

The complaint

This complaint's about a mortgage debt held by the estate of Mrs R. The mortgage is administered by Barclays Bank UK Plc on behalf of a separate legal entity that is part of Barclays' wider business group. There are two broad elements to the complaint – I'll detail them below – which has been brought by the executors of the estate.

What happened

The two components to the complaint are, in summary:

- the terms of the mortgage relied on a falsely deflated property valuation at the outset; and
- Barclays has unduly delayed its administration of the account since Mrs R died, resulting in financial loss to the estate, and considerable stress, worry and financial loss to the executors.

When the case came to us, our investigator was of the opinion that we could only consider the point about how Barclays had administered the account since Mrs R died. He explained that any aspect of the complaint that related to the terms on which the mortgage came into force fell outside our jurisdiction, as the lending business was not one that was covered by our scheme. In a separate view on the account administration, the investigator wasn't persuaded Barclays was the primary cause of the delays that the executors is complaining about.

The estate of Mrs R asked for the case to be reviewed by an ombudsman. By way of a decision dated 1 November 2023, I confirmed that my remit to consider the merits of this complaint was confined to the second bullet point listed above; i.e., the allegation that Barclays has unduly delayed its administration of the account since Mrs R died, resulting in financial loss to the estate, and considerable stress, worry and financial loss to the executors.

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, and the remit those rules give us.

Under our rules, we can consider a complaint from a consumer. Mrs R was a consumer when she was alive, so met the definition of an "eligible complainant" set out in our rules. That eligibility now vests solely in the estate of Mrs R, which is represented here by the executors..

Our rules say that a complaint may be brought on behalf of an eligible complainant by a person authorised by the eligible complainant or authorised by law. In this respect, the executors are bringing the complaint on behalf of the estate of Mrs R, under the grant of probate

I must explain that, although the executors represent the estate of Mrs R, it is the estate that is Barclays' customer. It's the executors' role is to bring the complaint on behalf of the estate, in the same way that other consumers might instruct a solicitor or accountant to represent them in a complaint.

But this does not entitle the executors to consider it their complaint or to air their own grievances about Barclays, because he is not its customer. This is the estate's complaint, and their role is limited to putting it forward on the estate's behalf. It also means that I cannot order Barclays to pay compensation to the executors for any out-of-pocket expenses they have incurred personally or any distress and inconvenience they have experienced whilst dealing with the business on behalf of the estate.

If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

We don't automatically find in favour of one party if the other party hasn't provided all the evidence we've asked for. It's for us to assess the reliability of evidence, from both sides, decide how much weight should be attached to it, and also when we have enough evidence to reach a fair conclusion. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

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. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

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

That includes listening to recordings of phone calls between the executors and Barclays, albeit some of those calls weren't relevant to the mortgage. They were about other accounts Mrs R held with the business. Also, many of the calls took place before the Grant of Probate (GOP) was issued to formalise the executors' authority to act for the estate.

If I'm to find in favour of the estate of Mrs R and make an award against Barclays in the way the executors are seeking, I have to be satisfied of two things:

- that there were errors and omissions on Barclays' part in how it administered the mortgage following Mrs R's death; *and*
- that such errors and omissions are the sole or primary cause of financial detriment to the estate, and that other external factor didn't play any contributory part.

The first thing to keep in mind is that whilst Mrs R died in March 2022, Barclays could not take any substantive action of any sort on the mortgage unless and until it had received the GOP confirming that the executors were authorised to act for the estate. The GOP was issued on 28 July 2022, and received by Barclays during August 2022 (the exact date is not apparent from the available evidence).

In a phone conversation on 30 August 2022, the first call on record after Barclays received the GOP, one of the executors asked Barclays to arrange for the mortgage property to be valued. This was a necessary step to determine how much money the estate would need to pay Barclays to redeem the mortgage when the property was sold. Barclays instructed an independent surveyor on 9 September 2022; that's a little longer than ideal, but Barclays was carrying out validation checks during this period. In any event, for reasons I'll set out next, it wasn't a long enough interval to affect the overall outcome.

What happened next was outside Barclays' control. Firstly, despite chasers, the independent valuer didn't carry out the valuation until 5 October 2022. Barclays received it on 11 October 2022, and acted immediately by issuing a redemption statement for the mortgage on the same day. What is regrettable, but again outside Barclays' control is that the government's mini-budget had taken place in the interim, and in the instability in the mortgage market that followed, the potential buyer of the property had their mortgage offer withdrawn.

Even if I take out the seven-day interval between the executors requesting the valuation and Barclays instructing the valuer, the mini-budget would still have taken place before Barclays would have been in a position to issue a redemption statement, and the potential buyer would still have had their mortgage offer withdrawn before a completion date could have been agreed and reached.

Soon after that, the executors began the complaint, a key element of which was that the redemption amount was unfairly high and should be reduced. Barclays didn't reduce it on the grounds that it considered the amount to be fairly due under the terms and conditions of the original mortgage agreement.

For reasons I've already explained in the decision setting out our jurisdiction relating to this complaint that preceded this final decision, I have no remit to consider the fairness or otherwise of the mortgage terms, or the redemption amount Barclays is seeking in reliance on them. But it does seem to me that in the period that followed the complaint being raised, the executors were genuinely torn between completing a sale and persuading Barclays to agree a lower redemption amount.

I imply no criticism of the executors and none should be inferred. But if there were opportunities for a sale to be agreed and completed, and these were passed on because the executors were disinclined to pay the full redemption amount Barclays has asked for, that's not something I can fairly hold Barclays to account for.

Aside from the likelihood of the afore-mentioned market instability impacting on other potential buyers – and having a detrimental effect on house values – a sale could still have gone ahead with the mortgage being redeemed at the amount Barclays had quoted. That need not have prevented the estate from being compensated if it were later found (whether by this service or a court) that the redemption balance was excessive and should be reduced.

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 the executors feel. They see error or wrong-doing in almost everything Barclays has done (or not done).

That's a natural, subjective reaction, and entirely understandable. It's also natural to emphasise individual statements or comments that appear to support a particular viewpoint, whilst at the same time paying less attention to those that support the opposite viewpoint.

But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time.

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. Having done so, for all the reasons I've set out, I can't find in favour of the estate of Mrs R in the way the executors think I should.

My final decision

My final decision is that I don't uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs R to accept or reject my decision before 5 December 2023.

Jeff Parrington

Ombudsman