

## **The complaint**

Mr and Mrs O complain that Barclays Bank UK PLC didn't offer them support and flexibility with their commercial mortgage.

## **What happened**

In 2012 Mr and Mrs O took out a commercial mortgage with Barclays. They used the funds towards the purchase of a business property which also had living accommodation.

The business was impacted by Mr O's health problems, which have affected his ability to work since 2019, and the Covid-19 pandemic. Mr and Mrs O stopped actively trading in March 2023, but retained relevant registrations in case the business was rented out. They made loan repayments using their personal savings.

Mr and Mrs O say Barclays service was poor and it didn't offer them support and flexibility. Mr O says Barclays:

- Didn't agree to switch the loan to interest only payments for 6 to 12 months from early 2024, while they arranged the sale of the security property or another property.
- Didn't agree to them renting out the property or transferring the loan to a residential property. Mr O says the key facts document sent with the offer documents says porting is possible.
- Referred to the terms and conditions when declining his requests, yet was unable to provide a copy of the original mortgage offer and terms and conditions. Mr O says Barclays is in breach of contract and its obligations under the lending code.
- Claimed to have enclosed or sent documents which didn't arrive.

Mr and Mrs O repaid the loan in mid-2024 with help from family.

Mr O says Barclays didn't offer solutions or fairly consider the solutions they put forward. He says it's wrong for Barclays to say it can only offer support if they default. Mr O says Barclays didn't take into account that the business premises were also their home. He says the way they were treated by Barclays caused stress and anxiety when he was struggling to come to terms with his illness.

Barclays said it couldn't offer a capital repayment holiday if the business wasn't trading, and its business financial assistance team can't assist until the loan defaults. Barclays said it couldn't switch a commercial mortgage to a residential mortgage or port it to a residential property. It offered £150 for poor service.

I sent a provisional decision to the parties. I said, in summary, that this was a commercial mortgage and it was fair for Barclays to treat Mr and Mrs O as business customers. While I thought Barclays ought fairly to have considered Mr O's requests, I didn't think the outcome would have been different had it done so. I said the compensation offered by Barclays was

fair and reasonable for the upset caused by delays in providing copies of the mortgage offer and terms and conditions to Mr O.

Mr and Mrs O didn't agree. Mr O said they hadn't been made aware that they'd be treated differently if the residential part of the property was less than 40%, and asked why we hadn't asked Barclays about this.

### **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.

The property Mr and Mrs O bought was their home as well as their business premises.

I can understand why the documents that Barclays sent to Mr and Mrs O in 2012 caused confusion. The key facts illustration (dated 5 January 2012) said Barclays would take a charge on Mr and Mrs O's residential property. It made other references to a residential property and regulated mortgage, and had a section on porting "if you move house".

If more than 40% of the security property was – or was intended to be – used as Mr and Mrs O's residence, this would have been a regulated mortgage contract. That's because rules on mortgage regulation would require this. But that doesn't seem to have been the case here. Based on the valuation report, less than 40% of the security property was used as Mr and Mrs O's residence. I think that Barclays offered an unregulated commercial mortgage. So I think it was fair for Barclays to treat Mr and Mrs O as business customers.

Mr O says Barclays didn't refer to the 40% issue when they took out the mortgage. He said we should have asked Barclays more about this. Whether more than 40% of a property is used as a residence is a factual matter. Based on the valuation report, less more than 40% of the property was used as a residence. I'm not sure what further information we could fairly ask Barclays to provide about this or how this could change the outcome of this complaint. If Mr and Mrs O have further concerns about this, they'd need to raise them with Barclays.

Mr O contacted Barclays in early 2024 to ask to switch to interest only payments for 6 to 12 months, to give them breathing space while the property was sold. He told Barclays about his serious health diagnosis and that they were unable to continue to run the business. Mr O said they had assets (including the security property) that would clear the debts owed to Barclays, but these were not liquid. He said he would start to receive his pension in April 2024 which would help. Mr O said he'd been funding mortgage payments from savings.

I think at this point (if not before) Barclays was aware that Mr O was vulnerable, and that Mr and Mrs O were trying to re-arrange their finances in light of their new circumstances.

Barclays declined to offer a capital repayment holiday, saying this was outside its policy as the business wasn't trading. It said its financial assistance team couldn't offer support as Mr and Mrs O hadn't yet defaulted on their payments.

Mr O put forward other suggestions. He asked if they could rent out the commercial premises. When Barclays didn't consent to this, Mr O asked about porting the loan to another property. The commercial property would then have been unencumbered, so Mr and Mrs O could have let it out.

Mr O feels strongly that Barclays treated them unfairly at a time when they were having to deal with his health diagnosis and treatment and the changes to their situation resulting from this. Mr O sent a screen shot of "A guide to the lending code" given to him by Barclays when

they took out the commercial mortgage. This guide is for micro-enterprises, which is consistent with this being a commercial mortgage. The guide says the lender will offer help if the borrower is experiencing financial difficulties. Mr O highlighted that the guide says lenders will “do everything they can to help you overcome your difficulties”.

This wasn't a regulated mortgage, so rules on mortgage regulation don't apply in the same way. But Barclays did have to treat Mr and Mrs O fairly.

Barclays was aware of Mr O's illness and that Mr and Mrs O wanted to re-arrange their business, assets and finances in light of this. I think Barclays had fairly to consider what support it could offer, to help them while they re-arranged their finances. I think Barclays needed fairly to take into account that Mr and Mrs O had matters to deal with other than the property and the mortgage – including Mr O's treatment – and this might mean them taking longer to deal with some matters.

I understand Mr and Mrs O's frustration that Barclays declined their request for a capital repayment holiday on the basis this was outside its policy as the business was no longer trading. And then said its financial support team couldn't offer assistance as they hadn't defaulted. I'm not sure this was fair, given what Barclays knew about Mr and Mrs O's situation and that the security property was their home. I'm not persuaded though, that if Barclays had considered their requests or what other options might be available, matters would have been very different.

Mr and Mrs O had maintained mortgage payments and said they intended to continue to do so. This didn't seem entirely consistent with them being in financial difficulties and needing a capital repayment holiday or other support to overcome their difficulties. So we asked Mr and Mrs O about their circumstances in early 2024 – whether they were in financial difficulties, or expecting to be unable to maintain mortgage payments or meet their other living costs. We asked how they intended to repay the mortgage, and if this was through the sale of a property whether this was being marketed for sale. We also asked how things would have been different for them if Barclays had agreed to the capital repayment holiday.

Mr O said they'd been trying to sell the security property since 2021 without success, due to the inclement commercial climate affecting the industry. Mr O said it would have been helpful if Barclays had agreed to the capital repayment holiday. He said they would, if needed, have eventually sold the security property or a detached house on the same site to clear the loan.

When Mr and Mrs O took out the commercial mortgage they did so to acquire the security property from which to run a business. That was the basis on which Barclays agreed to lend. Mr and Mrs O's circumstances changed – Mr O's health meant they were no longer able to run the business. Mr and Mrs O didn't need support over the short term, while they got their business back on track: they were looking at a complete change in how they used the property.

It's understandable that Mr and Mrs O were considering what to do with the property going forward. But I don't think this meant that Barclays had to change the basis of the commercial mortgage to fit in with their plans – either to a residential mortgage or to allow the premises to be rented out. I don't think Barclays had to agree to interest only payments if the reason Mr O asked for this was to free up funds to use for other purposes.

The mortgage offer said the mortgage was portable. Porting would only be possible if Barclays first agreed to offer a new mortgage on another property. Before Barclays could offer a new mortgage (of any kind) Mr and Mrs O would have had to meet its lending criteria, including affordability criteria. If the property was to be Mr and Mrs O's home then the mortgage would have to be a regulated residential mortgage – rules on mortgage regulation

would require this. It would be unusual for the terms of a commercial mortgage to be applied to a residential mortgage and I can't fairly find that Barclays ought to have offered this.

While the mortgage terms and conditions didn't allow for the property to be rented out, this wouldn't have prevented Barclays from agreeing to this. But I don't think it had fairly to do so. If Mr and Mrs O wanted to move from running the business themselves to letting out the premises, it would be reasonable for them to re-finance with a loan intended for this.

From what Barclays said, Mr O didn't provide the valuation it asked for to support his request to split the property title between the residential part and the business part of the premises. In the circumstances, I don't think it was unfair for Barclays not to proceed with this.

I think it would have been fair for Barclays to exercise forbearance over the short term, if Mr and Mrs O needed this. For instance, if they were struggling to meet their mortgage payments while they sold the property or re-financed. But based on the available evidence that doesn't seem to have been the case.

I do appreciate that Mr and Mrs O feel strongly that they were not treated fairly, and they will be disappointed with my decision. I'm not in any way underestimating how difficult their circumstances were. But, as I said, Barclays didn't have to change the terms of the commercial mortgage to fit in with changes in how they intended to use the security property. And it's difficult for me fairly to find that Barclays should have offered a capital repayment holiday – or other forbearance option – outside its usual policy when Mr and Mrs O were able to maintain monthly payments and not, it seems, in financial difficulties.

Barclays offered £150 for poor service, such as the delay in providing copies of the mortgage offer and terms and conditions. I think, in the circumstances, this is fair and reasonable for the upset this caused.

### **My final decision**

My decision is that Barclays Bank UK PLC should pay £150 (in total) to Mr and Mrs O, as it offered to do. It can deduct any amounts already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 28 May 2025.

Ruth Stevenson  
**Ombudsman**