

## **complaint**

This complaint is about a mortgage Miss O holds with Barclays Bank UK PLC. Using the information Miss O supplied in our complaint form, her complaint is made up of the following headings:

- Barclays' account statements are incorrect because they don't show extra payments she's made;
- Her account has been debited with illegal charges;
- Her complaints, including those made by email to the bank's chief executive officer, haven't been properly dealt with; and
- Barclays ignored the fact that her account was frozen whilst she was complaining.

Miss O also believes an individual savings account (ISA) was mis-sold to her. We've explained to her that she can make a separate complaint about the ISA; this complaint deals solely with the mortgage.

## **background**

The events leading up to, and arising out of, the complaint are complex and the evidence in the case, is immensely detailed, running to more than 2,500 pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented, using my own words.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome. Another reason I have left out a lot of the detail is to avoid the risk of identifying the consumer when my decision is published.

Miss O has had the mortgage since 2004; payments are made by direct debit from Miss O's current account, which she holds with "Bank M". Between 2015 and 2017, the direct debit was refused on several occasions; each time this happened, it showed on Miss O's mortgage account as a credit followed by a corresponding debit. Miss O made a number of manual payments to make up, but Barclays began to send arrears letters and apply charges. Miss O complained at the local branch, saying that she could prove not just that she'd made all the payments, and that she'd actually made overpayments that Barclays had put in a holding account.

The complaint didn't progress; Miss O says she was asked to produce evidence of her payment record that she'd already provided more than once. In January 2018, Miss O began emailing Barclays' chief executive to try and move her complaint forward. It was then formally acknowledged and in March 2018, Barclays issued a final response, largely rejecting the complaint and suggesting Miss O pursue a claim against Bank M under the direct debit guarantee if she thought any money was unaccounted for. It paid Miss O £150 compensation for the distress and adverse impact the complaint had had on her health.

That letter gave Miss O six months to refer her complaint to us. She did so in August 2018, but by then Barclays had decided to remove the temporary hold it had put on recovery action whilst it dealt with the complaint. Miss O said this was harassment. Barclays has held recovery action again whilst we've been looking at the complaint.

One of our investigators considered the complaint; for the most part, he didn't recommend it should be upheld. Having cross-referenced the mortgage records with those from Bank M, he wasn't persuaded any payments were unaccounted for by Barclays or that its account statements were incorrect. He also explained to Miss O why he thought she hadn't made enough manual payments to cover all of the returned direct debits. He agreed that Barclays had been slow to log her complaint when she first made it, but thought Barclays had dealt fairly with that when it paid her £150 compensation.

He went on to explain that mortgage accounts aren't frozen when a complaint is made; payments are still due as normal, and if not paid, then a lender is entitled to write reminding the borrower of the missed payments. He didn't think Barclays had harassed Miss O. The investigator also explained that arrears charges are allowed for in the mortgage contract, but he identified a number that he thought Barclays should refund in the interests of fairness.

Both sides objected to his findings, to varying degrees. Barclays was in broad agreement, but said that some of the charges he'd said should be refunded need not be. The investigator revisited this point and agreed with the bank; he issued a revised view saying that only one charge, an £8 fee for a returned direct debit in January 2016 needed to be refunded. In all other respects, his view of the complaint was as before. Miss O rejected the investigator's findings in their entirety, and asked that her complaint be referred to an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But I'll make some general observations before dealing with the substance of the complaint.

Lenders generally do put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them to. For the Financial Ombudsman Service to have that power would seriously undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers abusing our service by making complaints with the intention to obstruct businesses that were trying to take legitimate action to recover money owed to them. I'll make more specific comments in due course, when I deal with the point about the mortgage account being "frozen".

We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

Miss O has told us she suffers from a number of health problems; I won't reveal the details here, out of respect for her privacy, but I've kept that in mind throughout my review of her complaint. On a number of occasions, she's asked for us to intercede on her behalf in her dealings with Barclays. It's possible Miss O would benefit from having someone assist her -

for example, her local Citizens' Advice Bureau - but I'm afraid we can't do that for her, as that would interfere with our independence.

I'm aware Miss O has complained about how the investigator handled her complaint. The investigator's manager has dealt with that as a separate matter, and if Miss O wishes to pursue that further with the Independent Assessor, she's been advised how she can do that. My focus here is on the underlying dispute between her and Barclays, but I will make one general comment in response to something Miss O said about the investigator's use of the evidence.

It's up to us to decide what evidence we need to decide a complaint, where we should get it from, and what weight we should attach to it once we have it. It's also our judgement to make on when we have everything we need to reach a fair conclusion. I now turn to the substance of the complaint, starting with the record of payments.

The Financial Ombudsman Service doesn't provide an auditing or account checking service. But we can, and do, look to see if there are obvious discrepancies between the payments a business says it has received and the borrower says they have made. I've done that here, and like the investigator, I'm not persuaded Miss O has paid money to Barclays that it has failed to account for correctly.

Nor am I persuaded Miss O had made up all of the payments that were missed due to unpaid direct debits. However, strongly Miss O might think otherwise, a fair analysis of the available evidence just doesn't point to that having happened. That being the case, Barclays was always reasonably entitled to treat the mortgage as being in arrears, and take fair steps to deal with that situation. It was also allowed to apply fees and charges to cover the extra cost of recovering the overdue payments.

Miss O says the charges are illegal, but they're actually provided for in the mortgage contract. In any event, whether something is legal or not can only be tested in court. My role, having due regard for the law where relevant, is to decide if something is fair and reasonable. I've done that here, and I've come to the same conclusion the investigator did in his revised view. The fees and charges Barclays added to Miss O's mortgage were applied fairly, with one exception – the £8 fee for a returned direct debit from January 2016 - which should be refunded.

But superseding all of the above is the near complete absence of any monthly payments on the mortgage since November 2017. Barclays' records show Miss O had made only one payment since November 2017; that was in July 2018. When I'm determining a complaint, I don't just have to decide if a business has made a mistake; I also have to decide if the consumer is now in a worse position because of that mistake. Other than the charge I've identified as having been unfairly applied, I've not found that Barclays has made mistakes in its handling of Miss O's account. But even if I had, those mistakes aren't the reason Miss O is now facing the potential loss of her home.

Rather, it's because Miss O is contractually obliged to make monthly payments to the mortgage and stopped doing so when her complaint was logged in January 2018. If Miss O thought she didn't have to pay her mortgage whilst her complaint was being looked into, then without wishing to sound unkind, I'm afraid she has rather mis-directed herself. As I said earlier, a business *can choose* to (but does not *have to*) hold recovery action during a complaint, but the account itself is not frozen and borrowers are still expected to make their regular payments. Withholding payments that are required under the terms of a contract is

never a good idea. Whatever frustration Miss O may have felt, not making payments if she was able to could only ever make things worse, not better.

One of the fundamental principles underpinning the mortgage contract is that a lender has the right to enforce its security to recover money owed to it. It would be entirely inequitable and inappropriate for me to remove that right from Barclays in a final decision on Miss O's complaint, regardless of her wider situation. If court action is imminent, that may well be unwelcome to Miss O but in all the circumstances I can't say it's unfair.

When the case comes to court, Barclays will have to persuade the court that granting a possession order would be appropriate. It will also have to satisfy the court that it has met its obligations under the pre-action protocol. Miss O should have the opportunity to make her own representations to the court, including telling it of her health problems, before it makes a decision on what should happen. It wouldn't be right for me to pre-empt that process here.

That leaves the delay on Barclays' part in logging a complaint and dealing with it in a timely fashion. I don't have to decide if it got things wrong; it's admitted as much and paid Miss O compensation for its shortcomings. All there is for me to decide is if the compensation (£150) was enough, and in the circumstances, I think it was. The delay was clearly frustrating for Miss O but it hasn't ultimately prevented her from getting a response to her complaint and then having that response considered independently by this service.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions the determination with which Miss O has brought the complaint. She sees error or wrong-doing in almost everything the bank has done (or not done). That's a natural, subjective reaction, and entirely understandable.

It's also natural to emphasise individual statements or comments that appear to support a particular view point, whilst at the same time paying less attention to those that support the opposite viewpoint. But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back and focussing on the broader picture. That's what I've done. Having done so, I can't find in Miss O's favour, however much she'd like me to.

Miss O doesn't have to accept my conclusions, and if she doesn't, then neither she nor Barclays will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Miss O's right to take legal action against Barclays over the subject matter of this complaint won't have been prejudiced by our consideration of the complaint. She wouldn't necessarily have to initiate court proceedings of her own to do that. As I said earlier, if and when Barclays resumes possession proceedings, Miss O can, if she wishes, ask the court to consider all of the arguments she's presented here as part of her defence.

**my final decision**

For the reasons set out above, my final decision is that, with one exception, I reject the main thrust of this complaint. The exception is the fee of £8 for a returned direct debit from January 2016 which I order Barclays to refund, back-dated for interest purposes. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 15 June 2019.

Jeff Parrington  
**ombudsman**