DRN-5433773

The complaint

A company, which I will refer to as Q, complains that Barclays Bank UK Plc unreasonably delayed executing a Deed of Priority (DoP). Q's representatives say that Barclays' delay meant that Q had to pay significant extra costs.

What happened

In summer 2022, Q had some existing borrowing from Barclays (including a Coronavirus Business Interruption Loan, or CBIL), supported by a debenture. Q's directors wanted to move most of Q's banking arrangements to a new bank, which I will call Provider 2. Provider 2 was in principle prepared to lend to Q, but wanted security. In September 2022 Q arranged funding from an organisation I will call Provider 3 (which is not a bank), at a higher cost than it would have paid to Provider 2.

Everyone agrees that a DoP between Barclays and Provider 2 was necessary to allow Q's plans to proceed. They also agree that there were significant delays. But there is a dispute about whether Barclays is responsible for the delays surrounding the DoP, and about whether Barclays should be responsible for any of Q's costs.

Q ultimately solved the DoP problem by repaying its Barclays CBIL entirely in January 2024. From that point onwards Barclays no longer required security, there was no longer a need for a DoP, and so the DoP was never executed. Q's funding arrangements with Provider 3 have since come to an end, and it now has funding from Provider 2 instead.

I understand Q's directors' position is:

- By September 2022 Q has a serious cash flow issue. Most of its cash reserves had been used in July 2022 to purchase a property, leaving it short of money to purchase stock.

- If Barclays had not delayed executing the DoP, Q would have been able to borrow funds from Provider 2 using a trade finance agreement. But Provider 2 was unwilling to lend without security in place, and Barclays would not release its existing security without the DoP.

- Q attempted to borrow from other banks, but they broadly took the same view as Provider 2 – they were in principle willing to lend, but a DOP would be required. That meant it was not possible for Q to obtain the funds it needed from an alternative bank.

- Q was able to obtain funds from Provider 3 (which was not a bank, and which did not require a debenture). Q drew down funds from Provider 3 on 7 September 2022. However, Provider 3's charges were at least £62,100 more than Provider 2 would have charged. Barclays should pay that amount to Q, together with compensation for distress and inconvenience.

Barclays' position is that it did miss some opportunities, but Q also made mistakes which contributed to the overall delays. Barclays offered to pay £800 to apologise for the inconvenience, and it still considers that amount is fair.

One of our investigators looked at this complaint, but he didn't agree with either party. Briefly, he said:

- He was satisfied that Q had not suffered a financial loss before 7 September 2022 (when its arrangement with Provider 3 began) or after 1 October 2023 (when its arrangement with Provider 3 ended). Although he recognised that the delays before 7 September 2022 were frustrating for Q's directors, he said that Q was not paying interest to either Provider 2 or Provider 3 until 7 September 2022.

- He thought Barclays was responsible for some but not all of the delays in executing the DoP. He found:

    - 7 September 2022 – 22 November 2022: Barclays was responsible.
    - 22 November 2022 – 6 December 2022: Barclays was not responsible.
    - 7 December 2022 – 19 January 2023: Barclays was not responsible.
    - 20 January 2023 – 25 April 2023: Barclays was responsible.
    - 26 April 2023 – 3 May 2023: He did not make findings for this period.
    - 4 May 2023 – 2 November 2023: Barclays was not responsible.

    (Some of the above dates overlap, but for reasons I will go on to explain I don't think that is material.)

- Overall, our investigator thought that Barclays was responsible for just over five months of the overall delay. He explained why he thought that meant Barclays should pay £24,672.19 to cover loss of interest, £5,000 to cover Provider 3's arrangement fee, and £1,200 (rather than the £800 Barclays had offered) for distress and inconvenience.

Q's representatives did not accept our investigator's findings, and so the complaint was referred to me.

My provisional decision

I issued a provisional decision on this complaint in April 2025. I said:

> "Briefly, my provisional findings are:
>
> - Q's complaint does fall within the jurisdiction of the Financial Ombudsman Service.
>
> - It would not be fair for me to hold Barclays responsible for Q's decision to enter into an arrangement with Provider 3 in September 2022.
>
> - Although I don't have enough evidence to be certain about when Q's arrangement with Provider 3 was renewed (or was rolled over), I don't think it would be fair for me to hold Barclays responsible for the renewal either.
>
> - Barclays' customer service throughout this process was extremely poor, but based on the evidence I've seen so far, I'm not satisfied that Q suffered a financial loss as a result of that poor service. Q did suffer inconvenience, but I think the £800 Barclays has already offered represents fair compensation for

that poor service.

I give more details of my findings below.

[An explanation of why the complaint falls within our jurisdiction.]

Q's September 2022 decision to enter into an arrangement with Provider 3

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

I can see that our investigator only considered whether Barclays had made errors from 7 September 2022 onwards, on the grounds that he thought Q had only made financial losses after that date. I'm very sorry to further disappoint Q's representatives, but I don't think that's the right approach here.

My understanding of the arrangement with Provider 3 is that it was a trade finance agreement in which Provider 3 purchased Q's future receivables. The agreement made clear that Provider 3 did not consider that it was offering a loan. The effect was that Q received an upfront payment of £500,000, and Q promised to pay back a total of £580,000. There was also a £5,000 arrangement fee. I can see that Q's representatives have described the £80,000 difference between the amount Q received and the amount Q promised to pay back as "interest", but Provider 3 did not use the term "interest" to describe that money.

Regardless of whether the £80,000 was or was not interest, I don't think it makes sense to think of it as a fee spread out evenly over a year. The agreement between Q and Provider 3 said that if Q wanted to exit that agreement early, the £80,000 payment was still due. That means the agreement was fundamentally different to an overdraft, or to any other kind of arrangement in which interest is only paid on the funds drawn down. One of Q's directors acknowledged that when he told our investigator "I feel an important point…is the fixed term nature of the interest cost by [Provider 3] which means that the £80k interest cost was inevitable to be incurred regardless of any subsequent delays".

Given the terms of Q's agreement with Provider 3, once it had drawn down the £500,000 advance it was always going to be required to pay the whole of the £80,000 fee plus the £5,000 arrangement fee. That means that even if the DoP had been put into place in early October 2022, Q would still have had to pay £85,000 to Provider 3 – and there is nothing Barclays could have done to have changed that.

Put another way, so far as the £85,000 fees to Provider 3 are concerned, I don't think it matters whether Barclays made any errors on or after 7 September 2022. Any such errors cannot have caused Q to have to pay the £85,000 (although bank errors after 7 September 2022 might still be relevant to Q's later decision to roll over its facility with Provider 3).

That means I don't think it's necessary for me to decide whether our investigator was right to apportion post 7 September 2022 responsibility to Barclays in the way that he did. Instead, I have considered whether Barclays made any errors before September 2022 which would reasonably have caused Q to be required to take out the facility with Provider 3. I note:

- Barclays publishes information on its website about how it will deal with

requests for Deeds of Priority – see the "Common Protocol for the Agreement of Deeds of Priority and Letters of Waiver" (https://www.barclayscorporate.com/content/dam/barclayscorporate-com/documents/solutions/corporate-banking-solutions/common-protocol.pdf). That document primarily concerns requests from "alternative finance providers". Provider 2 is not an alternative finance provider, but I understand Barclays has a separate agreement with Provider 2 with the same timescales. The protocol Barclays describes on its website has been in place for some time, and I understand that it applied during the summer of 2022.

- Briefly, the information on Barclays' website says that the bank will usually make a decision about a request for a DoP within seven days of receiving all the information it needs to assess the request. It also explains that once the DoP has been agreed in principle, legal work may be required (as was the case here).

- The evidence I have seen suggests that Provider 2 first approached Barclays about the DoP in June 2022, and sent the first draft to Barclays on 28 June 2022.

- There is a dispute about the quality of the first draft that Provider 2 sent to Barclays on 28 June 2022. Barclays says the draft was illegible, but it appears that may have been due to a problem with scanning. In any event it took Barclays until 27 July 2022 to tell Provider 2 that the original draft could not be used. I think that was too long, and Barclays should have responded to Provider 2 earlier – especially given that Provider 2 chased Barclays on 18 and 26 July 2022.

- Provider 2 sent a new DoP draft to Barclays on 1 August 2022, then chased on 23 August 2022 and 5 September 2022 (and on many other occasions after 7 September 2022). Again, I think Barclays should have responded to Provider 2 (or to Q directly) much earlier. Even if Barclays was not able to make a decision in principle about the DoP within seven days of 1 August 2022, I think Barclays should have been in touch with Q to explain what it needed to make its decision (or to explain why it needed more time).

- Barclays agreed in principle to execute the DoP on 20 October 2022 (though it did not communicate that decision to Provider 2 until 21 October 2022).

- Barclays was ultimately not prepared to agree to the DoP in the form first suggested by Provider 2. Barclays' legal team suggested amended wording in November 2022, and raised queries in January and February 2022. (I expect that Provider 2's legal team was reviewing the documents at around the same time, but I don't have confirmation of that.)

It's clear that it was important to Q that it had cash to purchase stock in early September 2022. I think it is also clear that Q wanted to borrow that cash from Provider 2, but it could only do so with the DoP in place. However, I haven't seen anything to suggest that Barclays ever promised Q that a DoP could be executed by early September – nor have I seen anything to suggest that Q made Barclays aware that a delay was likely to incur significant costs.

I do think that the protocol Barclays had agreed to suggests that it should have made its decision in principle significantly earlier than 20 October 2022. But even if

Barclays had made its decision within seven days of 28 June 2022, there is still no guarantee that the DoP would have been executed before 7 September 2022.

I can see that between November 2022 and February 2023 there was a delay while the parties' legal teams discussed queries and potential amendments. In my experience, a two to three month delay is not particularly unusual in cases like this. Whilst I think Barclays could and should have acted more quickly in summer 2022, I also think that the legal work would still have taken time – and in this case, I don't think it's likely that the legal work would have been completed before 7 September 2022 in any event. I'm also mindful that there were significant delays later on, particularly after the DoP was signed incorrectly, and I agree with our investigator that not all of those delays were Barclays' fault.

Overall, I don't think I can fairly conclude that the DoP would have been executed by 7 September 2022 if Barclays had made no errors. But even if I am wrong about that, it wouldn't automatically follow that it would be fair for Barclays to pay the costs Q incurred in relation to Provider 3. I would usually expect a complainant to take reasonable steps to minimise the loss they incurred (or to 'mitigate their losses'). Here, whilst I understand why Q's representatives say that no other bank was willing to lend without a DoP in place, I haven't seen anything to suggest that Q explored the possibility of borrowing from Barclays. I don't know whether Barclays would have been prepared to lend, but if it had been then it is possible that the costs would have been significantly lower than Q ultimately paid to Provider 3.

The renewal of Q's arrangement with Provider 3

I don't know exactly what happened to Q's arrangement with Provider 3 after September 2022. I haven't seen any documents from Provider 3 beyond the original trade finance agreement, but I note that one of Q's directors told us:

> "We had to pay an additional £40k [on top of the original £80,000 plus £5,000] as we kept the funds over and above the initial term agreed with [Provider 3] which was 9 months.
>
> - Initial term was 9 months.
> - Loan taken on 7 September 2022.
> - We repaid on 6 October 2023.
> - Total interest we paid was £120,000."

As I've said, Provider 3 did not describe the arrangement as a "loan", and it did not refer to "interest" – but I have no reason to doubt the figures or dates that Q's director provided us with.

Q's position is therefore that the agreement with Provider 3 was renewed or rolled over in early July 2023. But again, I don't think it would be fair for me to hold Barclays responsible for Q's directors' decision to enter into a further agreement with Provider 3.

It appears that the wording of the DoP was agreed around February 2022, but by July 2023 it had still not been executed.

I can see that there were email discussions between Barclays and Provider 2 during May 2023 about the quality of the signed DoP (which had apparently been scanned

at some point). It's clear that Barclays had received something prior to 16 May 2023, but there was an issue with the legibility of the document.

I've also seen a copy of an email from Provider 2 to Q dated 14 July 2023 which says that one of Q's directors had signed the DoP incorrectly, and that Provider 2 required it to be signed again. Barclays says it chased Provider 2 on 8 August 2023, 28 September 2023, and 2 November 2023, but did not receive a correctly signed DoP at any point (despite one of Q's directors emailing on 3 November 2023 to say he would post it shortly).

I know that Q's directors say that Barclays' service was "disjointed and disorganised" over the whole of the relevant period, but I still don't think it would be fair for me to require Barclays to reimburse the £40,000 that Q paid to renew its facilities with Provider 3. Even if Barclays had lost one signed DoP, or if it had been scanned poorly by Barclays or by any other party, there should still have been plenty of time for Q's directors to provide another one. Overall, I don't think it would be fair for me to hold Barclays responsible for the £40,000 that Q paid to Provider 3 in July 2023.

Barclays' customer service

Everyone, including Barclays, accepts that Barclays' customer service here was poor. I don't think there can be any dispute about that. But for the reasons I've given above, I don't think that Barclays' poor service led Q to suffer a financial loss.

I'm aware that Q's directors have requested compensation for stress, but that isn't something I have the power to award. Barclays' customer here was the limited company Q, not the directors as individuals. Corporate bodies like Q are not capable of feeling emotions or becoming distressed, so I cannot make an award to Q for stress.

Companies like Q can suffer inconvenience, and I'm satisfied that Barclays caused inconvenience here. We publish information on approach to awards for non-financial loss on our website, available at https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience . I think Barclays' poor service could be said to have caused "significant inconvenience and disruption that need[ed] a lot of extra effort to sort out", but I don't think it would be fair for me to call it "serious disruption".

Looking at what has happened here, taking account of our guidance, and applying my own judgement, I don't think it would be fair for me to award more than the £800 Barclays has already offered."

Barclays accepted my provisional findings, but Q's representatives did not. Briefly, they said:

- They consider that my provisional findings are both factually and procedurally flawed, and that they fail to recognise the real and severe financial prejudice Q suffered.

- At the heart of this matter is a single, undeniable truth – but for Barclays' delays, Q would have suffered no loss.

- My provisional findings imply that the DoP might not have been executed in time even if Barclays had acted reasonably. But that is not a reasonable assumption, and ignores Barclays' own published protocol (amongst other things). Barclays' protocol cites a 7-day response window once documents are received.

- It is not relevant whether the facility from Provider 3 was a loan or trade finance. Regardless of how the facility was characterized, Q paid £120,000 on £500,000 of financing over 13 months. Whether that £120,000 is described as interest, fees, or something else is merely a matter of semantics. Q paid £84,792 more than it would have done under the Provider 2 facility. Provider 3 was the only provider willing to offer finance to Q without taking a debenture.

- My conclusion that the fee was inevitable once the funds were drawn down misplaces causality. Q was forced to draw down funds from Provider 3 because of Barclays' delay.

- They consider that Barclays should be held liable for the £40,000 cost that Q incurred during the rollover of the Provider 3 facility in mid-2023. The DoP was by then already agreed in principle, and Provider 2 had confirmed that the signed version had been sent to Barclays. On balance of probability, the likelihood is that Barclays failed to process the relevant documentation, not that Q failed to send it. To deny redress based on a missing document that was probably lost by Barclays would be to punish Q for Barclays' disarray.

- They consider that an award of £800 for inconvenience, despite an acknowledgement that Barclays' service was extremely poor, is inadequate. Q was required to expend substantial internal resource chasing multiple parties, resending documents, and mitigating risks created solely by Barclays. That was not minor inconvenience. It was serious operational harm to a small business caused by a major financial institution's sustained failure to act.

- They fear that "the Ombudsman has lost sight of its consumer protection mandate".

- They reiterate their request for compensation of £98,167.

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 done so, I have come to the same conclusions as I did in my provisional decision, for the same reasons as before. I therefore confirm those provisional conclusions as final. But I will make some additional comments below.

Firstly, I should confirm that the Financial Ombudsman Service is neither a consumer champion nor a regulator. My role as an ombudsman is to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. That is what I have done here.

I acknowledge that from Q's representatives' perspective, this matter is very simple – Barclays delayed putting the DoP in place, Q suffered losses as a result, and so Barclays should reimburse those losses. But for the reasons I gave in my provisional decision, I think the situation is more complicated than that.

I do not agree that Q would have suffered no loss but for Barclays' errors. But even if I did accept that, it would not automatically follow that Barclays should pay any compensation. I would also have to consider the wider circumstances, including whether Q had taken reasonable actions to mitigate its losses, and consider whether it was fair for Barclays to be required to pay compensation to Q.

The protocol on Barclays website said:

> "On receipt of the requested information the bank will undertake a risk assessment and will notify the SME customer of their decision within 7 working days unless the proposal is considered "complex" in which case it has more time to fulfil its obligations."

I note that the 7-day response window is to notify the customer of the bank's decision – it is not a 7-day window to put the DoP in place. In this case, Barclays notified Q of its decision on 21 October 2022 (having made that decision the previous day). As I've said, I think Barclays took too long to make its decision. But the underlying problem here was not just that Barclays took too long to decide whether to agree a DoP; the problem was that the DoP was never actually put into place. Barclays did not promise to execute the DoP within 7 days, or within any other period.

I remain of the view that even if Barclays had made its decision more quickly, there is still no guarantee that the DoP would have been executed before 7 September 2022 (the date that Q reached an agreement with Provider 3). Based on what happened later, I think it is likely that legal work would still have been necessary, and that legal work would still have taken time. In addition, given the correspondence between Barclays and Provider 2 in the second half of 2023, I'm not persuaded that Q's representatives ever sent a correctly signed DoP to Barclays. There is evidence that Q's representatives said they would send the DoP in early November 2023 (without mentioning any earlier documents that had gone astray), but I've seen nothing to show that Barclays ever received a correctly signed DoP.

In addition, I have not seen evidence to persuade me that Q did enough to mitigate its losses. Its representatives have said that the facility from Provider 3 was the only provider willing to offer finance to Q without taking a debenture. In the circumstances, I consider that Q's representatives chose to incur the higher costs associated with Provider 3's offer rather than incurring lower costs with a provider that wanted a debenture. That was a choice Q's representatives were entitled to make, but I don't think it would be fair for me to order Barclays to pay for the consequences of that choice. Further, I have seen nothing to show that Q's representatives told Barclays prior to 7 September 2022 that Q would incur substantial costs if there was a delay – nor have I seen anything to show that Q attempted to borrow from Barclays rather than from Provider 3.

I know Q's representatives are unhappy that I considered the exact nature of the agreement between Q and Provider 3. But I think it is relevant that Q had no opportunity to exit that agreement early and avoid some or all of the costs. The agreement meant that once Q had drawn down the £500,000 advance it was always going to be required to pay the whole of the £80,000 fee plus the £5,000 arrangement fee.

Put another way, even if the DoP had been properly executed on 8 September 2022, Q would still have had to pay £85,000. That means I don't think it is appropriate for me to analyse who was at fault for the various delays while the agreement with Provider 3 was in force. If I had concluded that it was fair for Barclays to be held responsible for the additional costs that Q incurred in taking finance from Provider 3 rather than Provider 2, then I might have awarded the whole of those costs. But I don't think that would be fair, and so I have not awarded any of the costs Q incurred in relation to the 7 September 2022 facility.

Q rolled over its facility with Provider 3 in summer 2023, and paid a further £40,000 to do so. But again, I don't think it would be fair for me to order Barclays to reimburse those costs. For the reasons I gave in my provisional decision I don't think Barclays was solely responsible for the delays over summer 2023, but even if it was, I would still have concerns about

whether Q had mitigated its losses. Q's representative's comments imply that Q did have other options, but they didn't want to accept those options because they didn't want to give a debenture. Again, I think that was a legitimate choice, but I don't think it would be fair for me to order Barclays to pay for it.

In respect of inconvenience, I agree that Barclays' poor customer service caused considerably more than minor inconvenience. As I said in my provisional decision, I think the inconvenience Q suffered could fairly be described as "significant inconvenience and disruption that need[ed] a lot of extra effort to sort out". We would usually say that an award between £300 and £750 might be fair in such circumstances, but Barclays has already offered £800 and I see no reason to increase that offer.

My final decision

My final decision is that I order Barclays Bank UK Plc to pay Q £800.

Under the rules of the Financial Ombudsman Service, I'm required to ask Q to accept or reject my decision before 6 June 2025.

Laura Colman
Ombudsman