

The complaint

Mr O complains that Barclays Bank UK PLC didn't treat him fairly when he experienced financial difficulties with his mortgage, including issuing proceedings to repossess the property.

What happened

Mr O has a mortgage with Barclays, taken out in 2014. He borrowed around £160,000 on repayment terms over 16 years.

In 2023, Mr O lost his job, and as a result experienced difficulties in paying his mortgage. Mr O says that he was then successful in finding a new job, to start in November 2023. In mid-October 2023 he got in touch with Barclays to tell it about his new job and that he would be able to start making payments again from the following month. He offered to pay the monthly payment plus £400 towards the arrears each month from the end of November, when he would first be paid by his new employer.

Mr O says that Barclays asked him to complete an income and expenditure form – he said he didn't think there was any point in doing so because at that time he had no income, but reiterated that he would be starting a new job shortly.

At the end of October 2023 Barclays instructed its solicitors to begin repossession action. Its solicitors wrote to Mr O asking him to call them – he says he did so several times but couldn't get through, though he did leave messages. But no one called him back. Possession proceedings were issued in November 2023.

On 28 November, Mr O received his first salary payment. He paid that month's mortgage payment plus £400 towards the arrears to Barclays. He then completed and sent Barclays an income and expenditure form based on his new salary.

Mr O complained. He said that Barclays hadn't treated him fairly. In particular, he didn't think it was reasonable to issue possession proceedings when he was about to start a new job and resume making mortgage payments – and was willing to evidence his new salary to Barclays. He said that Barclays should not charge him legal fees associated with the legal action, and compensate him for the upset it had caused.

Barclays didn't think it had done anything wrong. It said that its process was to proceed to litigation if a customer wouldn't agree to give income and expenditure information. It said that Mr O had a history of substantial arrears. It had agreed to halt the repossession in December following an agreed repayment plan.

Our investigator thought Barclays had acted fairly so Mr O asked for his complaint to be reviewed by an ombudsman. I took a different view so I issued a provisional decision setting out my thoughts for the parties to make any further comment they wished to ahead of my final decision.

My provisional decision

I said:

“It’s correct that Mr O has been in arrears before – between the start of the mortgage and 2021 it was in arrears for most of the time. The arrears peaked at around £26,000 before being reduced to £22,000 by August 2021, when Mr O cleared them with a lump sum payment.

Since then, Mr O kept up with his mortgage until the most recent period of arrears began. Throughout 2022 Mr O was making overpayments, and by January 2023 had built up an overpayment balance of around £2,500.

Between February and May 2023 no payments were made, which used up the overpayment balance and caused arrears to rise to around £2,000. In May and June 2023 Mr O again paid more than his contractual monthly payment, bringing the arrears down to around £1,500.

Mr O then made token payments of £150 in July 2023, and £50 in August, September and October. By October, the arrears had risen to around £5,600 – the equivalent of five months’ worth of payments. From November 2023 he resumed making payments, including paying around £400 each month to reduce the arrears.

Mr O’s first contact with Barclays over this period, as recorded in its internal notes, was in April 2023. He told Barclays he’d lost his job and was looking for another. He said he would be starting a new job at the beginning of May. Mr O said he didn’t have time to discuss his account in detail.

The next contact was in August, in which Mr O told Barclays he’d been on a short-term contract which had come to an end and he was looking for alternative employment. Barclays reported that Mr O was unwilling to discuss his income and expenditure.

In September 2023 Mr O spoke to Barclays, explaining he was still looking for employment. He again refused to discuss his income and expenditure.

On 12 October, Mr O told Barclays he’d now found a job, starting the following month, and would resume making payments once he’d been paid. Barclays recorded that he was again unwilling to discuss his income and expenditure – which was necessary to agree an arrangement – and said that he had blocked calls and text messages from Barclays and shreds its letters unread. On 30 October, Barclays instructed solicitors.

We asked Barclays for a copy of the call recording for 12 October, but it couldn’t locate a copy of the recording. This is unfortunate, as the complaint turns on what happened on that date.

However, there’s no dispute that Mr O told Barclays that he’d got a new job and would be paid from November, and that he didn’t agree to go through his income and expenditure information. While it would have been helpful to hear the detail of the discussion, those two key points are agreed by both parties.

The rules of mortgage regulation require a lender to deal fairly with a customer in arrears, making reasonable efforts to agree a way of getting the mortgage back on track if possible, and treating repossession as a last resort.

Barclays made the decision to instruct solicitors at the end of October, after Mr O had

told it he had a new job and would be able to resume making payments – and reduce the arrears – from the following month.

Barclays says that Mr O refused to discuss his income and expenditure, so it couldn't agree an arrangement with him – meaning legal action was the only other option. But I don't agree about that.

I agree that it's important that a borrower is open and co-operative with their lender, explaining their circumstances and working together to try and get things back on track. A lender can't force a borrower to disclose income and expenditure information – but it's generally important to have this to ensure a full understanding of the customer's circumstances and what can be done to assist.

I can see that Mr O has refused to give Barclays this information many times, both during the 2023 period of arrears and the earlier arrears. He contacts Barclays fairly regularly to update it on his situation – but only wants to give the information he wants to give, and doesn't engage with Barclays' attempts to discuss his situation more widely.

That makes it difficult for Barclays to agree a way forward, or find out whether there's any prospect of getting the mortgage back on track.

If, therefore, Barclays had decided to take possession action before October, I might come to a different conclusion. Before October, there had been several missed payments, mounting arrears and a lack of information from Mr O. He had briefly gone back to work, only for his contract to end and the arrears start to mount again. With mounting arrears, and in the absence of any ability to agree an alternative because Mr O wouldn't discuss his situation, it might have been reasonable to have taken legal action.

However, that's not what happened here. Barclays only took the decision to issue legal proceedings after the 12 October call, in which Mr O told it that he'd found a new job and would resume payments from the following month.

It's true that he still didn't co-operate with providing income and expenditure information. But that's not an end in itself, and the purpose of possession proceedings is not to punish customers who are unco-operative. The purpose is to bring a mortgage to an end where there's no prospect of getting it back on track and the last resort has been reached. That wasn't the case here; there was an immediate prospect of getting the mortgage back on track, with the expectation that Mr O would resume payments from the following month.

There was no reason to disbelieve what he said about a new job, and Barclays could have asked for evidence of it – such as a job offer – if it believed it would assist.

In my view, Barclays ought to have looked at Mr O's individual situation and understood that there was a reasonable likelihood of him resuming payments and tackling the arrears from the following month – so the last resort hadn't been reached. But instead it didn't do that. It moved to repossession because Mr O hadn't co-operated with its pre-defined process – even though he'd offered other evidence that he could resume making payments.

In those circumstances, I don't think instructing solicitors was fair and reasonable. At the very least, Barclays could have waited one month to see if Mr O did resume making payments.

I'm also not persuaded that it was reasonable for the solicitors to issue proceedings. The solicitors applied on 30 November and the claim was issued on 1 December – but Mr O made a payment on 30 November. Given what he had said in October, this ought to have been taken into account before proceedings were issued.

Mr O said that he repeatedly tried to contact the solicitors – as they told him to do when they wrote to him – to let them know that he was now in employment and would shortly resume payments. But they didn't answer his calls or respond to his messages. I asked Barclays to comment on this but it didn't do so, so I accept Mr O's evidence about this. Had the solicitors responded to Mr O as they should have done, issuing proceedings at the end of November might have been avoided – but they didn't. As Barclays' agents, Barclays is responsible for that. If Barclays requires its customers to deal with its solicitors, it should make sure the solicitors respond.

Barclays did instruct the solicitors to apply for an indefinite adjournment to the proceedings with liberty to restore, but this wasn't dealt with in sufficient time and the hearing went ahead. Rather than adjourn the proceedings, the court struck Barclays' claim out.

In all the circumstances, I'm not persuaded that Barclays acted fairly and reasonably here. I don't think it was reasonable that it took legal action when it did – instructing solicitors after it was aware that Mr O was able to resume making payments, and issuing proceedings after he had actually done so.

To put things right, Barclays should remove all legal fees from Mr O's mortgage account – that is, £697 for issuing proceedings and £55.20 for the adjournment request – together with all interest charged on them. In addition, it should compensate Mr O for the distress and inconvenience caused by being threatened with repossession and having to attend court to deal with the case. Mr O was faced with the worry of potentially losing his home for two months until the court struck the case out. I think £650 is fair compensation for that.”

The responses to my provisional decision

Both parties accepted my provisional decision. Mr O wanted to add that he hadn't refused to provide income and expenditure information; it was just that he didn't see any point when at that time he had no income.

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've also considered again my provisional decision. Having done so, and having noted that both parties accept what I said, I see no reason to change my mind.

I've noted what Mr O says about the request to provide income and expenditure. But I've also noted that he has also refused to provide this information in the past. Should a situation like this arise again in the future, it would help if Mr O does agree to go through his finances – even if he doesn't see the need to, identifying not just his income but also his expenditure enables Barclays to have a better insight into his circumstances and what it may be able to do to help, and help avoid situations like this arising again.

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank UK PLC to:

- Remove all legal fees, and interest charged on them, in connection with the recent possession proceedings from Mr O's mortgage balance; and
- Pay Mr O £650 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 August 2024.

Simon Pugh
Ombudsman