

The complaint

Mrs G, on behalf of the estate of Mr G, complains that Barclays Bank UK Plc ('Barclays') has not removed a charging order from the property that Mrs G and the late Mr G jointly owned.

What happened

Mrs G and the late Mr G jointly owned a property. But in 2019 Mr G sadly passed away.

In 2020 Mrs G approached another lender to take out a further advance on an existing equity release loan. However, when the lender was carrying out the necessary background checks it came to light that there was a restriction on the property added in 1987. The precise wording of the restriction was:

'RESTRICTION: No disposition by a sole proprietor of the land (not being a trust corporation) under which capital money arises is to be registered except under an order of the registrar or of the Court.'

The lender told her she would need to find the business responsible for the restriction in order to have this removed.

So, Mrs G looked into things further and found a Notice on Registration of a Caution from 1987 with an accompanying letter addressed to her. These showed a restriction had been placed on the property in 1987. And this came about in connection with borrowing the late Mr G had with Barclays – Barclays had taken Mr G to court in relation to the debt. The restriction was connected with the ending of the beneficial joint tenancy and meant Mr and Mrs G held the property as tenants in common.

The accompanying letter explained this meant that should Mr G or Mrs G die, the survivor couldn't sell or otherwise deal with the property for money on their own. It said the property couldn't be sold until a trustee was appointed to jointly hold the property and ensure that the money from any sale is paid to those who are entitled to receive it.

So, after gathering this information, Mrs G contacted Barclays asking it to remove the charge which she felt should have been removed when the debt was repaid many years earlier. But Mrs G was unable to resolve things despite multiple visits and calls as Barclays couldn't find a record of a charge. Mrs G eventually complained.

Barclays responded and said it had checked the Land Registry Title which showed there was no charge on the property by Barclays. It agreed there was a restriction on the property from 1987 but said this was put in place because the property was held as tenants in common. It advised Mrs G she would need to speak with a solicitor to get this changed. It apologised for the delay in responding to Mrs G's complaint and offered £150 compensation for this.

Mrs G didn't agree and asked our service to look into things. Our investigator didn't uphold Mrs G's complaint as he felt Barclays had carried out the investigations he would expect.

He explained a court had placed the restriction on the property and so Barclays was not able to remove this. He also felt the £150 offered for the delays was fair.

Mrs G disagreed. She said the restriction couldn't be removed until she had confirmation the interest that gave rise to the restriction was satisfied. She said she needed Barclays to confirm details of the loan and repayment in order to demonstrate this. Mrs G also said she'd originally complained because Barclays said it had no relationship with Mr G, which she felt was incorrect.

So, the complaint was passed to me to consider.

After reviewing the evidence, I contacted both parties as I intended to comment on some of the new points Mrs G had raised that our investigator hadn't covered. In brief, I told both parties that I could understand why Barclays couldn't locate the account and can see why there was confusion when this issue was initially raised. I didn't feel Barclays had denied that a relationship between it and Mr G had ever existed. I also asked Barclays if it would be willing to provide a letter confirming there was no outstanding debt.

In response, Barclays agreed to provide a letter and sent this to Mrs G.

Mrs G disagreed with my comments. She raised a number of points about Barclays, including:

- It was evident in Barclays's letter to her that it had denied having a relationship with Mr G. And for over a year Barclays denied the existence of a loan.
- Barclays ought to have a record of the payment of the loan as there are retention periods on accounts.
- Barclays ought to have had no difficulties understanding what had happened on the account as she gave it the necessary paperwork.
- On the balance of probabilities Barclays had closed down the account without removing the restriction on her property. Mrs G provided guidance from HM Land Registry which she felt showed Barclays was responsible for cancelling and removing the notice from the Land Registry.

Mrs G asked me for advice on how she could proceed with removing the restriction and asked me to point her to where it says this is her responsibility. She also asked me to consider the length of time this matter has been ongoing and the costs she has incurred and continues to incur.

I'm now in a position to issue a final decision on this complaint.

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 was sorry to read about Mr G's passing and about the difficulties Mrs G has encountered in trying to take a further advance on her equity release loan. I don't doubt it would have been incredibly worrying to uncover this issue and to have limited information about the problem. It's also clear how frustrating she has found this entire experience.

That being said, I would only ask Barclays to take further action if I thought it did something wrong. And having carefully considered the information available, I'm not persuaded that it has.

The current Land Registry documentation shows Barclays doesn't have a charge on the property. That is not to say that it may not have historically held a charge, but the evidence indicates that it doesn't currently hold one – so I'm satisfied Barclays doesn't need to do anything further in relation to this.

But there is a restriction still in place on the property. And this is what is causing Mrs G difficulties.

Barclays has explained that the restriction is not something it is responsible for or can remove, like it can when it holds a charge. Whilst I recognise that there is a link between the restriction being registered and the borrowing Mr G had with Barclays, this does not mean Barclays is responsible for the restriction in the same way. The restriction came about because of changes in how the property was owned following court action. Barclays has said this isn't something it has the responsibility or power to remove and, having read the restriction, I'm satisfied this is likely the case. Given this, I think Barclays has acted fairly in advising Mrs G that she may need to seek legal advice to resolve things – I'd note it is not its role to provide such advice.

Mrs G has said she still needs Barclays to confirm the borrowing has been satisfied in order to allow her to resolve things – she wants details of the loan and when it was repaid (which she thinks was in 2007). Mrs G is also unhappy as she feels that Barclays has unfairly denied that it had a relationship with Mr G.

It's evident that Barclays had difficulties locating the account and could find no record of the loan. However, I wouldn't necessarily expect Barclays to retain the record of loan repaid over ten years earlier - there'd be no reason for Barclays to retain this information for so long. So, I don't think it's unreasonable that it couldn't find this information. And I can't direct Barclays to provide Mrs G with information it doesn't hold. I note Barclays has confirmed it holds no further charge. And at my request it has also sent Mrs G a letter confirming it is not aware of any outstanding loans or debt that the late Mr G had with Barclays.

I can also see why the lack of records and the lack of a current charge caused confusion when Barclays investigated this matter for Mrs G. I appreciate Mrs G provided documentation to Barclays that indicated Mr G had had borrowing with it. So, I can see why the questioning of whether there was a definite borrowing relationship must have been very frustrating for her. But there was still a mismatch in what Mrs G was telling Barclays and what the land registry documentation showed. Barclays would also have expected to have retained records for a charge it still held. So, I think all of this would have understandably caused confusion and may have led Barclays to question whether the information it had been given was accurate. Ultimately, I'm satisfied that the final response letter replying to the complaint doesn't deny that a relationship existed. Rather, it says that it is not this relationship that is key to the restriction on the property – which I think is fair.

I can see that Barclays has offered Mrs G £150 compensation for the delays in responding to her initial queries and complaint. I think this is sufficient in the circumstances to account for the inconvenience caused to Mrs G as the representative of the estate. I appreciate Mrs G has been attempting to resolve this matter for some time and that she thinks £150 doesn't reflect the time and efforts spent attempting to resolve things. But I would only ask Barclays to compensate for inconvenience directly caused by its mistakes, and I think a lot of the inconvenience experienced here was a result of the restriction and the confusion; neither of which arose from an error by Barclays.

I understand this decision will likely come as a disappointment to Mrs G. I think it would be helpful to explain that I think this complaint has largely arisen from confusion about the

nature of the restriction on the property, why it's there and who is responsible for it. It's not my role to provide legal advice or to comment on issues beyond the scope of this complaint; so I'm afraid I'm not able to assist Mrs G in advising how she can get this removed or to point her in the direction of the relevant guidance and legislation covering this restriction. But I'd like to reassure her that I've carefully considered the evidence that both she and Barclays have provided to our service. And having done so, I'm satisfied Barclays isn't at fault here. Mrs G may wish to consider taking legal advice if she wants to explore further how the restriction can be removed. She might, in the first instance, want to try her local Citizen's Advice Bureau.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr G to accept or reject my decision before 31 March 2022.

Jade Cunningham
Ombudsman