

The complaint

Mr S complains that Barclays Bank UK PLC acted unfairly when dealing with his lending requests relating to his business's needs.

What happened

The background to this complaint is well known to both parties and has been set out in detail by our investigator, so I haven't repeated this below.

In summary Mr S has a number of concerns about the actions taken by Barclays when it provided him lending for his business, operated as a sole trader.

Mr S feels the mortgage balance against his buy-to-let (BTL) properties is higher than it should have been and the additional borrowing should have been raised against a commercial property owned by his business. This has meant Mr S has experienced problems when trying to refinance the BTL properties with more owed to clear this balance than he was expecting.

Barclays has also said it needs to consider the outstanding balance on Mr S's Coronavirus Business Interruption Loan (CBIL) when deciding whether it can release some of the security it holds. Overall Mr S has said Barclays and its actions have caused confusion and inconvenience to his business as well as delays to his refinancing with a new lender.

Our investigator looked at Mr S's complaint and found that Barclays had made a mistake when a new loan for Mr S was arranged against his BTL properties. She could see from the information provided that the first loan (Loan 1) taken out in June 2019 for £130,000 was to be repaid when (Loan 2) for £200,000 was taken out in August 2019, based on the notes on what was discussed ahead of this. But when Loan 2 was taken out, this didn't refinance Loan 1 or repay the balance and Mr S received the total amount. The loan agreement paperwork for Loan 2 made no reference to Loan 1 being repaid as a requirement to the drawdown but added a charge to a fourth property. This was in addition to the charge held against the 3 properties with Loan 1.

With the above in mind and because Mr S would have received all of the £200,000 drawn down, she thought he should have reasonably been aware at the time that Loan 2 had not repaid Loan 1 and was additional borrowing made against the same existing properties with an extra added to the security for the loan. So she thought it was reasonable for Barclays to expect the total balance of Loans 1 and 2 to be repaid when Mr S was looking to re-mortgage to another lender.

Equally, she didn't think Loan 1 was refinanced when Mr S had his commercial property re-valued in January 2020. Mr S said it was confirmed verbally that the borrowing on this property would increase by £130,000 but there was no recording of this conversation or paperwork to support a new lending application had been made. In the absence of this, she thought it was reasonable to believe the borrowing was still secured by the BTL properties with Loan 1.

She didn't think Barclays had done anything wrong when it said the CBIL needed to be taken into consideration when it decided whether it would release the security it holds over Mr S's properties. She was happy Barclays had followed the correct process when offering this loan and despite this loan not being secured, Barclays was entitled to make a commercial decision about the risk to it when making decisions about security it holds and whether this could be released.

Overall, she hadn't seen anything to suggest that Barclays held security over any properties that it shouldn't. And although there had been a call where there was confusion about whether another property had a charge over it, she didn't think Barclays had done anything wrong.

She highlighted that since the complaint had been brought to this Service, Mr S had reached an agreement with Barclays to repay some of his existing loans and charges had been removed as a result of this. She said if Mr S was unhappy about anything in relation to this agreement reached, a complaint would need to be raised with Barclays in the first instance and it wasn't something she was able to consider or comment on.

Mr S disagreed with our investigator's opinion. He has concerns over the error that occurred when Loan 2 was taken out without Loan 1 being repaid. He feels the Loan to Value (LTV) ratio was far too high and outside of the limits he feels are allowed by regulation. With the LTV restrictions in mind, he believed the difference of £130,000 had been secured against his commercial property. He said he is not an expert in financial matters and it was the role of Barclays to make sure everything happened as it was supposed to.

Mr S doesn't think enough weight has been placed on the potential implications of this error made when Barclays increased the borrowing on the BTL properties to 93% LTV and this needs to be considered. He said had he not had additional security available, things could have been very different.

Our investigator's opinion remained unchanged. She didn't believe Barclays had been in breach of any law or regulation. Ultimately when lending with a higher LTV ratio it was exposing itself to risk if the loan was to default and she didn't think it had a negative impact on Mr S. She accepted Mr S is not an expert in lending but he had taken out lending with Barclays in the past and so she thought it reasonable to believe he was aware of how this worked.

Because Mr S disagreed, the complaint has been passed to me for decision.

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 decided not to uphold this complaint for much the same reasons as our investigator. I know Mr S will be disappointed by this, but I'll explain why I've reached this decision.

BTL re-mortgage amount and security for the commercial property.

It has been accepted by Barclays that it didn't refinance Loan 1 when Loan 2 was taken out, this was despite the indication being that this is what Mr S wanted to happen. The question is, as a result of this error, has it acted fairly now.

Mr S has highlighted he is not an expert in lending and I accept this is the case. But the borrowing being taken out and now disputed was done so on a commercial basis with Mr S withdrawing equity from his BTL properties to help support his commercial interests. As such, although not an expert in lending, it is reasonable to expect a certain level of due diligence and understanding on his part as a business, ensuring that the products he is taking are meeting his business needs.

The loan documentation for Loan 2 gives no indication of Loan 1 being repaid as part of the process, so I think from the outset it would have been clear this was not happening as intended. And Mr S would have received considerably more from the drawdown than he would have expected.

Loan 2 was agreed in August 2019 but the commercial property was not revalued until January 2020 and it wasn't until after this that Mr S said he believed the security for the additional £130,000 had transferred to this property. There is no recording of a conversation to confirm what was said in the call when this was discussed. I am not persuaded this would be arranged without paperwork to support the transaction. And I think this supports that Mr S was aware in August 2019 that Loan 1 and 2 were in place concurrently after the inception of Loan 2.

I know Mr S is concerned about the LTV ratio he had with the BTL properties secured under Loan 1 and 2. I appreciate this left very little equity in these properties based on the valuation and amount borrowed against them. But Barclays as a commercial lender will consider a range of factors when deciding how much it is willing to lend against the value of a property and the LTV is just one of these. I've not seen that it breached any regulations when it allowed the LTV on Mr S's borrowing to reach 93% and I've not seen this did have a negative impact on Mr S or his business.

Mr S was able to raise the additional borrowing he wanted and I think it was clear from the loan agreement in August 2019 that this was secured against his BTL properties. It may be that Mr S later hoped to move some of this borrowing to his commercial property which was revalued after this point but I haven't seen anything to show this was agreed and completed.

I agree Barclays acted fairly when it said it has considered its total lending and exposure to Mr S when he has asked to have the charges on some of his properties removed. I appreciate the CBIL loan agreement says no further security was required when it was taken out but this doesn't remove the charges already held and lending provided alongside these. And Barclays can consider its overall position with a customer when making a decision about its existing charges and what is needed to release these.

It follows that when Mr S looked to refinance his BTL properties with a re-mortgage to another lender, that it is fair and reasonable for Barclays to expect all lending secured against the properties to be repaid. So Barclays correctly explained both Loan 1 and 2 needed to be repaid.

Other issues

Mr S hasn't explained that he disagreed with our investigator's opinion on the rest of his complaint points so I've not covered these off again. I mean no discourtesy by this, but I agree with our investigator's opinion on these points and I think the crux of Mr S's complaint is whether Barclays acted fairly when Loan 2 was taken out and the issues I've addressed above.

My final decision

For the reasons I've explained above, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2023.

Thomas Brissenden
Ombudsman