outcome of the previous complaint is outside the jurisdiction of the Financial Ombudsman Service.

In addition, the complaint about the way Barclays dealt with the complaint about the DSAR remains outside the jurisdiction of the Financial Ombudsman Service, as it is not about, nor ancillary to, the provision of a financial service.

However, I think I can consider the complaint about the delay by Barclays in responding to the Freedom of Information Act (FOIA) request made in December 2022, as this was made after the mortgage application to Barclays had ended but during the course of Miss H's purchase of her property, for which she'd originally applied to Barclays for a mortgage. It therefore formed part of the same transaction.

In relation to the complaint about the delay in providing the DSAR I said:

In December 2022 Miss H made a request to Barclays for information under the FOIA. I don't know why Miss H did this, as the FOIA applies only to the following:

- government departments, devolved administrations, other public bodies and committees;
- local councils;
- schools, colleges and universities;
- the NHS - including hospitals, GPs, dentists, pharmacists and opticians;
- publicly owned companies;
- publicly funded museums, galleries and theatres;
- the police and fire services;
- registered social landlords in Scotland.

Barclays doesn't fall into any of these categories. Rather than Barclays explaining that it wasn't subject to FOIA and that Miss H would need to make a DSAR, the bank did nothing.

It wasn't until late 2023 that Barclays responded to the DSAR request, and Miss H says she didn't receive the incomplete call recordings until April 2024. This didn't include the call transcripts Miss H wanted. However, it's not part of Barclays' business operations to transcribe telephone calls, and so I can't criticise the bank for not doing this.

When responding to a DSAR, a business isn't required to create new data, only to provide existing data. A call transcript that didn't previously exist would fall into the category of the creation of new data, something Barclays isn't required to do under the General Data Protection Regulation.

I'm satisfied that Barclays should have responded to Miss H's FOIA request made in December 2022 explaining that the bank wasn't subject to the FOIA. If Miss H had made

a DSAR at that time, she may – or may not – have been provided with the information she considers to be “*the smoking gun*” on her previous complaint. As I’ve already explained, I cannot – and will not – comment further on the previous complaint.

However, I think Barclays’ delay in responding to the DSAR fuelled Miss H’s belief that something was amiss and that the bank was deliberately failing to provide information that would show its “*guilt*”. This, notwithstanding that the Ombudsman fully upheld Miss H’s complaint.

I think a payment of compensation for distress and inconvenience is warranted for Barclays’ failure to explain in late 2022/early 2023 that the FOIA request wasn’t appropriate and that Miss H would need to make a DSAR. Barclays should also have explained that it wasn’t required to create new data in the form of call transcripts.

I’ve read everything Miss H’s has said about why she considers the redress for this current complaint should be linked to her perceived losses on the previous complaint. I’ve also noted the comments about the effect on Miss H’s mental health, including the daily fear and trauma she’s going through because she believes Barclays deliberately withheld evidence on her previous complaint. However, at the risk of repeating myself, the previous complaint is closed, with an acceptance of the Ombudsman’s decision, making it legally-binding.

I therefore have to consider what I consider to be a fair, reasonable and proportionate level of compensation in relation to this complaint, in relation to the delay in December 2022.

The Investigator asked Barclays to pay compensation of £200, which the bank agreed to do. Having considered Barclays’ failure to explain to Miss H that the FOIA didn’t apply to the bank, resulting in delay in her making a DSAR, I think this is fair, reasonable and proportionate in all the circumstances.

Whilst I’ve noted all the points Miss H has made about why she considers a compensation payment of £5,000 to be warranted, I’m not persuaded this is appropriate. I can understand why Miss H believes she’s “lost” £5,000 that she would otherwise have been awarded on her previous complaint. But it’s not fair or reasonable to link this current complaint with the compensation awarded on Miss H’s previous complaint to attempt to justify an award for distress and inconvenience at such an enhanced level, in lieu of the compensation Miss H believes she lost out on. In all the circumstances, taking into consideration what is fair and reasonable in all the circumstances of this case, I’m satisfied £200 is an appropriate award of compensation.

Responses to the second provisional decision

Barclays accepted my second provisional decision. Miss H has provided a detailed response.

In relation to the complaint issue – the delay in providing the DSAR – the salient points in Miss H’s response can be summarised as follows:

- Miss H feels “*so failed by Barclays*”.
- Her true loss is £15,000 on her first complaint, and so she is disappointed that the Financial Ombudsman Service is unable to order Barclays to put things right for her by offering her a remedy on this second complaint which would restore her to her “true”

position.

- In relation to the £200 redress which Barclays has agreed to pay, Ms H *“does not wish to receive their money on principle that they are profiting from such terrible deeds...”*
- Miss H wants no part in accepting the decision of the Ombudsman and doesn't want to receive a penny from Barclays.

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've reviewed the file again from the outset, including my two provisional decisions and the responses to those decisions. The majority of Miss H's response to my second provisional decision relates to her dissatisfaction with the Financial Ombudsman Service, rather than the actual complaint itself. My role is to decide the issue in this complaint, not to comment on the wider role of the Financial Ombudsman Service in relation either to financial services businesses or in society as a whole. But I do note Miss H's strength of feeling about this.

I must explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we do not act for consumers, and we don't defend businesses. Importantly, we do not take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality.

It's up to us to determine what evidence we need in order to investigate a complaint, and to determine our own casework process. So although I've noted the directions Miss H would like me to follow, particularly in relation to how any redress is paid, I must explain to Miss H that I will not be following her directions, as it is not part of our casework process to allow either Miss H or Barclays to provide directions on how this matter should be determined.

I remain of the opinion that the issues Miss H is raising that relate to her previous complaint are matters I cannot and will not comment on. Miss H accepted the Ombudsman's final decision and was paid the full redress ordered by the Ombudsman. I also can't consider Miss H's complaint about the way Barclays dealt with her complaint about the DSAR, for the same reasons given in my second provisional decision which are repeated above.

In relation to the delay in responding to the DSAR, I'm satisfied that Barclays' delay caused Miss H distress and inconvenience. Barclays has acknowledged this, and has agreed to pay compensation of £200.

Miss H's position throughout is that an additional £5,000 should be paid to her by way of compensation for the delay in Barclays providing the DSAR. Miss H's claim has been presented to suggest that the daily fear and trauma she suffered – and is continuing to suffer – because the DSAR wasn't provided in a timely manner justifies an award of £5,000.

However, Miss H has also argued that she believes she is entitled to an additional £5,000 in order to “top up” what she perceives to be a shortfall in the redress she thought she should have been awarded on her first complaint. This is because the redress award from the Ombudsman on that complaint was approximately £10,000, whereas Miss H thought she was entitled to £15,000. Therefore, by claiming compensation for distress and inconvenience of £5,000 on this current complaint, Miss H believes she will have received her true entitlement for her losses on the first complaint.

But “topping up” financial redress that Miss H believes she’s missed out on in a previous complaint by positioning it as a claim for distress and inconvenience in this current complaint isn’t appropriate, and is not how we make awards for distress and inconvenience. I remain of the opinion that Barclays should have explained to Miss H when she made a FOIA request that this should have been a DSAR. If Barclays had done this, the information Miss H wanted could have been provided sooner than it was, avoiding the upset caused to Miss H when she later had to make a DSAR. As I have previously explained, Barclays wasn’t required to provide call transcripts where these didn’t already exist, nor was the bank required to create new data to satisfy the DSAR.

Putting things right

For the delay in responding to the DSAR, I remain of the opinion that Barclays should pay compensation of £200. I think this is fair, reasonable and proportionate for upset caused by the delay.

I note what Miss H has said about the outcome of this complaint and payment of redress by Barclays. To summarise, Miss H wants no part in receiving any money from Barclays, and wants the bank – or our service – to pay this to charity. However, that isn’t the way our process works, so I will explain what Miss H’s options are.

If Miss H accepts the decision, it will become legally binding on her and Barclays, and the bank will be obliged to pay Miss H the £200 compensation – which is payable directly to her. If Miss H rejects the decision, or doesn’t respond within the specified time limit – the decision won’t be binding on either party, and Barclays will be under no obligation to pay the compensation awarded.

As I’ve already explained above, we don’t take directions from the parties to a complaint, and so I won’t be asking Barclays to make a payment to charity. This is particularly so as Miss H has already said she wants no part in accepting my decision. So Miss H’s choices are:

- to accept the decision, and have the £200 paid to her by Barclays for her to do with as she wishes;
- or
- to reject the decision (or not reply in time), in which case no payment will be made to her by Barclays.

My final decision

My final decision is as follows:

- Miss H’s complaints about how the delay in the DSAR impacted the redress awarded on her previous complaint, and her complaint about the way Barclays dealt with her complaint about this, are not matters I can consider as they are outside the jurisdiction of the Financial Ombudsman Service.
- In relation to the delay by Barclays in responding to the DSAR in December 2022, I direct Barclays Bank UK PLC to pay Miss H compensation of £200. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 2 January 2025.

Jan O'Leary
Ombudsman