

## The complaint

This complaint is about two buy-to-let (BTL) mortgages Mr P holds with Barclays Bank UK PLC. Mr P is unhappy that Barclays didn't increase his direct debit payment each time the interest rate went up. He says this has caused the mortgages to go into arrears, and the resulting entries on his credit file have impacted on his ability to obtain credit. Barclays has offered compensation of £300 for his time, trouble and upset, but Mr P says it should write off the arrears and remove the adverse entries from his credit file.

## What happened

In what follows, I have set out events in rather less detail than they have 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.

Our decisions are published and it's important that I don't include any information that might result in Mr P being identified. Instead I'll give a summary in my own words (and rounding the figures where appropriate) and then focus on giving the reasons for my decision.

Mr P took the mortgages out in 2008 and 2009 respectively, making the payments by direct debit. In 2021, he set up an agreement with Barclays to pay more each month than the contracted amount. This was set up by making the direct debits for fixed amounts of £200 on each account, starting in January 2022. This was sufficient to cover the contractual interest payment, plus a surplus. However, starting in February 2022 there then followed a series of periodic interest rate rises, which in turn caused the contractual payments to increase, reducing the overpayment effect of Mr P's fixed £200 payments.

By September and October 2022 respectively, the contractual payments had exceeded £200, and the accrued overpayments began to dissipate as they were applied towards the extra contractual amount required month-by-month. Soon, the overpayments had gone altogether, and the mortgage accounts began to accrue arrears. Barclays began issuing arrears letters in March 2023. When Mr P received these, and asked what was going on, the problem came to light. Starting in May 2023, the direct debits were amended to collect the full monthly contractual amounts, which by then were in the region of £480 and £430 respectively.

Mr P complained. Barclays said it had written to Mr P each time the rate (and by extension the contracted payment) increased; each letter had said that because he didn't pay by direct debit, he'd need to take action to amend the amount he was paying each month. As this was slightly misleading (Mr P did pay by direct debit but it was fixed arrangement, so

he would need to modify it if he wanted to keep up with the increases) Barclays upheld the complaint in part only, offering him £300 compensation for distress and inconvenience.

Mr P referred his complaint to this service; in his initial call to start the complaint on 14 November 2023, he told us the letters he'd received all informed him that because he paid by direct debit, he didn't need to take any action. Our investigator didn't recommend Barclays provide any further redress beyond the £300 already paid. She said that from September 2022 onwards, notwithstanding the misleading message about direct debits, the letters informed Mr P that his contractual payments were now more than £200.

Mr P has asked for the complaint to be reviewed by an ombudsman.

### **What I've decided – and why**

I'll start with some general observations. 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 (FCA). 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. But in doing so, we have to work within the rules of the ombudsman service.

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

Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

I mentioned above that evidence can sometimes be contradictory. That's the case with Mr P's complaint; but here, the contradiction is in his own evidence. In his letter of 4 April 2024 asking for his case to be decided by an ombudsman, Mr P says the first time he received the rate change letters from 2022 and early 2023 was together in a batch, from Royal Mail, on 23 December 2023. But that's not what Mr R told us when he called us on 14 November 2023 to refer the complaint to us. What he said then was that he'd received the letters but each one told him he didn't need to do anything because he was paying by direct debit.

When a party changes their evidence midway through a complaint, I'm usually minded to attach more value to their original testimony, which has typically been given before the significance of it has become apparent. I see no reason not to do that here; on balance, I think it more likely than not that most, in not all, of the rate change letters, which were correctly addressed, reached their intended destination.

Having concluded on the balance of probabilities that Mr P received the rate change letters, I'm minded to conclude, also on the balance of probabilities, that he didn't pay as much attention to them as he needed to. That's because, in his phone call to us of 14 November 2023 Mr P described them as saying the exact opposite of what they actually said.

The copy letters I've seen all say that Mr P wasn't paying by direct debit and therefore needed to take action to change his payments. That wasn't quite correct, and I'll come back to that shortly, but what each letter also told Mr P was how much the new contractual payments were going to be.

I said I'd come back to the letters not describing Mr P's payment regime correctly; he was paying by direct debit, but instead of being variable, it was fixed at £200 for each account. Mr P should reasonably have known that to be the case. The fixed direct debit had been set up at his behest, and his current account statement would have shown the same amount being debited every month.

In summary, the letters told Mr P his contractual payments were going up, and told him, albeit for the wrong reason, that he needed to take action if he wanted the amounts he was paying to go up to reflect the changes in the contractual payments. Furthermore, from September 2022 onwards, Mr P knew, or should have known, that his fixed payments of £200 weren't even covering the new contractual payment.

A BTL mortgage isn't regulated in the same way that a residential mortgage is; it's viewed as a business venture where both contracting parties are acting commercially. Barclays' role is to administer the mortgage accounts in accordance with Mr P's instructions, not to manage the accounts for him. It's Mr P's responsibility to monitor and manage his business costs, and for the reasons I've set out above, I'm satisfied he had the information necessary to do so.

In my view, the prudent thing for Mr P to have done, at the very latest by September 2022, was to contact Barclays, clarify the ambiguity about the direct debit position, and restore a variable mandate in place of the fixed one, to ensure he was meeting the new contractual payments. Even if he didn't do that in September 2022, it's difficult to see why he would not have done so in January 2023, when the annual statements for 2022 were issued. These showed the amounts being billed increasing, and the "cross-over" point where the amounts being billed exceeded the amounts being paid.

Put all of the above together, and I'm not persuaded that the arrears and their reporting on Mr P's credit file, are solely – or even primarily – the result of acts or omissions on Barclays' part. For the ambiguity the letters contained, Barclays rightly, and my view fairly, compensated Mr P with £300. If that payment hadn't been made, I wouldn't be awarding more. But there's no reasonable basis for me to order Barclays to waive the arrears and/or remove the adverse entries from Mr P's credit file.

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 how strongly Mr P feel. That's a natural, subjective reaction, and entirely understandable.

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 from the minutiae, focussing on the broader picture. That's what I've done.

**My final decision**

My final decision is that I don't uphold this complaint or make any order or award against Barclays Bank UK.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 July 2024.

Jeff Parrington

**Ombudsman**