

The complaint

Mr and Mrs S have complained about the way Barclays Bank UK PLC dealt with their mortgage application. They say the bank caused unnecessary delays by asking them to provide a report on cladding on the property (known as a EWS1) which wasn't actually required.

On their complaint form Mr and Mrs S say that Barclays' actions have caused them serious health issues, including headaches and chest infections that required hospital treatment, elevated blood glucose levels, flu, pneumonia, and insomnia. They've explained that Mr S's health has been so poor he is now unable to work, receiving only statutory sick pay. Mrs S, who has dealt with the complaint throughout, says that they have had to use credit cards to pay for basic necessities, as they were having to pay rent on their previous property for the six months it took for the mortgage application to be approved.

Mr and Mrs S also say they've been discriminated against, because Barclays gave other buyers in the same block mortgages, but not them.

To settle the complaint, Mr and Mrs S want Barclays to pay them compensation for the additional rent they had to pay, and for Mr S's lost wages. They would also like compensation for distress and inconvenience, for Barclays to provide "*a formal, coherent apology for the despicable way they treated us*", along with evidence that Barclays will change its application process.

What happened

The evidence in the case is detailed, running to several hundred 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.

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.

In addition, our decisions are published, and so it's important I don't include any information that might result in Mr and Mrs S being identified.

Mr and Mrs S wanted to buy a shared ownership property and applied for a mortgage with Barclays. The bank instructed a surveyor to carry out a valuation for mortgage purposes. The valuer said the property's external walls may contain potentially combustible materials and so they wanted a satisfactory EWS1 form.

An EWS1 form is a document produced by a qualified fire safety professional reporting on the state of a property's external wall system. It's often produced where there are concerns that a building might have combustible cladding on its walls.

Barclays asked Mr and Mrs S to provide the EWS1 for the block in which the property they were buying was located. Mr and Mrs S appealed this, and on review, Barclays was prepared to go ahead with the mortgage, which completed in March 2023.

Mr and Mrs S complained to Barclays, saying that the bank had caused unnecessary delay. They said other buyers in their block had received mortgage offers from Barclays without any need to provide the EWS1.

In its final response letter dated 13 January 2023 Barclays explained that it didn't believe it had made an error in asking for the form, and that its change in decision was an internal business decision. Barclays apologised for the frustration and delays this caused Mr and Mrs S.

Barclays also acknowledged that it should have responded to the complaint within eight weeks, but its response had been delayed. Barclays offered compensation of £100 for this.

Dissatisfied with Barclays' response to their complaint, Mr and Mrs S contacted our service in April 2023. An Investigator looked at what had happened but was satisfied Barclays was entitled to rely on the opinion of its surveyor. As a result, she didn't think Barclays had done anything wrong. The Investigator said we couldn't look at complaint-handling, as it's not covered under our rules and left it to Mr and Mrs S to decide whether or not to accept the £100.

Mr and Mrs S disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint. They said that the date of their mortgage application was after the date when new guidance had come into place which meant that their property didn't need an EWS1 form. They reiterated that other buyers in the block had received mortgage offers without any need for an EWS1 and provided screenshots of text messages with their neighbours along with copies of regulations.

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.

I'll begin by explaining that I don't have any power to tell Barclays what processes or systems it should have in place when it considers a mortgage application. So whilst I've noted Mr and Mrs S's request for evidence that Barclays is changing its process, that's not something I'll be asking the bank to do. The way Barclays runs its business is a matter for its own commercial judgement, overseen by the regulator, the Financial Conduct Authority (FCA).

Turning now to the complaint, I understand how frustrating the delay in completing the mortgage must have been for Mr and Mrs S, who were living in rented accommodation and were under pressure from their landlord to vacate. However, after reviewing what happened, I'm not persuaded Barclays' handling of the mortgage application resulted in Mr and Mrs S being treated unfairly.

The EWS1 form was introduced in collaboration between government, the mortgage industry and the surveying profession following the Grenfell Tower tragedy. The fire at Grenfell Tower

led to concerns across the country about the possibility of combustible cladding and other fire safety issues which might allow a fire to spread quickly through affected buildings.

The EWS1 process allows a qualified fire safety inspector to assess a building's external wall system. The building will then be given a rating showing that there are no fire safety risks, that there are issues but the risk is low, or that there are issues which are high enough risk to require remedial work. Obtaining the EWS1 form is the responsibility of the building owner/management company and not individual leaseholders. This is because the form covers the whole building.

The EWS1 process was designed, amongst other things, to give mortgage lenders enough information to decide whether a building presented a particular fire safety risk. Lenders will therefore only lend subject to the property being good security for the loan – and if there is a fire safety risk, it might not be good security. That's because there is a higher risk of damage to the property, and also a greater likelihood that re-sale value might be affected.

General guidance to surveyors and valuers from the Royal Institution of Chartered Surveyors (RICS) was that an EWS1 would be required where there are potential cladding or other issues, and the building is six storeys or higher, or for smaller buildings if there are grounds for considering there's a risk that needs to be assessed.

In common with other lenders, Barclays took these issues into account in setting its lending criteria for mortgages on properties in blocks of flats and similar buildings. Barclays' lending criteria state that a surveyor is required to assess the building in line with RICS guidance in determining the risks posed by cladding on a building. Where necessary, the surveyor will require the production of an EWS1 certificate.

The surveyor appointed by Barclays was of the opinion that an EWS1 certificate was required. Although the building is only five storeys, the surveyor noted that cladding was present and so thought it appropriate for this to be covered by an EWS1 certificate.

I appreciate Mr and Mrs S don't agree with the surveyor's conclusions, but that's not something I can comment on. The surveyor is an independent third party and as such doesn't fall within the remit of the Financial Ombudsman Service. I'm satisfied it was reasonable for Barclays to rely on the opinion of a qualified surveyor, who is an expert in assessing and valuing buildings.

I acknowledge Mr and Mrs S say that neighbours in the same block managed to get their Barclays' mortgages approved without the need for an EWS1. They've argued that Barclays was already aware, therefore, that other applicants hadn't needed this and that if it had checked its records, it would have known this.

That isn't how mortgage applications work, however. Staff dealing with Mr and Mrs S's application wouldn't be able to access applications made by other buyers in the same block. This would be a breach of data protection legislation, because a customer's address is considered to be personal data. In addition, each mortgage application is treated as a standalone application, because individual properties, even in the same block, may differ.

So for these reasons, Barclays wouldn't be allowed to cross-reference previous applications to ascertain whether or not it had agreed to lend on other properties in the same block in order to rubber-stamp an application from another customer. Instead the bank is required to consider each application on its own merits.

In Mr and Mrs S's case, Barclays reviewed the matter internally and, having done so, agreed to lend. That's a commercial decision Barclays is entitled to make. That Barclays overrode

the requirement for the EWS1 doesn't mean that its initial decision, made in reliance of its own professional expert, was wrong.

I've noted Mr and Mrs S say they feel discriminated against by Barclays. It's not for me to make a formal finding of discrimination contrary to the Equality Act 2010 – that's a matter for the courts. But having taken the law into account and after consideration of all the evidence, I haven't seen any evidence that Barclays made an unfair decision based on Mr and Mrs S's characteristics. Barclays' decision was based on its lending criteria and on what the bank was told by its surveyor – not because of a protected characteristic relating to Mr and Mrs S.

Barclays has acknowledged it took too long to respond to the complaint. Whilst complaint-handling as a standalone activity isn't covered under our rules, where it is ancillary to a regulated activity, we can look at how the bank dealt with a complaint. I'm satisfied that the complaint was raised during the course of the events complained of, and was part of the application and appeal process – and so was ancillary to the regulated activity of lending money secured on land. Barclays has offered compensation of £100 for the delay in responding to the complaint, which I think is fair in all the circumstances.

Mr and Mrs S have provided details of the very serious health issues they've suffered from, some requiring hospital treatment, all of which they attribute to Barclays. I'm sure this has been a stressful time for Mr and Mrs S, but overall I'm satisfied Barclays didn't do anything wrong in its handling of the mortgage application. This means that I'm not going to order Barclays to compensate Mr and Mrs S for the additional rent they paid during this period, for loss of wages, or compensate them for distress or inconvenience, other than for the delay in responding to the complaint.

My final decision

My final decision is that Barclays Bank must pay Mr and Mrs S £100 for the delay in responding to their complaint. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 3 October 2024.

Jan O'Leary

Ombudsman