

## **complaint**

Mr M is unhappy that Barclays Bank UK PLC is reporting a mortgage shortfall debt on his credit file. Mr M says that the mortgage account (and the Mortgage Current Account - MCA) were both included in his Individual Voluntary Arrangement (IVA).

The mortgage account was in the joint names of Mr M and a third party. Ordinarily, we wouldn't be able to consider a complaint about a joint mortgage without the consent of the other party. But as this complaint relates solely to Mr M's credit file and what Mr M says is the effect of Barclays' actions on him, I'm satisfied we can consider the complaint brought solely by Mr M

## **background**

Mr M had a mortgage with Barclays. There was also a related MCA, which is a secured overdraft.

In March 2016 Mr M entered into an IVA with his creditors. The IVA was concluded in April 2017.

In June 2017 Mr M complained to Barclays because it had refused to accept a voluntary surrender form to sell the property. He was also unhappy that a field agent had been instructed because he considered the mortgage to have been included in his IVA.

Barclays explained that it couldn't accept a voluntary surrender form signed by only one party. The bank also said that the mortgage and MCA weren't included in the IVA as they were secured debts.

Mr M's insolvency practitioner wrote to Barclays in July 2017. In summary, he said that Mr M had proposed in his IVA in 2016 that any unsecured shortfall arising from the sale, surrender or repossession of any property he owned was to be included in his IVA. This is known as a "future contingent liability" (FCL). At the time, the FCL owed to Barclays was estimated to be about £44,500. Before the IVA in 2016 Barclays had been invited to submit an unsecured claim for this amount. Barclays had also been sent a proxy form, which would, if completed and returned, have allowed Barclays to vote on the IVA proposal.

The insolvency practitioner explained that, by not submitting a claim in 2016, Barclays had acquiesced to, and was bound by, Mr M's proposal that the FCL on his Barclays' mortgage would be included in the IVA. The insolvency practitioner said that this meant that, although the IVA didn't affect Barclays' right to enforce its security, it was binding in relation to any unsecured shortfall arising from the sale of the property, no matter when this might happen.

In 2018 the property was sold by Barclays and the bank contacted Mr M about repayment of the shortfall debt. It also reported the shortfall debt on his credit file. Mr M complained, explaining that this debt was a FCL included in his IVA. Barclays said that it had never agreed to this and considered Mr M was liable for the mortgage shortfall debt. Although the bank later decided to write off recovery of the debt, it was still reporting it on Mr M's credit file.

Mr M complained to us. He said that the debt should have been reported as a default on 20 April 2017, when his IVA was concluded. Mr M said this was in line with guidance he'd been given by the Information Commissioner's Office.

An adjudicator looked at his complaint but didn't think it should be upheld. Mr M was unhappy about this. He reiterated the arguments he'd made about the debt being a FCL included in his IVA. Because the adjudicator didn't change her opinion, the case was referred to me for a decision.

### **provisional decision of 15 August 2019**

After considering the complaint, I reached a different decision from the adjudicator. On 15 August 2019 I issued a provisional decision in which I made the following findings.

Barclays didn't do anything wrong when it refused to accept the voluntary surrender form signed by Mr M and not the other account holder. But as events have somewhat overtaken this in relation to the IVA and credit file, I don't think Mr M is pressing this point.

The crux of this complaint is whether or not Barclays is bound by the FCL as part of Mr M's IVA. Having looked at the Insolvency Rules, I think that the bank is bound by the terms of Mr M's IVA.

Part 5 of the Insolvency Rules (Northern Ireland) 1991 sets out the position, which under 5.04(2)(c)(i) required the proposal to state how the debtor intended to deal with secured creditors. Barclays was sent notification as a creditor. I'm satisfied the insolvency practitioner anticipated the likelihood of a shortfall and took steps to include it as a FCL in the IVA.

Barclays didn't respond to Mr M's IVA proposal. The proposal was approved by a majority of creditors. In the circumstances, I'm satisfied Barclays is bound by the IVA even if it didn't agree or submit a dividend claim. Its position was that of a potentially unsecured creditor, given the negative equity and the FCL. So it had the opportunity to vote down the proposal and/or make a claim.

It's not the role of Mr M's insolvency practitioner to explain the Insolvency Rules to Barclays; the bank has its own legal department which can do this. So if Barclays chose not to respond to the insolvency practitioner's correspondence, the bank would (or should) have known that this meant it was bound by the terms of the IVA.

In the circumstances, I agree with Mr M that his credit file should reflect the default of the mortgage and MCA as at 20 April 2017, when the IVA was concluded.

It is disappointing that Barclays continued to maintain that Mr M remained liable for the shortfall debt when it ought to have known that this was included as a FCL in the IVA. Although Barclays has said it has now 'written off' the debt and will no longer be seeking to pursue Mr M for it, this is something of a moot point, given what I have said above. Barclays can't 'write off' a debt which it shouldn't have been pursuing in the first place.

I think Barclays' actions have caused Mr M distress, trouble and upset. I think Barclays should pay Mr M compensation of £500 for this. It must also stop sending him letters about the shortfall debt.

### **responses to the provisional decision**

Mr M responded to say that he agreed with the outcome but thought the £500 compensation of was too low, given the impact this has had on his ability to raise credit elsewhere.

Barclays hasn't provided any further arguments or evidence.

### **my findings**

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 afresh and have revisited my provisional decision. I've also taken note of what Mr M has said in response to my provisional decision.

Having done so, I see no reason to depart from the conclusions I reached in my provisional decision.

Although I've taken note of the point Mr M has made about being unable to raise credit because Barclays was holding him liable for the shortfall debt, I'm not persuaded that his position would have been any different in relation to raising credit if Barclays hadn't made the error. I say this because, if Barclays had accepted the position and not recorded the shortfall debt on Mr M's credit file, his credit file would still have shown the defaulted mortgage from 20 April 2017. On balance, I think that a defaulted mortgage would have had an adverse effect on Mr M's credit file too.

Given this, I'm not persuaded that the compensation for trouble and upset should be increased.

### **my final decision**

My decision is that I uphold this complaint.

. In settlement I direct Barclays Bank UK Plc to do the following:

- amend Mr M's credit file to show the date of default of his mortgage and MCA account as 20 April 2017;
- ensure its system is updated so Mr M no longer receives letters about the shortfall debt;
- pay Mr M £500 compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 October 2019.

Jan O'Leary  
**ombudsman**