

complaint

Mr T complains that Barclays Bank UK PLC unreasonably appointed Law of Property Act receivers on his buy-to-let mortgage and has treated him unfairly – particularly in view of his serious health problems. He also complains that Barclays recorded incorrect information on his credit file and that this led to an application to port another mortgage to be declined.

background

In October 2017, Barclays appointed receivers to manage Mr T's property when he didn't repay his buy-to-let mortgage in April 2017 as agreed. When it received evidence that Mr T had an offer from another lender to refinance his borrowing, pending a dispute in respect of the mortgaged property being resolved in court, it told the receivers to step down. Mr T repaid the mortgage in March 2018.

Mr T considers Barclays has acted unfairly for a number of reasons, including:

- Barclays shouldn't have phoned him about this matter.
- He received only one letter from Barclays about this matter, although it says it sent more. It should have sent at least one letter by recorded delivery.
- There was a breach of confidentiality by his Premier manager in passing information about Mr T to Barclays' mortgage department, which led to the receivers being appointed.
- Barclays instructed receivers despite knowing that he had an offer from another lender and the serious health problems he was experiencing at the time.
- Barclays knew that the tenants of the property had poor health. It and the receiver's actions meant they moved out.
- He had to pay the receivers. Barclays then unfairly debited the amount from the mortgage and recorded that on his credit file. The debt was to the receivers, not Barclays.

In 2019, Mr T applied to port a buy-to-let mortgage with another lender to another property he owned outright. But that application was declined. So he had to use the sale proceeds to repay the mortgage and incurred an early repayment charge (ERC) of £11,889.36. When he checked his credit file, he found out that Barclays had incorrectly recorded adverse information on his credit file in respect of his buy-to-let mortgage. Mr T wants Barclays to refund the ERC.

Subject to any further submissions, I issued a provisional decision forms, which forms part of this decision. I provisionally found:

appointment of receivers

I don't consider it was fair or reasonable for Barclays to appoint receivers in the circumstances of this complaint. I say this because I consider it likely that Mr T told both his Premier manager and his Barclays' mortgage adviser that he had a mortgage offer in place and that he was suffering from some very serious health problems, including recovering from

an operation. I say this as Mr T says he told those members of staff about his circumstances – and that is supported by the statements we have from them.

I don't agree with Mr T's points that the members of staff should not have passed any information to Barclays' mortgage department as they owed him a duty of confidentiality. That is because they were all employees of Barclays. So when he told them anything, he was effectively telling Barclays. They were entitled to share that information where relevant. The mistake was in not passing all of the relevant information to the mortgage department. If they had done so, I am satisfied that Barclays would not have appointed receivers. I say this as when it found out the correct position regarding the mortgage offer and Mr T's health it removed the receivers.

The first thing to put things right is to refund all costs that were incurred by the receivers – with interest. Mr T says he paid the receiver directly as well as Barclays adding its costs to his mortgage. He will need to provide evidence of this for Barclays to refund those amounts to him. Barclays should let me know if it hasn't added any receiver's costs to the mortgage

Any rent paid to the receiver is usually passed to the lender – so it will have reduced the mortgage balance. But Barclays should tell me if the rent has not been passed from the receiver and make sure that Mr T is refunded all costs related to the appointment of the receivers and that he has had the benefit of any rent that was paid.

Mr T says he also lost his tenants because of the appointment of the receivers. I know he feels very strongly that is why they left. But I have no evidence to support what he says. There could be a number of other reasons why they chose to leave. So I am not awarding any compensation for this "loss".

I would add for completeness that Barclays is not required to send letters by recorded delivery. And it is entitled to try and contact a customer by phone where an account is overdue.

I will deal with my award for distress and inconvenience below.

credit file information

Barclays has already accepted it incorrectly recorded that Mr T was five months in arrears on his mortgage. I understand it has already corrected Mr T's credit file. But Mr T says that incorrect information caused his application to port another mortgage to a different property to be declined. As a result, he says he needed to pay an ERC to the lender.

Mr T has given me evidence that he was porting a buy-to-let mortgage to an unencumbered property in late 2019. He has given me evidence that the application was declined and of the ERC he paid. He has also shown that he had previously made successful applications to the same lender before the incorrect information was recorded on his credit file – and he had the mortgage he wanted to port. And other than the incorrect information, there is no adverse information on his credit file.

After carefully considering the evidence we have, I consider it is likely that the incorrect information recorded by Barclays was the only reason why Mr T's application to port the mortgage was declined. So it was Barclays' mistake which led to the porting application being declined. I therefore need to consider the financial loss that caused Mr T.

He has given me evidence that he had to pay an ERC of £11,889.36. But he has also not had to pay the interest on that mortgage from 13 December 2019 until 31 December 2022 when the fixed rate was due to end. That is 36 months of payments at £542.45 - £19,528.20. So, he has paid less overall than if the mortgage had continued for the remaining fixed rate term. Even if I accept that he has had an unexpected upfront cost, rather than being spread over three years, it is difficult to see that he is worse off overall.

We also don't know what might have happened between now and the end of the fixed rate period. Mr T might have incurred the ERC in any event. So I don't consider that Barclays should refund the ERC. I think it should pay Mr T compensation for the distress and inconvenience caused – and I will deal with that below.

compensation

I understand all of the points that Mr T has made but I don't have the power to penalise Barclays where it has acted unfairly or unreasonably. I have to follow the rules that we operate under. They say I can make:

a money award may be such amount as the Ombudsman considers to be fair compensation for one or more of the following:

- (1) financial loss (including consequential or prospective loss); or*
 - (2) pain and suffering; or*
 - (3) damage to reputation; or*
 - (4) distress or inconvenience;*
- whether or not a court would award compensation.*

I have already considered the financial loss above. That leaves an award for the pain and suffering, damage to reputation and distress or inconvenience Mr T has suffered as a result of this matter. Having considered what Mr T has said, think Barclays' actions have caused him all of those things. But I can only make an award for the impact on him – not anyone else, including his family and his tenants. And I would reiterate that I can't penalise Barclays.

Mr T has provided evidence to show the number of medical problems he was suffering with at the time in question – including that he was recovering from a recent very serious operation. I've already found that Barclays were or ought to have been aware of that. Mr T says, and I accept, it caused him a great deal of pain and stress at a time when he was meant to be recuperating and I have taken that into account. I accept the worry he was caused by potentially losing his property and incurring the associated costs at what was already a difficult time for him.

The receivers were appointed on 3 October 2017. Mr T appears to have become aware of the issue on 6 October and spoke to Barclays on 6, 10 and 12 October. Barclays removed the receivers on 18 October. So the issue was resolved within two weeks of Mr T becoming aware of it – I have taken that into account in my award.

Mr T subsequently spoke to Barclays to set out his plans. I'm not awarding compensation for that as it was a reasonable for Barclays to want to understand his intentions as the term on the mortgage had ended some time ago.

Mr T will also have been caused stress and inconvenience by the incorrect information on his credit file and the trouble he experienced in sorting it out.

Looking at everything that happened, there was a substantial amount of pain, suffering, distress and inconvenience – along with damage to Mr T's reputation with the incorrect adverse information being recorded on his credit file. Not to downplay the impact on Mr T, but the issue with the receivers was resolved in a relatively short space of time. Overall, and listening carefully to everything that Mr T has said about how this matter has affected him, I consider it would be fair for Barclays to pay Mr T £1,500 to reflect what happened with both the receivers and the credit file.

So I proposed that Barclays should:

- *Refund any of the receiver's costs it added to Mr T's mortgage along with any receiver's costs that Mr T paid directly where he can provide evidence to show the payment was made.*
- *If any rent payments made to the receiver were not paid to the mortgage, pay those amounts to Mr T.*
- *Pay interest on any of the above amounts that were added to the mortgage at the mortgage interest rate from the date added to the mortgage and then at 8% simple interest per year from the date the mortgage was repaid until date of settlement.*
- *Any of the above amounts paid directly by Mr T should receive interest at 8% simple per year from date of payment to date of settlement.*
- *Pay Mr T £1,500 for any pain, suffering, damage to reputation, distress and inconvenience caused by these matters.*

Barclays accepted my provisional findings. It said that it applied a total of £802 of receiver's costs to the mortgage. And that of £1,760.23 was received in rent during the period the receiver was instructed, but only £1,549.01 was paid to the account. It said that was a difference of £111.02 – but I make it £211.22.

Mr T responded to make a number of points, including:

- The amount awarded was insufficient and Barclays is being let off lightly. Barclays will still behave in the same manner if it isn't "penalised". The pressure and stress on him and his family was indescribable.
- My provisional decision did not take into account that Mr T lost the 100% tax relief on the interest paid on the mortgage. And he had also lost the opportunity to invest the sale proceeds of the property as he had to use those funds to repay the mortgage that he could not port.

I explained to Mr T that my understanding was that HM Revenue & Customs' (HMRC) position on tax relief for mortgage interest payments has been phased out and that from April 2020 he would only receive a tax credit of 20% on any mortgage interest paid, which will be offset against his tax bill. I said I was happy to consider any other evidence to show the exact tax loss that Mr T would suffer – and set out the type of information I would need to see. Mr T said he accepted my explanation regarding the tax position.

my findings

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

appointment of receivers

It is no longer in dispute that Barclays was wrong to appoint receivers. It has agreed to refund all costs associated with that.

I note there are some discrepancies with the figures supplied by Barclays. I would ask that it checks those figures before settling with Mr T – if he chooses to accept my decision.

I do not have sufficient evidence to say that the tenants left the property because of the appointment of the receivers. So I won't be asking Barclays to pay Mr T the rent he says he lost because of that. After reviewing everything in respect of the appointment of the receivers, I can't see any reason to change the decision I reached in my provisional decision.

I will address the impact on Mr T and what I consider to be fair compensation for that below.

credit file

It is not in dispute that Barclays recorded incorrectly that Mr T had been in arrears on his mortgage. That information was showing on his credit file when he applied to port an existing mortgage with another lender to another property he owned. That application was declined. I still consider that it is more likely than not that the application was declined solely because of the information recorded incorrectly by Barclays. I say that as taking into account what we knew about Mr T's credit history and his previous record there was no reason for the application to be declined other than the adverse information recorded by Barclays.

As a result, Mr T had to use the proceeds of the sale to repay the mortgage and an ERC of £11,889.36 was applied. I know Mr T feels strongly that the ERC would be refunded. But I need to consider whether this has caused him a financial loss – and what is fair and reasonable in the individual circumstances of this case.

Although Mr T had to pay £11,889.36, he has saved 36 months of payments at £542.45. That equals £19,528.20. So he will pay £7,638.84 less than he would have had he continued to pay the mortgage interest. I accept that Mr T will have lost the ability to claim tax relief or tax credits under the new system. But after looking carefully at the amount he could claim, I still find it difficult to see he has suffered a loss overall. The cost of the ERC is less than the total amount of interest payments he would have had to make over the remaining fixed rate period – even taking into account tax relief/credits.

I also accept that Mr T has lost the ability to invest the funds that he had to use to repay the mortgage instead of porting it. But there was nothing to prevent Mr T taking another mortgage if that is what he wished to do. I note that Barclays agreed to remove the adverse information on 5 December 2019 (and it tells me it had actually done so on 4 December 2019). We told Mr T that the same day. That was before the mortgage was repaid and the ERC incurred on 13 December. Although it was late in the house selling process, Mr T could still have let his lender know that Barclays had agreed to remove the adverse information. Further, on 30 January 2020 we told Mr T that Barclays had removed the adverse

information and Mr T confirmed he knew that. There was also nothing to prevent Mr T checking his credit file.

The mortgage where Mr T paid the ERC had a six-month window to port the mortgage, in which case the ERC would be refunded. I understand that Mr T might not have been aware of this. But I note that he was using the services of a mortgage broker for this transaction. And bearing in mind the amount Mr T is claiming as a loss, I think it is reasonable to say that there were other steps he could have explored with the lender that applied the ERC once he found out the adverse information had been removed.

We also don't know if Mr T would have repaid the mortgage in any event at some point during the tie-in period and incurred the ERC.

Overall, and for the reasons I have explained, I don't consider it would be fair and reasonable to tell Barclays to refund the ERC in the circumstances of this case. I will consider the impact on Mr T of this part of his complaint below.

compensation

I've listened carefully to everything Mr T has said about the impact of this matter on him. I agree that this matter as a whole have caused him an enormous amount of stress and worry at a time when he had a lot of health problems and was recovering from a very serious operation. But I still consider my award of £1,500 is fair and reasonable.

I don't have the power to make an award to punish Barclays or to reflect the impact of these complaints on others, including Mr T's family. Nor can I take into account Barclays' resources in deciding how much to award.

As set out above, I can make awards to reflect financial loss, pain and suffering, damage to reputation, and distress or inconvenience. I've dealt with the financial loss above. I think that Mr T has experienced distress, inconvenience, pain, suffering and damage to reputation because of the acts and omissions of Barclays. My award reflects the serious impact that Barclays' acts and omissions had on him and that it caused him a substantial amount of trouble and upset. After reconsidering everything, I still consider £1,500 is a fair amount to compensate Mr T for what happened and how it affected him, bearing in mind that the issue with the receivers was resolved in just over two weeks.

my final decision

My final decision is that Barclays Bank PLC should.

- Refund any of the receiver's costs it added to Mr T's mortgage along with any receiver's costs that Mr T paid directly where he can provide evidence to show the payment was made.
- If any rent payments made to the receiver were not paid to the mortgage, pay those amounts to Mr T.
- Pay interest on any of the above amounts that were added to the mortgage at the mortgage interest rate from the date added to the mortgage and then at 8% simple interest per year from the date the mortgage was repaid until date of settlement.

- Any of the above amounts paid directly by Mr T should receive interest at 8% simple per year from date of payment to date of settlement.
- Pay Mr T £1,500 for any pain, suffering, damage to reputation, distress and inconvenience caused by these matters.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 December 2020.

Ken Rose
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