

The complaint

Ms D complains that Barclays Bank UK Plc (“Barclays”) allowed money to be taken from her joint mortgage current account (“MCA”) by the joint account holder without her signature or verbal consent.

What happened

Ms D got a joint repayment mortgage with Barclays in 2008. I’ll refer to the joint mortgage holder as Mr S.

Ms D and Mr S borrowed around £105,000 over a 30-year term.

A condition of the mortgage was that an MCA was obtained and linked to the mortgage. However, Ms D and Mr S were under no obligation to use it.

The MCA had a “reserve limit” which operated much like an overdraft limit. This allowed Ms D and Mr S to use the MCA to borrow more money, up to an agreed limit. Any money borrowed from this reserve was secured against the mortgaged property. Interest was regularly charged on the MCA borrowing – but no regular repayments to the outstanding balance were needed.

The MCA on Ms D’s account was used, and by June 2016, it had a balance of around £8000.

In June 2016, Ms D told Barclays more about her relationship with Mr S. She asked it to stop letting Mr D borrow more money using the MCA. Barclays put a ‘marital dispute marker’ on the account, restricting use of the MCA account.

Despite this Mr S was able to borrow around £110 more using the MCA after the marital dispute marker had been applied to the account. That prompted Ms D to complain to Barclays. In August 2016 Barclays accepted it had made a mistake about that. It refunded the £110 that was borrowed after the marital dispute marker was put on the account and awarded Ms D £75 compensation for that. Barclays had previously said that it didn’t make a mistake when it had allowed Mr S to use the MCA before the marital dispute marker was put on the account as he was authorised to do so.

In late 2023, Ms D complained to Barclays again. She said Barclays shouldn’t have allowed Mr S to use the MCA between 2013 and 2016 without her express permission.

In its 2024 final response Barclays said it thought that Ms D’s complaint about Mr S using the MCA had already been addressed in a previous complaint. So, it wouldn’t consider the issues again. However, it acknowledged that Ms D had spoken to a member of staff in branch about her circumstances. But that person hadn’t made notes of their conversation. So, Barclays paid her £200 compensation for that. Ms D told us that conversation happened in 2015.

Barclays didn’t give the Financial Ombudsman Service consent to consider this complaint,

saying Ms D was out of time to complain to us.

Our investigator looked into the matter. He said Ms D had complained to Barclays in 2016 about Mr S being able to use the MCA after it applied the marital dispute marker to the mortgage account. That was a different issue to the complaint that Ms D is making now – that she thinks Barclays should never have allowed Mr S to use the MCA without her express permission.

However, he didn't think we could look into this complaint. He said Ms D was out of time to do so.

Ms D disagreed with our investigator and asked for the complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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 can't investigate every complaint that's referred to me. I'm bound by certain time limits, which are set out in our rules. Those rules are the Dispute Resolution rules (known as DISP) and are set out in the Financial Conduct Authority's handbook. They set out the scope and limits of our powers. I can't choose to ignore these rules, however strongly someone might feel about their complaint.

DISP 2.8.2 R says that the Ombudsman cannot generally consider a complaint if the complainant refers it to the Financial Ombudsman Service more than:

- six years after the event complained of; or (if later)
- three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint.

If a complaint is made out of time, I've no power to consider it unless the financial business consents (which Barclays hasn't here) or unless there is evidence of an earlier complaint having been made in time (which there isn't), or unless there are exceptional circumstances which explain why this complaint wasn't made in time.

Like our investigator, I also think that Ms D is out of time to complain to the Financial Ombudsman Service. I'll explain why.

The six-year rule

Ms D says Barclays shouldn't have allowed Mr S to use the MCA between 2013 and 2016 without her express permission.

Each use of the MCA between 2013 and 2016 was a new "event complained of".

The complaint was raised in 2023, which is more than six years after each event complained of.

So I'm satisfied that Ms D is out of time in respect of the first part of this rule.

The three-year rule

The next question I must ask myself in this complaint, is when did Ms D become aware, or ought reasonably to have become aware, that she had cause for complaint?

The mortgage account notes Barclays have provided suggest that Ms D was aware of Mr S using the MCA without her permission in November 2013. In her complaint form she said she didn't complain about the time as she was going through a difficult period. There was further use of the MCA after that.

In mid-2016 Ms D spoke to Barclays prompting it to put the marital dispute marker on the MCA. Ms D complained to Barclays in August 2016 about Mr S' continued use of the MCA after the marital dispute marker was put on the account.

So I think that Ms D was aware, or ought reasonably to have become aware, that she had cause for complaint about Barclays allowing Mr S to use the MCA without her express permission (on each occasion he did so) by August 2016. By this time, she was aware of Mr S' use of the MCA on multiple occasions and had complained to Barclays about it. I've seen copies of the MCA monthly statements Ms D (and Mr S) were sent in 2016. These show how the MCA had been used, and the balance of the MCA.

As I think Ms D knew about all of Mr S' use of the MCA by August 2016, that means that she had until August 2019 to complain that Barclays should never have allowed Mr S to use the MCA without her express permission. But she didn't complain about that until late 2023 – more than seven years later.

So I'm satisfied that Ms D is out of time in respect of the second part of this rule.

Exceptional circumstances

I'm able to consider a complaint that wasn't referred to this service within the time limits if I'm satisfied that exceptional circumstances apply.

Ms D has been open with us about her relationship with Mr D and the impact of that on her and her family. I want to thank her for being so open about that.

In her complaint form Ms D told us that she was shocked, disappointed, and angry that Barclays allowed Mr S to use the MCA without her express permission, and that ten years on she still feels the same.

Ms D has told us about the financial impact of what happened, and how it affected her health and trust in others. She says Mr S stopped making mortgage payments and left the country a number of years ago, so she had to raise her children and pay the mortgage (and Mr S' use of the MCA) on her own. She says she didn't have the confidence to complain sooner and that she has been extremely busy caring for her children. She thinks those are exceptional circumstances.

I don't underestimate Ms D's strength of feeling about what happened, or how hard she has worked to pay her mortgage and look after her family over the years. I'm very sorry to hear about the difficulties she has told us about. It's clear that she feels that Barclays failed to support her as a vulnerable customer and that she has been left to repay the MCA debt and the mortgage on her own. She says she feels like a victim of financial abuse.

I've taken everything Ms D has told us into account. However, I'm afraid to say that I'm not persuaded that Ms D was prevented from complaining about this matter sooner because of her circumstances. I say that because despite what Ms D has told us I can see that Ms D was able to complain in 2016 about Mr S' use of the MCA. I can also see from the

information that Barclays has provided that Ms D has been in contact with Barclays on numerous occasions about her mortgage since then – including in 2018, 2019, 2020 and 2021.

Conclusion

I appreciate that Ms D is likely to be unhappy with my decision. However, for the reasons set out above I think she's out of time to complain to the Financial Ombudsman Service.

Ms D has told us about how she has struggled to pay off the MCA. She may want to speak to Barclays about her current circumstances so that it is able to understand her position and support her.

My final decision

For the reasons set out above, my decision is that we're not able to look into this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 12 June 2024.

Laura Forster
Ombudsman