

The complaint

Mr B complains that Barclays Bank UK PLC wrongly reported late payments to his credit file, which means he lost the chance to move his buy to let mortgages to another lender.

What happened

Mr B has a portfolio of buy to let properties. Two are mortgaged with Barclays, the remainder with other lenders. The Barclays mortgages were originally taken out as joint mortgages with a third party. The third party has since passed away. As the properties were held on a tenants in common basis they are now owned by Mr B and the wife of the late joint borrower. But the mortgages reverted to and remain in Mr B's sole name. As a sole trader running a buy to let property business, Mr B is a qualifying micro-enterprise under our rules.

The two mortgages are on separate flats within the same block. Mr B also owns several other flats in the same block. For ease I'll refer to these mortgages as 5T and 7T respectively.

The mortgage on 7T was taken out in 2012, for £144,000 on interest only terms over a term of 15 years.

The mortgage on 5T was taken out at the same time and for the same amount, but with a loan term of 10 years.

Mr B's broker applied for new mortgages to replace the ones with Barclays, as part of a wider plan to refinance loans across Mr B's portfolio. As part of this process Mr B discovered that Barclays had reported missed payments to his credit file, and says that this meant none of the refinancing could go through.

Barclays accepted that it had wrongly recorded missed payments because of an error with direct debit collections for the two mortgages. It agreed to correct Mr B's credit file and offered £1,500 compensation for the impact of the error.

Mr B wasn't happy with that. He said that Barclays had taken almost a year to investigate and resolve the problem. In the meantime, he hadn't been able to re-mortgage and reduce the interest rates on the mortgages. He said he had overpaid interest as a result, and that Barclays ought fairly to refund the overpaid interest. He brought his complaint to us.

In March 2022 Mr B's mortgage broker recommended mortgages with another lender – I'll call this lender V – for both 5T and 7T. Both were for borrowing of £147,000 on interest only terms with an initial five year fixed rate of 3.19%. The applications were rejected because of the issues with Mr B's credit file. As a result re-mortgages on four other properties in Mr B's portfolio did not go ahead. These mortgages were not with Barclays, but Mr B says the same credit file problems meant that no applications were submitted.

The broker has since said that while there was no guarantee the loans would have been accepted without the credit file problems, he knows of no other reason why they would not have gone through. However, the March 2022 advice email does say that a specialist lender

would be required because of other problems – including that Mr B owns several other properties within the block of flats and owns the management company (which presents a concentration risk) and that the portfolio as a whole doesn't generate enough rent to cover the mortgages (which is, in part, the reason why re-mortgaging to reduce costs was pressing).

At the time of the March 2022 mortgage advice, the Barclays mortgages were on an interest rate of 3.6% - but as this was a variable not a fixed rate, it increased in line with increases to Bank of England base rate and other mortgage market volatility later in 2022.

Overall, as at March 2022, Mr B's broker recommended six re-mortgages (including the two on 5T and 7T), which he said would result in a total saving of £1,350 per month in reduced monthly payments.

Mr B therefore said that his losses were £1,350 per month for each month that he was unable to re-mortgage (more as interest rates rose in the meantime). He also said that he had spent considerable time dealing with the issue and wanted Barclays to compensate him for his time – at the time he first complained in September 2022, he estimated that to be around 30 hours at an hourly rate of £25 per hour.

Barclays said that the refinancing was speculative and it couldn't be sure Mr B would have been able to re-mortgage even without the credit file issues. So it didn't agree to pay the additional interest Mr B said he had been charged.

Our investigator thought Barclays had made a fair offer. Mr B didn't agree and asked for an ombudsman to review his complaint.

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.

There's no dispute that Barclays made an error. It seems there was an issue with collecting the payments for the two mortgages – it said it had no direct debit, but Mr B says he hadn't cancelled it and he had sufficient funds to make the payments had Barclays called for them. Barclays accepted that there was a problem with collecting the direct debit, the payments should have been made and it wouldn't be fair to treat the mortgages as having been in arrears. It agreed to remove the arrears markers from Mr B's credit file.

That's the right and fair thing to do. However, the issue for me to decide is what are the consequences of Barclays' error. Mr B says they are significant. At the time he was looking to re-mortgage six properties in his portfolio, which would have substantially reduced their costs, but was unable to go ahead because of the recent arrears markers. And, secondly, Barclays took so long to remove the markers that once the problem was resolved interest rates had gone up in the meantime – meaning any new mortgage would be more expensive than the fixed rates Mr B wanted in March 2022, and that he might not be able to obtain the mortgages at all because of the increased costs compared to the rents received. So Mr B says this has had a substantial financial impact – as well as the expense, time and inconvenience he's been put to in trying to get matters put right.

There are two issues here – any financial losses because Mr B couldn't re-mortgage, and compensation for the impact the mistake had on him. I'll deal with each in turn.

Before I can award compensation for financial loss, I have to be satisfied that there actually was a loss, and that Barclays is responsible for it. In this case, that means I have to be

satisfied that Barclays was the reason Mr B was unable to re-mortgage, and that but for Barclays' error he would have been able to do so.

I've looked at all the evidence and thought about this very carefully. Having done so, I'm not persuaded that it's more likely than not that Mr B would have been able to re-mortgage even if Barclays hadn't wrongly recorded arrears on his credit file.

Barclays points out that the arrears markers it recorded are not the only issues on Mr B's credit file. I've reviewed his credit file, and I can see that – besides the Barclays missed payments, since removed – there are several other outstanding mortgages, as well as a bridging loan that was paid off in 2019, and various other accounts. Two of the mortgages (not with Barclays) show arrears in 2016, and the bridging loan shows a missed payment in 2017. There are also arrears on utility bills in 2019.

I think those past missed payments might have had an impact on Mr B's ability to re-mortgage. For example, I'm aware that one of the lenders Mr B's broker was considering applying to does accept applications from borrowers with past missed payments that are not recent, but where that is the case its mortgage products are more expensive than those offered to borrowers with no past missed payments. But it's also the case that these entries would have been relatively historic at the time of the application.

Secondly, and I think more importantly, I've looked at the advice from Mr B's broker in March 2022. The broker says

"Your situation is not straightforward and relatively niche which is causing limitations on what can be done. The reason the applications fall outside of mainstream lending are that you own such a large proportion of [T], you also own the management company of [T] and the portfolio doesn't produce the rents required in relation to the debt.

That being said there are options which are considerably lower than what you are paying now.

The following lenders are all lenders that have said they could lend here:

[Three lenders Z, V and P]

Z – will need to take a comfort charge over the freehold

V

P – I know you have two mortgages finishing term with P but we could do a fresh application to them. I'm waiting on P to ascertain how many properties in the block they could do...

The two mortgages with Barclays would be moved to V, with a saving of £46 per month. The bulk of the savings were to come from switching the mortgages already with P to new mortgages – still with P, but re-applying for new mortgages.

As the evidence from the broker shows, no application had been made to P. The broker wasn't even sure whether P would accept the applications given that Mr B owned other properties in the same block (including the ones with Barclays).

And the broker also pointed out that options were limited because of problems with the concentration of properties in Mr B's portfolio and the low rent yields. That had restricted the

choice of lenders – while the three the broker identified wouldn't automatically reject applications in these circumstances (unlike others), there's no guarantee that they would have offered mortgages in this situation. I think this is more likely to have been a barrier than relatively old entries on Mr B's credit file.

In the end, it seems an application was made to V, but failed at the stage of initial credit checks. Even if the Barclays markers weren't on Mr B's credit file, V might still have rejected the application because of the other issues on the file, or it might have accepted an application but at a higher rate than the standard rate quoted by the broker. Or it might have declined to lend because of the problems the broker identified with the property and Mr B's overall portfolio.

Because of the response from V, no application was made to P. So it's not known whether it would in fact have accepted the properties with the issues the broker identified, or whether it would have accepted an application from Mr B with the other markers on his credit file, even without the Barclays ones.

For me to be able to award compensation, I have to be satisfied that it's more likely than not that but for Barclays' error Mr B would have been able to re-mortgage, and that doing so would have resulted in a saving.

Having taken everything into account, I think there are too many uncertainties for me to be able to say that. The combination of Mr B's credit history (even leaving aside the Barclays' markers), the unusual number of properties owned in one block, and the low rental yield, means that there's a significant possibility Mr B wouldn't have been able to re-mortgage – or even if he could, at the prices quoted by the broker – even if Barclays hadn't recorded the missed payments on his credit file. In those circumstances, I don't think I can reasonably say that it's more likely than not that Mr B suffered a financial loss, or that Barclays was the cause of him being unable to re-mortgage. And so I don't think I can fairly award compensation based on the interest rates quoted by the broker.

Turning now to the impact of Barclays' mistake, for the same reasons I don't think I can fairly require Barclays to compensate Mr B for the upset of not being able to re-mortgage any more than I can require it to compensate him for the costs of that. But regardless of that it's clear that Barclays' mistake has had a substantial impact on Mr B and has caused him a great deal of upset – compounded by the amount of time it took Barclays to put things right.

I've taken into account the guidance the Financial Ombudsman Service has produced about fair awards of compensation in situations like this.¹ Barclays has offered compensation of £1,500, which the guidance says would be appropriate in situations where the impact of a mistake has caused substantial distress, upset and worry, with serious disruption to daily life over a sustained period, and an impact felt over many months or a year. Taking into account what Mr B has said about the impact of the mistake on him, including the time he's had to spend dealing with it, I'm satisfied Barclays has made a fair offer.

My final decision

My final decision is that Barclays Bank UK PLC has made a fair and reasonable offer to settle this complaint and should pay Mr B £1,500 compensation, if it hasn't already done so.

¹ See <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 February 2024.

Simon Pugh
Ombudsman