

The complaint

Mr A, Mrs A, Mrs A and Ms A 's complaint about Barclays Bank PLC (Barclays) relates to a judgment debt in Barclays favour. Barclays were asked to waive the debt and remove a Charging Order which they said they had done, when in fact they hadn't.

What happened

Mr A senior and Mrs A owned a property together. Mr A senior passed away and his estate became the responsibility of his personal representatives Mr A, Mrs A, and Ms A. I shall refer to them as Mr A's Administrators. As the property was owned by Mr A senior and Mrs A in a particular legal fashion (tenants in common), Mr A senior's 50% interest in the property became his Administrators to deal with.

The Administrators learned that Barclays had obtained, historically, a Court judgment in 2008 against Mr A senior in respect of monies he owed on a loan and current account. That led to Barclays obtaining a Charging Order for that judgment debt, secured against the property. Barclays also obtained a Restriction which is a marker placed on the register for the property at the Land Registry, and which in this case prevents any future disposition of the property without the consent of the Restriction owner.

The Administrators asked Barclays to effectively waive the debt by releasing the Charging Order and they spent some time in trying to arrange this on the telephone as well as getting their solicitors to write to Barclays. Feeling they were getting nowhere, the Administrators raised a complaint with Barclays who responded apologising and confirming they were upholding the complaint. They said they had released the charge on the property, and it was no longer showing on the property register. In recognition of the poor service in dealing with the Administrators request, they offered £200 in compensation.

At a later date the Administrators learned that the Restriction hadn't been removed and contacted Barclays once again. Barclays accepted that their earlier letter may have caused some confusion, because having checked they could find no evidence of any charge being on the register at the Land Registry. They also said that they would not remove the Restriction until the judgment debt was paid. Barclays apologised for the further poor service in respect to the unclear letter and offered a further £150 in compensation.

The Administrators and Mrs A were unhappy with Barclays' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that Barclays hadn't done anything wrong and had dealt with the complaint fairly. The Administrators and Mrs A didn't agree and asked for the complaint to be passed to an Ombudsman for a final 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 am very sorry to hear that this matter caused so much stress and upset for Mrs A and the Administrators, and naturally I am very sorry to hear of the surrounding sad circumstances to this complaint. I can accept that it must have come as an unpleasant surprise to learn of the judgment debt and the existence of the Charging Order and Restriction. It is often the case that once a Charging Order is granted by the Court that the person or organisation with the benefit of that Order will have it registered against the charges register of the title to the property held at the Land Registry. It would seem from Barclays investigation that this may not have occurred, but even if it didn't it does not invalidate the Charging Order itself. It just means it isn't registered against the property, and that, according to Barclays, is the current position. Of course, it may have been registered against the property and subsequently removed, but whatever happened I am satisfied that it is no longer there. And so, to an extent it becomes a side issue.

The problem is now the existence of the Restriction. It is this which is preventing the Administrators and Mrs A dealing with the property as they would wish, without first paying the judgment debt.

The judgment debt remains valid even though Mr A senior passed away, since it became a debt of Mr A's estate. As Mr A's estate has assets, namely his 50% share in the property, theoretically it has sufficient monies to pay that judgment debt. The complication is that unless the Administrators and/or Mrs A obtain the money from elsewhere, or come to an arrangement with Barclays, it effectively means they might have to sell Mrs A senior's interest in the property, which could entail selling the entire property. So, I can easily see how stressful this is for them all, since that is not what they want to do. And I do understand that they also say they cannot afford to pay this debt.

But, the issue in this complaint is about the service Barclays provided to Mrs A and the Administrators. The judgment debt and Charging Order were granted by the Court and are valid. This is accepted by Mrs A and the Administrators. This service cannot go behind those Court Orders, which is, I think, a point also recognised by the Administrators and Mrs A. The Restriction is valid, and Barclays are entitled to rely on that for as long as it remains registered against the property at the Land Registry. I know Mrs A and the Administrators have suggested that Barclays should be held to the statement they made when they said the Charge would be removed, but that was clearly a mistake and it does not invalidate the regular Court judgment. Therefore, the debt remains valid.

Barclays accepted that it was in error when it delayed in responding to the initial request to waive the debt and it also accepts that its first final response letter was unclear. As a result, it has offered to compensate Mrs A and the Administrators with £350.

The issue for me now is what a reasonable amount of compensation might be. When we make awards of compensation we categorise them, and examples of these can be found on our website. What is important to remember is that there is no set figure, since the facts of each case are different, and ultimately it is an exercise of judgement, looking at all the circumstances of the case and coming to a figure which feels fair, when set against the effect upon the complainant of any particular service failures.

I think there are two potential categories of award this complaint could fall into; the first 'An award .. of up to £300', and the secondly 'An award .. of up to £750'. For the first category it would be usual to find complaints of a type where there have been repeated small errors, or a larger single mistake, requiring a reasonable effort to sort out. These typically result in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment, or loss of expectation.

For the second category, these complaints are usually where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needed a lot of extra effort to sort out. The impact here might last over many weeks or months, but it could also be fair to award in this range if a mistake has a serious short-term impact.

In this case there would certainly have been considerable upset and stress caused by learning of the existence of the debt, but that was not because of any poor service by Barclays. The judgment debt was already in existence and Mrs A and the Administrators were always going to find out about it. The poor service relates to the delay in responding to the initial enquiry and also the unclear letter saying the charge would be removed, leading Mrs A and the Administrators to expect the debt had been forgiven. That incorrect position was corrected when Barclays wrote their second final response letter. The impact therefore was to raise an expectation that the debt had been forgiven, for a period of just over eight weeks. It is also the delay in getting a response and the stress that caused.

I feel that this is a complaint that could therefore easily fall into either of the above two categories. It certainly comes at the higher end of the first and I think the lower end of the second category. So, returning to the £350 compensation offered, I do think that it is a reasonable and fair sum, and reflects the impact of the poor service.

My final decision

Barclays Bank PLC has already made an offer to pay Mr A, Mrs A, Mrs A, and Ms A £350 to settle this complaint, and I think that is fair and reasonable. So, my final decision is that it should pay Mr A, Mrs A, Mrs A, and Ms A £350 in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A, Mrs A, Mrs A and Ms A to accept or reject my decision before 13 June 2022.

Jonathan Willis
Ombudsman