

## **The complaint**

Mr and Mrs T complain that Barclays Bank UK PLC has treated them unfairly when dealing with the arrears on their residential mortgage.

The background to this complaint is extensive and goes back many years. The Financial Ombudsman Service has previously dealt with several complaints from Mr and Mrs T about this mortgage and also their buy-to-let mortgages held with Barclays. As our investigators have explained, we won't look at those complaints again. We also can't consider anything that has happened other than what forms part of this complaint Mr and Mrs T have now made to Barclays.

Mr and Mrs T complain that Barclays is unfairly seeking possession of their property without keeping them updated about its intention and notwithstanding that they've been making attempts to get their account back on track.

In addition, they complain about the distress suffered by continuing to receive letters regarding legal action, despite being told that proceedings had been stayed by Barclays pending the outcome of this complaint.

## **What happened**

The broad circumstances of this complaint are well known to both parties, so I won't repeat them again here in detail. Instead, I'll summarise the main facts that I consider to be fundamental to the outcome and focus on giving my reasons for my decision.

In 2017, Mr and Mrs T's financial circumstances changed which impacted their ability to maintain payments across their mortgage accounts. Over the years their residential mortgage has accrued arrears of almost £40,000.

In April 2020 another Ombudsman at our service issued a final decision setting out why he didn't think Barclays had acted unreasonably by declining the proposals put forward by Mr and Mrs T – since none of the options put forward presented reasonable prospect of getting the account back on track. The Ombudsman concluded that in the absence of an agreed way forward to repay the arrears, it may be possible for Barclays to consider possession of the property.

Another Ombudsman issued a final decision on another complaint relating to this mortgage in June 2021. The basis of that complaint was inherently different, so I won't summarise the outcome here.

As I've explained, I'm unable to reconsider any of the complaint issues that formed part of these (or any other) complaints brought by Mr and Mrs T against Barclays. Mr and Mrs T have said that they understand this, but in any event this complaint relates to how they say Barclays has handled the arrears on their account since those decisions were issued.

Mr and Mrs T say that their circumstances have improved and for the past few years they've been maintaining their contractual monthly payments plus more, to slowly reduce their

arrears. In late 2022 they contacted our service to complain that Barclays had written to them to start legal action without any prior notice or any suggestion that the arrears were an ongoing cause for concern. As they put it, in the absence of such communication they thought their arrears had been capitalised and the payments they were making were sufficient.

Mr and Mrs T have expressed their concern about multiple failures on Barclays' part. These include not providing a consistent point of contact and absence of proper engagement between relevant departments handling their mortgage.

Upon bringing their complaint to our service, Mr and Mrs T asked that we get Barclays to agree to put proceedings on hold while we consider their complaint and to allow them time to come up with a suitable proposal to get their account back on track. During that time Mr and Mrs T put forward to our service some informal proposals to reduce their arrears – this included making two lump sum payments of £10,000 to reduce their arrears balance.

It took Barclays some time to agree to the stayed court action (around one month). And after doing so, Mr and Mrs T continued to receive court action letters from Barclays' legal team. They say this caused them unnecessary distress during what was already a worrying time for them.

Around this time, Barclays also issued its final response to the complaint. In its letter it said that due to Mr and Mrs T's change in circumstances it was willing to reconsider its position regarding proposed legal action. Barclays said that to date it was having trouble reaching Mr and Mrs T to discuss the proposals put forward. To agree a way forward Mr and Mrs T would need to contact the Litigation team to discuss their account and agree a plan moving forward. This cannot be done via a complaint, as an affordability assessment would need to be carried out.

The investigator continued to consider the complaint and didn't uphold it. He said that the onus was on the parties to actively engage with each other to agree a realistic and affordable plan for getting the account back on track. He reminded Mr and Mrs T that he was unable to revisit any previous decisions issued by our service about Barclays' earlier responses to previous proposals.

In addition, he said that given the level of arrears, he didn't think it was unreasonable for Barclays to start legal action and Barclays wasn't under any obligation to adjourn the court hearing either. So, he didn't think he could fairly make a compensation award for this reason.

In response, Mr and Mrs T have asked that we put their proposals forward to Barclays on their behalf. They also feel that the investigator has misunderstood part of their complaint relating to the adjournment of the court hearing. Their concern is the time taken to agree this and the miscommunication regarding the matter that they say caused heightened distress at the time.

Because an agreement wasn't reached the case was passed to me to decide. I issued a provisional decision, and an extract of my provisional findings is below:

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

*As I've explained the background to this complaint is extensive and goes back many years. There is also an ongoing dispute between the parties regarding who's at fault for the lack of communication relating to the account.*

*My intention is not to spend a large part of this decision focusing on historic events leading up to this complaint being made. This is coupled with the fact that our rules don't allow for me to reconsider any events that form part of earlier complaints already considered by our service. Instead, to provide swift assistance to Mr and Mrs T and in an attempt to bring the need to make persistent complaints to an end, I'll focus my attention on Barclays' current stance in relation to this complaint and determine the most suitable way forward in the circumstances.*

*It's clear from Barclays' final response letter dated 29 November 2022 that it recognises there has been a change to Mr and Mrs T's circumstances in recent years and as such it is willing to reconsider options to bring the account back on track.*

*Our investigator has explained, and I agree, that the onus is on the parties themselves to engage effectively with each other to agree a way forward.*

*I expect Barclays to treat Mr and Mrs T fairly, by discussing their circumstances with them to try to get the mortgage back on track. Mr T has previously presented a proposal to pay a combined lump sum of £20,000 to reduce their arrears balance. In response to the investigator's outcome on the case, he's also provided our service with a detailed income and expenditure report.*

*Regarding the proposal to pay a significant amount towards the arrears, it's not clear if such payment has been made yet – but I do suspect, doing so, will be advantageous for Mr and Mrs T regarding their remaining arrears balance and make the agreement of any plans to clear the rest, less onerous.*

*Any future plans will need to be agreed between the parties themselves. Barclays isn't reasonably expected to offer a concession without going through Mr and Mrs T's circumstances, as it could be irresponsible for it to do so – in risk of it agreeing to something that might be inappropriate or unaffordable for them.*

*But the onus doesn't stop entirely with Barclays. Mr and Mrs T also need to engage meaningfully with Barclays about their circumstances, and supply any reasonable evidence it requests, such as detailed information about their income and expenditure and potentially pay slips or similar evidence of their income.*

*Although Barclays can't dedicate a single point of contact to the case, it has provided the telephone number for its litigation team for Mr and Mrs T to make contact. As such I encourage Mr and Mrs T to make contact in the way described by Barclays in its final response letter. It's their responsibility to directly communicate any suitable proposals and Barclays is required to consider all the possible concessions available in light of Mr and Mrs T's current circumstances – even those that may have previously been considered to be unsuitable – as things have since changed.*

*Once the parties have engaged, proposals have been fairly considered and Barclays has made its decision regarding next steps for the account, if Mr and Mrs T remain unhappy, then they can potentially complain again.*

*I must manage Mr and Mrs T's expectations here and explain that whilst a complaint is with our service, we can only ask a business to stay any possession action, we can't compel a business to do so. Barclays may refuse to agree to any further hearing adjournments if it's concerned that doing so is not in the customer's best interest. So, I must make it clear that I'm in no way encouraging any further complaints being raised here. And I do hope that it won't come to that as both parties appear to be keen to agree a way forward.*

*Everything I've set out above is largely what the investigator said in his response. The part I agree less with his is his interpretation of the complaint regarding the postponement of legal proceedings.*

*I do agree with Mr and Mrs T that it took too long for Barclays to confirm proceedings had been stayed and until the very last minute, Mr and Mrs T were left worrying that the hearing was still going ahead. I accept Barclays is under no obligation to agree an adjournment of court action in light of an ongoing complaint with our service. But that said, after confirming the adjournment in November 2022, Mr and Mrs T still received communication from Barclays' legal team about a planned hearing. Barclays later confirmed this was sent in error. I think Barclays caused avoidable distress in the circumstances and it should fairly compensate Mr and Mrs T for its failing here. In line with our published awards bandings, I've decided that a fair award for a mistake of this nature lasting over a month or so is £250."*

### My provisional decision

*My provisional decision is that I intend to uphold this complaint and direct Barclays Bank UK PLC to pay Mr and Mrs T £250 compensation for its failing when communicating regarding the stayed court action"*

Both parties have now responded to my provisional decision. Barclays initially asked for some more information to support my reason for awarding £250 compensation. This was provided and Barclays agreed with the provisional findings. Mr and Mrs T responded to say that they disagree with my provisional findings.

In summary Mr and Mrs T say:

- They think it's unreasonable that our service won't share their proposals with Barclays.
- They refer to events dating back to pre-2021 and feel Barclays needs to pay more attention and address things that happened from 2017 when they first fell into financial difficulty.
- They have been trying to engage with Barclays using the email address given, and with its solicitor, including sending their proposals across. They've received no response from Barclays.
- They've not paid the proposed amount of £20,000 to help reduce their arrears balance. And they're unhappy their monthly mortgage payments have increased, although they've been maintaining their contractual monthly payments for the last 14 months and feel they should have better options to make their mortgage more affordable.
- They don't agree £250 fairly compensates them in the circumstances.

### **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 have given careful consideration to Mr and Mrs T's response, but I note that neither party has made any new arguments, or provided any new evidence, that I've not already considered when reaching my provisional decision. So, I won't be departing from what I provisionally decided. That said, I will however for clarity address Mr and Mrs T's response.

I've explained that the scope of my decision focuses only on the events that have occurred outside of any earlier complaints brought to our service by Mr and Mrs T.

I do empathise with Mr and Mrs T's circumstances. I want to explain why there are several reasons why it would not be appropriate for our service to present Mr and Mrs T's proposals to Barclays as they suggest.

In accordance with the Mortgage conduct of business (MCOB) rules, lenders must follow certain rules when dealing with a customer who is experiencing financial difficulty.

Barclays is expected to treat Mr and Mrs T fairly. It must discuss their circumstances with them and try to get the mortgage back on track. This is reflected in MCOB 13.3, which says lenders should act fairly towards a customer who is in arrears.

It's necessary for Barclays and Mrs and Mrs T to engage meaningfully with each other. Firstly Barclays will need to find out what Mr and Mrs T's circumstances are. In practice, this usually means conducting an assessment of their income and expenditure. Mr and Mrs T will need to respond with the required information about their circumstances, what's possible for them, and supply any reasonable evidence Barclays request.

Barclays should then consider suitable options available to Mr and Mrs T to help get their mortgage back on track. MCOB 13.3.4A and MCOB 13.3.4C make it clear that lenders should consider all the options set out in the rule and be able to justify their decision to offer (or not offer) a particular concession. Barclays must be able to demonstrate that they've taken Mr and Mrs T's individual circumstances into account when offering a particular concession.

I must also manage Mr and Mrs T's expectations by saying that Barclays is under no obligation to accept a proposal that they put forward. Barclays may decide another option is more suitable and affordable for Mr and Mrs T – but it must explain why.

So, when considering everything, it's not as simple as our service sharing Mr and Mrs T's proposals with Barclays and the proposals being accepted. Fully assessing Mr and Mrs T's circumstances and considering and discussing all the available options is a process that requires ongoing dialogue between the parties. It's not appropriate nor is it the role of our service to act as an intermediary or as a representative for customers. Our role is to resolve individual complaints quickly and informally and we must remain impartial. For these reasons I remain decided that our service will not share Mr and Mrs T's proposals with Barclays on their behalf.

In response to this specific complaint that has been brought by Mr and Mrs T to our service – I find that more is required in terms of communication between the parties and the steps, as set out above, need to be explored first – before our service can reasonably decide whether Mr and Mrs T have been treated unfairly.

I will take this opportunity to remind Barclays of its obligations under the MCOB rules. It must be responsive to attempts made by Mr and Mrs T to make contact and it must adequately consider the MCOB rules when offering support.

If Mr and Mrs T feel that Barclays is not adhering to the steps as set out in this legally binding decision, they should raise their concerns with Barclays. They should be specific about their attempts to make contact – including providing information about the date, time and contact method used (telephone number called/email address used). Providing any evidence that is available such as email threads and/or calls logs. If such a complaint is

brought to our service and we find Barclays has acted unfairly we'll use our legal powers to direct Barclays to put things right.

### **Putting things right**

For the reasons I've explained, Barclays should pay Mr and Mrs T £250 compensation for its failing when communicating regarding the stayed court action. I'm satisfied that this is a fair award in the circumstances and a proportionate award in line with our published bandings.

### **My final decision**

My final decision is that I uphold this complaint and direct Barclays Bank UK PLC to pay Mr and Mrs T £250 compensation for its failing when communicating regarding the stayed court action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 18 December 2023.

Arazu Eid  
**Ombudsman**