

The complaint

Mr W and Mrs M have complained about an application they made – via a mortgage broker – to Barclays Bank UK PLC for a further advance on their mortgage.

What happened

Mr W and Mrs M had a residential mortgage with Barclays.

In October 2021 Mr W and Mrs M spoke to a mortgage broker (“broker T”) about borrowing an additional £180,000 against their property so they could buy another property in Scotland to rent out. The plan was the property would be bought outright using that £180,000, with no separate mortgage needed to purchase it.

In November 2021 broker T submitted a further advance application to Barclays on that basis. Barclays said that if the property was to be bought outright then confirmation was needed from Mr W and Mrs M’s solicitor of the purchase price and that no further funding was being taken, or if a further mortgage was required then broker T would need to amend the application to include the costs of that other mortgage. The broker confirmed the property was being purchased outright, and it was agreed that Mr W and Mrs M’s solicitor would provide the confirmation required before completion.

After some back and forth over Mr W and Mrs M’s income and other requirements a mortgage offer was issued in December 2021.

A few days later broker T uploaded an amendment to the application asking that the loan amount be increased to £200,000. That was agreed and a revised offer was issued.

At the end of January 2022 Mr W and Mrs M decided not to buy the Scottish property, and instead wanted to buy a property near their home, again to rent out. However because the purchase price was higher they needed to obtain a buy-to-let (“BTL”) mortgage to fund the remainder of the purchase price. They also decided to set up a limited company to purchase the new property. Broker T placed an application with another lender for the BTL mortgage with the limited company as the applicant.

On 14 February 2022 the limited company was incorporated, and the same day broker T uploaded a further amendment to Barclays, now asking for a loan amount of £220,000.

As the document hadn’t been submitted correctly Barclays asked broker T to upload it again, and Barclays also asked about the repayment strategy for the interest only borrowing. The broker uploaded the document again, and said the repayment strategy was the sale of the mortgaged property.

Barclays issued a mortgage offer on 3 March 2022 for a £220,000 further advance, and Mr W and Mrs M accepted that offer on 22 March and requested the funds be drawn down.

As part of its processing of that acceptance Barclays reiterated its requirement that confirmation was needed from Mr W and Mrs M's solicitor that the funds would be enough to purchase the new property outright, without recourse to any further borrowing.

There was some back and forth between Mr W and Mrs M and broker T over the next week or so, with Mr W and Mrs M chasing the release of the funds.

In the meantime broker T, on 31 March, told Barclays that Mr W and Mrs M were no longer purchasing the property in Scotland, and that now the funds were just to be the deposit for a different property with a BTL mortgage being taken out for the remainder of the purchase price. This meant the 3 March mortgage offer was no longer valid and the application would need to be re-underwritten as the lending proposal had changed due to the fact an additional mortgage debt was being taken out. Barclays requested an amendment form be submitted along with a copy of the new BTL mortgage offer.

On 4 April broker T uploaded a copy of the mortgage offer from the other lender for the purchase of the BTL property.

Barclays reviewed this and upon noticing the mortgage offer was in the name of a limited company (rather than Mr W and Mrs M personally) was no longer willing to lend as the revised proposition fell outside its lending policy.

In the meantime broker T uploaded the amendment to the mortgage application to include the monthly cost of the new BTL mortgage in Mr W and Mrs M's outgoings, and when that amendment was processed it triggered a new mortgage offer to be issued on 11 April.

On 13 April Barclays confirmed to broker T that the lending proposition was outside of its lending policy so it wouldn't be able to proceed with it.

Over the next few days there were conflicting messages from Barclays, with the senior underwriter stating that the lending couldn't proceed as it was outside lending policy, but the broker support team confirming a new mortgage offer had been issued when it confirmed a complaint from Mr W and Mrs M had been logged.

On 22 April broker T told Mr W and Mrs M that, despite trying to get the decision to decline the lending overturned, Barclays wasn't willing to lend and so the transaction fell through.

Barclays responded to Mr W and Mrs M's complaint on 28 July. In that it said the application didn't meet its lending policy, and the March offer was issued because the broker hadn't disclosed the true nature of the BTL proposition. It offered £200 for the time it had taken to respond to the complaint

Unhappy with the response they'd received from Barclays, Mr W and Mrs M emailed broker T to query what Barclays had said about the information not being provided about the nature of the onward purchase.

Broker T treated that as a complaint and issued its final response letter on 13 October 2022.

In the meantime, the limited company was dissolved on 11 October 2022, and then on 8 January 2023 Mr W and Mrs M referred the two complaints to our service

On 14 January Mr W and Mrs M wrote to Barclays to accept the £200 compensation for the delay in handling the complaint. In September 2023 Mr W and Mrs M let us know they hadn't received the payment and I understand it was then paid in October 2023.

Our Investigator looked at the complaint against Barclays. She said she didn't think Barclays had fairly withdrawn the 11 April mortgage offer as no material new information had come to light between that being issued and being withdrawn. For that she felt Barclays should pay an additional £400 compensation for the stress and inconvenience caused, and also cover any costs that directly related to the 11 April offer being issued and then withdrawn. She said she couldn't ask Barclays to fulfil the offer as she couldn't force it to offer lending that is outside its lending policy, and she also didn't find Barclays had done anything wrong when it withdrew the March mortgage offer.

Barclays accepted our Investigator's findings about the additional £400 compensation and said it would need to know more about the costs to confirm whether it agreed with that part.

Mr W and Mrs M didn't accept the outcomes of their two complaints overall, saying their losses are:

- The potential increase in value of the BTL property.
- The rental income that would have been received.
- The costs from the abortive purchase.

They said they couldn't settle one dispute without having clarity over the other, so I'm issuing decisions on both complaints. This decision only relates to the actions of Barclays albeit, due to the nature of the complaints, there will be repetition and cross over.

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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

There are three steps I need to go through when deciding a complaint.

1. The extent of our powers, as set by the Financial Services and Markets Act 2000 ("FSMA"), is set out in the dispute resolution section of the regulator's handbook of rules and guidelines. This is commonly referred to as DISP and the handbook can be found online. The first step I must take is to decide whether we have jurisdiction to consider the complaint (DISP 2), and as part of that I need to ensure the complainant is an eligible complainant under our rules as we can only consider a complaint from an eligible complainant.
2. If I'm satisfied we have the jurisdiction to consider a complaint I then review the merits of it to reach a decision on whether or not I think the complaint should be upheld. Part XVI of FSMA sets out the details of our scheme, and s.228 deals with how I determine complaints that come under our compulsory jurisdiction. That says a complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case. When considering what's fair and reasonable in all the circumstances, I'm required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. That requirement is reflected in DISP 3.6.1 to 3.6.4.

3. If I decide a complaint should be upheld then I need to decide appropriate redress, but I can only make an award of compensation so far as our rules allow me to as per s.229 of FSMA and DISP 3.7.

Step one

This complaint relates to an application made to Barclays by Mr W and Mrs M for a further advance on their residential mortgage that they hold in their joint names. So I'm satisfied Mr W and Mrs M are eligible complainants in this matter. There's a two-stage test for determining eligibility – the nature of the complainant, and the nature of the complainant's relationship with the respondent. In proposing to borrow money to set up a buy to let company, Mr W and Mrs M were not acting as consumers (since they were not acting wholly outside their trade business or profession). However, they qualify to complain to us as a micro-enterprise. And they were customers of Barclays so have the required relationship with the respondent. Having considered the remainder of our jurisdiction I'm satisfied there are no issues, and so I have the power to consider a complaint brought by Mr W and Mrs M against Barclays in respect of their application for a further advance on their residential mortgage.

Step two

I've reviewed everything that has been said and provided by Mr W and Mrs M, Barclays and broker T, and having done so I'm satisfied it is more likely than not that broker T didn't notify Barclays that the lending proposition had substantially changed.

The application that was submitted to Barclays in 2021 was for Mr W and Mrs M to borrow a further £180,000 to purchase a BTL property outright and in their own names; that is, without recourse to any further borrowing and without creating a separate entity to own the property. Whilst Barclays agreed to increase that amount to £200,000, and then £220,000 there's nothing to indicate broker T told Barclays, before the March mortgage offer was issued, that:

- The BTL property had changed and now the Barclays further advance was no longer fully funding the purchase, and instead it was simply the deposit with a BTL mortgage being taken out for the remainder of the purchase price.
- The BTL property was being purchased by a limited company, rather than Mr W and Mrs M personally.

When it receives a mortgage application, a lender will need to carry out various checks and enquiries, and consider the information it's given, in deciding whether to lend. It's important to note that there's never an obligation to lend, and neither is there an obligation to give reasons for refusing an application.

However, an application should be considered fairly and in line with relevant law and regulations. Of particular relevance to this complaint is the part of the mortgage rules that says that when a lender issues a mortgage offer it is a binding offer – which means that (subject to any lawful conditions included in the offer) the lender is bound by the offer and cannot withdraw it.

In this case, in March 2022, Barclays issued a binding offer subject to various conditions set out in the offer. Supplementary Condition 7 of that offers says:

'We can withdraw the offer or change its terms (whether or not you have agreed to buy the property), but only before the advance is made under the mortgage, in the following circumstances; a) where we become aware or suspect that any information you have

provided to enable us to make our lending decision is incorrect or misleading; b) where any information that we have obtained materially changes and such change affects our decision to lend; c) where you request and we agree to a variation in the amount of the loan; d) following internal investigations and/or advice from our solicitor, valuer or other professional adviser which would directly affect our decision to lend as the Bank's security might not offer adequate security or the security the Bank would have expected; e) where it appears that the mortgage will be in breach of the law; f) to change the offer so as to correct an error in it (such as inconsistent or inaccurate particulars of you, the property or the terms of the mortgage).'

As I'm satisfied Barclays wasn't aware of the two points I've set out above at the time it issued the March mortgage offer, I'm satisfied it was entitled to withdraw the offer under the rules of mortgage regulation and the specific scenarios it set out in the offer. That's because the information that had been provided to enable Barclays to make its lending decision was (now) incorrect, and the information it had obtained was materially different and affected its decision to lend.

For that reason I'm satisfied Barclays did nothing wrong when it withdrew the March mortgage offer.

Barclays, however, did make a mistake when it issued a second offer in April 2022. I'm satisfied that Barclays didn't intend to issue that offer as the lending proposition was outside of its lending policy, and it was issued due to an administration mistake (a mistake that was then compounded by the differing information that was given by the different departments). But I can't decide this complaint based on what Barclays intended; the fact is, whether mistakenly or not, it did issue a binding offer.

In the circumstances, I don't think it was fair for Barclays to withdraw the binding April offer when nothing had changed since it was issued based on information already in its possession. However, I also don't think I can fairly say that Barclays should be required to lend to Mr W and Mrs M in line with the offer.

As I've said, there's no general obligation to lend. The mistake Barclays made here was the underwriter not putting a block on a mortgage offer being automatically reissued when an amendment was made to the application. When someone working in an admin function within Barclays updated the application that triggered a revised offer to be issued, despite the underwriter already deciding Barclays wasn't willing to lend. Had that mistake not been made, the offer would never have been issued. I don't think Barclays would ever have lent that money to Mr W and Mrs M (under the scenario we're dealing with here) and so I don't think I can fairly find that it should have honoured the offer. But it should compensate them for the consequences of issuing and then withdrawing an offer when that should not have happened.

Step three

That leads me to step three that I set out above; deciding appropriate redress so far as our rules allow me to as per s.229 of FSMA and in DISP 3.7.

Our Investigator said that Barclays should pay £400 to Mr W and Mrs M for the stress and inconvenience caused to them due to the offer that was issued on 11 April being subsequently withdrawn. She also said Barclays should cover any financial loss incurred by Mr W and Mrs M that was just due to the issue and withdrawal of the April offer.

Mr W and Mrs M said their losses are:

- The potential increase in value of the BTL property.
- The rental income that would have been received.
- The costs from the abortive purchase.

As our Investigator explained, the first two bullet points were only potential losses and, in any event, they would be losses incurred by the limited company rather than Mr W and Mrs M personally. She said that as this complaint was brought by Mr W and Mrs M personally then we can only make an award in respect of their losses, not the losses of a separate limited company.

Mr W and Mrs M didn't agree, citing case law to support their submissions.

When deciding compensation I'm bound by the limitations of the powers that are granted to me under FSMA and DISP. We're not a court, and I only have the power to award compensation in so far as our rules allow me to. I don't have the power to award compensation in line with case law, if to do so would mean I was acting outside our powers.

S.226 of FSMA sets out the scope of our compulsory jurisdiction. That says:

'226 Compulsory jurisdiction.

- (1) *A complaint which relates to an act or omission of a person ("the respondent") in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.*
- (2) *The conditions are that—*
 - (a) *the complainant is eligible and wishes to have the complaint dealt with under the scheme;*
 - (b) *the respondent was an authorised person [or an electronic money issuer within the meaning of the Electronic Money Regulations 2011][, or a payment service provider within the meaning of the Payment Services Regulations 2009,] at the time of the act or omission to which the complaint relates; and*
 - (c) *the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.*
- (3) *"Compulsory jurisdiction rules" means rules—*
 - (a) *made by the [FCA] for the purposes of this section; and*
 - (b) *specifying the activities to which they apply.*
- (4) *Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.*
- (5) *Activities may be specified by reference to specified categories (however described).*
- (6) *A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.*

- (7) *The rules—*
- (a) *may include provision for persons other than individuals to be eligible; but*
 - (b) *may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.*
- (8) *The jurisdiction of the scheme which results from this section is referred to in this Act as the “compulsory jurisdiction”.*

S.229 of FSMA sets out my powers in respect of making awards, and that says:

‘229 Awards.

- (1) *This section applies only in relation to the compulsory jurisdiction ...*
- (2) *If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—*
- (a) *an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);*
 - (b) *a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).*
- (3) *A money award may compensate for—*
- (a) *financial loss; or*
 - (b) *any other loss, or any damage, of a specified kind.’*

DISP 2 sets out the jurisdiction of the Financial Ombudsman Service, with DISP 2.7.1 explaining:

‘A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant.’

‘Eligible complainant’ is defined in DISP 2.7.3 as:

‘An eligible complainant must be a person that is:

- (1) *a consumer; or*
- (2) *a micro-enterprise ;*
 - (a) *in relation to a complaint relating wholly or partly to payment services, either at the time of the conclusion of the payment service contract or at the time the complainant refers the complaint to the respondent; or*
 - (b) *otherwise, at the time the complainant refers the complaint to the respondent; or*
- (3) *a charity which has an annual income of less than £6.5 million at the time the complainant refers the complaint to the respondent; or*

- (4) *a trustee of a trust which has a net asset value of less than £5 million at the time the complainant refers the complaint to the respondent; or*
- (5) *(in relation to CBTL business) a CBTL consumer; or*
- (6) *a small business at the time the complainant refers the complaint to the respondent; or a guarantor.*

And DISP 2.7.6 goes on to clarify the nature of the relationship, with the relevant parts here being:

'To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:

- (1) *the complainant is (or was) a customer, payment service user or electronic money holder of the respondent;*
- (2) *the complainant is (or was) a potential customer, payment service user or electronic money holder of the respondent;'*

DISP 3.7 covers our rules about awards I may make, with DISP 3.7.1 saying:

Where a complaint is determined in favour of the complainant, the Ombudsman's determination may include one or more of the following:

- (1) *a money award against the respondent; or*
- (2) *an interest award against the respondent; or*
- (3) *a costs award against the respondent; or*
- (4) *a direction to the respondent.*

DISP 3.7.2 makes clear that my powers to make a money award are to award what I consider to be fair compensation "whether or not a court would award compensation".

'Complaint' is defined in DISP as:

- (1) *[deleted]*
- (2) *(in DISP, except DISP 1.1 and (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule, and in CREDS 9 and in SUP 12) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which:*
 - (a) *alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*
 - (b) *relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products or claims management services, which comes under the jurisdiction of the Financial Ombudsman Service.*

- (3) *(in PRIN, DISP 1.1 and (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.*
- (4) *(in DISP) reference to a complaint includes:*
- (a) under all jurisdictions, part of a complaint; and*
 - (b) under the Compulsory Jurisdiction, all or part of a relevant complaint, a relevant claims management complaint or a relevant credit-related complaint.*

Putting all these together I can only make an award to an eligible complainant who is (or was) a customer (or potential customer) of the respondent firm. And the award can only be for any loss or damage suffered by the complainant.

Our rules don't give us the power to consider a complaint from a shareholder of a limited company about a firm that provides a financial service to the limited company as the shareholder isn't the financial services firm's customer. The limited company is the firm's customer, but our rules don't extend to allowing a shareholder to complain in their own right (rather than as a representative of the company).

We also can't consider a complaint from a director of a limited company about things that have affected them personally for the same reason.

There were two distinct customers (or potential customers) in this overall attempted transaction (by that I mean Mr W and Mrs M taking out a further advance with Barclays, to buy a BTL property in the limited company's name):

- Mr W and Mrs M.
- The limited company.

Mr W and Mrs M were Barclays' customers in this attempted transaction as they wanted a further advance on the personal residential mortgage they held with Barclays. Mr W and Mrs M aren't Barclays' customers (or potential customers) in their capacity of directors or shareholders of the limited company as that limited company had no relationship with Barclays.

That means I can't award any losses (or potential losses) incurred by the limited company, nor any losses (or potential losses) that were incurred by Mr W and Mrs M in their capacity of directors or shareholders of that limited company.

I've set that out at length because Mr W and Mrs M have disagreed about the extent of my powers here, and cited caselaw where the courts have made awards in what they consider to be analogous situations. I've set out the law and rules which govern my powers as an alternative to the courts; they are not the same as those of the courts, and I have to act within the powers given to me by the legislation and rules governing our service. DISP 3.7.2 makes clear that the powers of the court are not relevant to my powers to make an award. Even if Mr W and Mrs M are right that a court would award them compensation in this situation, I cannot do so if I do not consider I have the power to do so.

The lost rent and lost profit that would come from owning the property are losses that would be incurred by the limited company, not Mr W and Mrs M. The limited company is not the complainant in this case, and I have no power to make an award in favour of an entity that is not party to a complaint.

The limited company could not bring a complaint against Barclays, either on its own or jointly with Mr W and Mrs M, since the limited company has no relationship with Barclays that would make it an eligible complainant. The limited company was not the applicant for the Barclays further advance and therefore was not Barclays' customer or potential customer.

In any case, even if I had the power to make an award for lost rent or lost capital gain on the rental property I don't think it would be fair to do so.

That's because I've already found that the loan application was outside Barclays' lending criteria and – if it had full information at the time – it would never have issued a mortgage offer and was entitled to withdraw the first offer once it knew the full facts. The second offer was issued by mistake, and while it was a binding offer under the mortgage rules I've explained it wouldn't be fair to require Barclays to lend outside its lending criteria where an offer is issued by mistake.

Where a mistake is made, the appropriate remedy is to require Barclays to compensate Mr W and Mrs M for the consequences of the mistake and their losses incurred relying on it before it was corrected, to put them back in the position they would be in if the mistake had never been made. The appropriate remedy is not to compensate them as if the mistake was implemented and carried through.

Applying that to this case, that means that the appropriate measure of compensation is the costs Mr W and Mrs M incurred while mistakenly believing they had a valid mortgage offer relying on that offer. The appropriate measure is not any profit they might have made from a mortgage offer that should never have been issued. Had Barclays done nothing wrong, Mr W and Mrs M would not have been given the second mortgage offer and the limited company would not have been able to buy the rental property, so would still not have made any profit from it.

Summary

In summary I'm satisfied:

- The decision by Barclays to withdraw the March offer was fair as it had made that offer without knowledge of the true lending proposition, and had it known Mr W and Mrs M's revised intentions for the BTL purchase then it wouldn't have agreed to the lending. When those intentions changed, changing the basis on which it had agreed to lend, Barclays was entitled to review and withdraw the offer.
- It wasn't fair of Barclays to issue and then withdraw the April mortgage offer. Whilst I don't think I can fairly say Barclays should be required to lend to Mr W and Mrs M when the overall proposition is outside its lending criteria, I agree some compensation is due to Mr W and Mrs M for the distress and inconvenience caused. But this compensation is not for lost profits from a business venture that Barclays would never have agreed to fund and which Mr W and Mrs M would therefore never have been able to proceed with even if Barclays hadn't acted unfairly with the second offer.
- I can only award compensation for any financial loss or distress and inconvenience caused to Mr W and Mrs M personally. I can't make an award of compensation to them for any losses they might have suffered in their capacity of directors or shareholders of

the limited company, nor can I make an award to the limited company. So even if Barclays was responsible for the rental business not going ahead and the lost profits that resulted, those losses would be losses of the limited company not Mr W and Mrs M and I would not be able to direct Barclays to compensate them personally for those losses.

- Mr W and Mrs M haven't shown they incurred any losses that can be directly and solely attributable to the April mortgage offer being issued in error, in the belief they had a mortgage in place when they didn't. All the costs they've demonstrated relate to decisions they'd made prior to that.

That just leaves me to decide a fair level of compensation for the distress and inconvenience caused to Mr W and Mrs M due to Barclays issuing – and then withdrawing - the April offer in error.

Whilst Barclays has already paid £200 compensation, that was for the delay in responding to the complaint. Mr W and Mrs M have already accepted the £200 for that aspect, and had they not already done so I would have considered it to be a fair and reasonable offer.

In respect of the April mortgage offer withdrawal, I agree with our Investigator that a further £400 is fair for the additional stress and inconvenience caused by that matter.

My final decision

I uphold this complaint in part and order Barclays Bank UK PLC to pay £400 compensation to Mr W and Mrs M for the distress and inconvenience that was caused to them by Barclays issuing and then withdrawing the April mortgage offer. I make no other order or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs M to accept or reject my decision before 5 April 2024.

Julia Meadows
Ombudsman