

complaint

Mr H entered into a commercial mortgage with Barclays Bank plc. He complains of delay in setting up the mortgage and of the way it was managed.

background

Mr H bought commercial premises intending to let it to a tenant to run a business from. He had a prospective tenant in place, but the tenant was not willing to wait the length of time it took to process Mr H's mortgage application and the tenancy fell through.

As a result Mr H took on the mortgage without a tenant. He tried to operate a business from the premises himself, but that didn't work out. He found another tenant, but Barclays would not allow him to let the premises because the proposed rent was lower than its lending criteria.

He fell into arrears on the mortgage, and was making no payments for a time. Eventually, he found a buyer for the premises, though for much less than he had paid for it. However, Barclays agreed to take the sale price in full and final settlement of its loan, which meant that it wrote off the outstanding balance in excess of £40,000.

Mr H says that Barclays is at fault, firstly for delaying and causing him to lose the first tenant, then for refusing to allow him to let to the second tenant. He also complains that, when he asked for a payment holiday he was told there was a charge of £1,000 for agreeing it. He says that he has lost a lot of money as a result; he has lost the fall in value of the property, he has lost any profit he would have made on the rent, and he has lost the increased value he would have got when he came to sell at the end of the term. He quantifies his losses in excess of £300,000.

In response, Barclays says that it has acted reasonably. In particular, the delay in processing the initial mortgage application was because of the amount of material and checks required; it was not because Barclays moved too slowly. It says that the second prospective tenant was not allowed because it was a long term lease at a low amount; specifically, less than the minimum rent specified in the mortgage terms and, at 120% of the monthly payment, less than the minimum required by its policy of 150%.

Barclays says that it has not acted unreasonably, and indeed agreed a lower price in final settlement, meaning it too made a significant loss.

Mr H brought his complaint to this service. Our adjudicator recommended that it be upheld in part; he agreed with Barclays that the processing of the application and the refusals of the tenancy, and the fee, were reasonable. However, he felt that Barclays could have communicated better and showed better customer care, and he recommended an award of £150 for Mr H's distress and inconvenience in this respect. As it was not possible to reach an agreement, the case has come to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the outcome recommended by the adjudicator, for broadly the same reasons.

the mortgage application

I note that the processing of the original mortgage application took several months rather than the 10 weeks Mr H wanted. He says time was of the essence, because the proposed tenant wanted to set up a business in the student area of a major city – and therefore wanted to be up and running for the start of the academic year.

Barclays says that any delay was not its fault as it was due to factors outside its control, and / or to the requirements of the loan. These included confirmation of the lease and usage licence and registration of a charge over the property.

I have seen Barclays' final offer letter, setting out the terms of the loan and inviting Mr H to accept so that funds could be released. It was sent in late October 2008, and his signed acceptance was dated a week later. The letter says that he must comply with the conditions set out in the offer, and must take the money by mid February 2009 or it will lapse.

Therefore, the offer was made by Barclays, and accepted by Mr H, after the start of the university term. Even after acceptance, he could have decided not to take the money and simply let the offer lapse.

So when he accepted Barclays' offer, he knew that the university window had been missed – and he was still not irretrievably committed at this stage. He could have decided not to go ahead.

I am not persuaded that the delay was the fault of Barclays; nor am I persuaded that, even if it was, Mr H was committed to the loan before he knew that the window he wanted had passed.

the second prospective tenant

The offer letter also says that it is a term of the loan that rental income is at least 125% of the loan. Barclays says its policy had changed, and so by the time Mr H found his second prospective tenant the requirement had become 150%. Even if it had not, it would have been entitled to reject the tenancy as it was at 120%. Its reasons for refusing were that it did not consider an income of 120% provided enough security, for example against future interest rate rises.

It could be argued that some rental income was better than none. But in this case, Mr H was proposing a long term lease over a number of years, and therefore the long term prospects of it being sufficient income to service the loan were a reasonable consideration for Barclays to have. Barclays is entitled to exercise its commercial judgement in lending money and in the conditions it attaches to loans, and I'm not persuaded that it has done so unfairly or unreasonably here.

the payment holiday arrangement fee

I have seen the paperwork Mr H was asked to sign before Barclays would agree the payment holiday. The fee was clearly set out in the notice of variation Barclays asked Mr H to sign. I don't think it was unfair to charge a fee, and I'm satisfied that Mr H was warned about the fee in advance so that he could decide whether he wanted to incur it.

Mr H's inconvenience

I do agree with the adjudicator that Barclays could have showed better customer care in dealing with Mr H. He has written to Barclays a number of times asking for information and not received a response. Similarly, Barclays has delayed in providing information to this service, meaning that the investigation of the complaint took longer than it might have done. I therefore agree with the adjudicator that a payment of £150 towards Mr H's inconvenience in making multiple requests to Barclays and to this service should be made.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint in part, and I direct Barclays Bank plc to pay Mr H £150.

Simon Pugh
ombudsman