

## **The complaint**

Mrs L complains that Barclays Bank UK PLC threatened her with court action to take possession of her property, for a debt which isn't hers and despite knowing about her health and financial situation.

## **What happened**

Mrs L has a Barclays mortgage with her now ex-husband, Mr L. The mortgage is linked to a mortgage current account (MCA), which has a secured overdraft facility.

In or about 2009, Mr and Mrs L separated. At around the same time, they visited a Barclays branch and arranged to remove Mrs L's name from the MCA. The mortgage continued to be in both their names. Mr and Mrs L later divorced. Mrs L remained living in the mortgaged property, and says she has been paying the mortgage on her own ever since, without any support from Mr L.

In around 2015, Mrs L found out that the balance on the MCA had gone over the overdraft limit. The debt was around £30,000. Barclays said it should never have taken her name off the MCA, and it put Mrs L back on the account.

In 2016, Mrs L made a complaint to Barclays about this. She said she was unhappy that it had taken her name off the MCA, Mr L had run up a significant debt without her knowledge, and Barclays had then put her name back on the account and told her she was liable for the MCA debt.

Mrs L then brought this complaint to us, and it was looked at by one of our adjudicators. Following our involvement, Barclays agreed to pay Mrs L up to £500 to cover the cost of an appointment with a family solicitor so she could get independent, professional advice about her options. Mrs L went ahead and took advice in 2017, and Barclays paid for it.

In early 2020, Mrs L received notice from Barclays of a court hearing for possession of her home. She got back in touch with us and made a new complaint. She also said the advice she had taken following her earlier complaint hadn't resolved anything, and Barclays hadn't tried to come to any arrangement with her about the MCA; instead, it had threatened legal action out of the blue.

Barclays said it had responded to Mrs L's complaint about her liability for the MCA debt in 2016, and the Financial Ombudsman Service had looked at that complaint as well. It said it wouldn't reconsider the matter again now but legal action had been stopped as Mrs L had approached us.

Our investigator thought Barclays hadn't treated Mrs L fairly, and that it should work with her to find a solution for the MCA debt, and pay her £500 compensation. Neither Mrs L nor Barclays accepted that conclusion.

Mrs L said she would reluctantly accept responsibility for half of the money spent on the MCA before her name was taken off the account in 2009. She would agree to pay that back

when the mortgage term ends in around seven years' time, since she won't be in a position to move before then. She said her preference, however, would be for Barclays to write off the debt on the MCA.

Barclays said it wanted time to review things, but then said it had nothing more to add.

### **My provisional decision**

I issued a provisional decision upholding this complaint. I said:

"As a starting point, Mr and Mrs L agreed when they took out the mortgage and MCA that they would be jointly and severally liable to repay debts on both accounts. That's how such accounts generally operate and these ones are no exception: Mr and Mrs L's joint and several liability is set out in the account terms. What this means is that Barclays could ask Mr L or Mrs L, or both of them, to repay *all* of the debt on the accounts. It doesn't mean that Barclays could only ask Mr and Mrs L for half each.

Here, however, matters have been complicated by the fact that Barclays removed Mrs L's name from the MCA in 2009 and put it back on again around six years later. Barclays has since accepted it should never have taken her name off the account in the first place. It has also said Mrs L has complained about this before, and she can't resurrect that complaint now.

As far as I can see, from our own records and those Barclays has provided, Mrs L's previous complaint was never fully resolved. The plan was that Mrs L would go and get legal advice, which Barclays would pay for – and that's what happened. Mrs L and Barclays were then to discuss next steps and come to an agreement – and that didn't happen. Instead, there followed the legal action which Mrs L is complaining about now.

Mrs L continues to argue that she shouldn't be responsible for debt run up on the MCA by Mr L in the years when she wasn't party to the account. I accept that she understood the MCA was no longer anything to do with her – she had, after all, visited a Barclays branch and signed paperwork to come off the account, and handed back her debit card and cheque book.

So I can certainly understand Mrs L's point. However, I don't think it would be either fair or appropriate for me to decide that Mr L should be solely responsible for all the money that was spent on the MCA, for reasons I'll go on to explain.

Importantly, I'm not satisfied that Mrs L received no benefit from the payments which were made from the MCA after she was removed from it. Barclays' records show that it looked into this in 2016 and found that regular direct debit payments had been made to a number of companies, including financial services providers, after Mrs L was taken off the account in 2009. It concluded that some of the payments were to an endowment policy which had been running alongside the mortgage, and to a life policy in Mrs L's name – with the final payment to the life policy having been made in 2015. Its records include a note saying Mrs L would make her own enquiries about what the various policies were for, and that, amongst other things, she told it in March 2016: "*she was aware of some policy that Mr had cashed in and had paid her car loan off with and kept the surplus (approx. 15k)*". I'm also mindful that Mr L isn't party to this complaint, and I don't know his side of the story.

Against this background, I find I can't fairly conclude that Barclays shouldn't be entitled to hold Mrs L responsible for the MCA, or to charge interest on the balance. While Mrs L wasn't named on the account for a period of time, the available evidence indicates that she benefited from some of the payments made from it during that time. In the circumstances, I

think that how responsibility for the MCA debt is apportioned between Mr and Mrs L is a matter for them, rather than for Barclays.

I think it's also important to note that there is some considerable equity in the property which, as I understand things, is to be shared between Mr and Mrs L when the property is eventually sold. In 2018, a field agent estimated the property's value at around £345,000. The combined mortgage and MCA balance was around £150,000 at that time. How the equity is to be divided between Mr and Mrs L is a matter between them, and I see no reason why they shouldn't be in a position to take account of the spending on the MCA in working out how much each of them should get. Indeed, that approach appears to be in line with the independent advice which Mrs L received in 2017.

However, that's not the end of the matter. While Mrs L has been able to afford to pay the mortgage on her own since 2009, she says she's on a low income and isn't in a position to pay anything towards the MCA. She and one of the children who lives with her also have significant health issues and Mrs L is the child's carer. She has said that they're not in a position to sell the property and move now, given her finances and the children's education and medical needs. I think it's clear that the family is vulnerable, and selling now would be difficult. It also seems disproportionate for them to have to do so given the background and the circumstances in which the MCA debt arose.

In these particular circumstances, I don't consider that it would be fair for Barclays to take steps to take possession of the property before the mortgage comes to the end of its term in 2028 – subject to Mrs L maintaining the monthly payments to the mortgage. The mortgage isn't in arrears, and given the level of equity in the property, suspending any action because of the MCA debt wouldn't appear to represent a risk to Barclays being able to recover its money in due course.

This isn't to say that Barclays and Mrs L shouldn't discuss the MCA during that time. Interest will continue to accrue on it, so if Mrs L (or indeed Mr L) is in a position to make payments towards it, that can only help the situation. And if the MCA balance is reduced through those payments, bringing it below the current overdraft limit, given the dispute between Mrs L and Mr L, Barclays should not allow further spending on the account.

I also consider Barclays should refund the legal fees it has applied to the mortgage and/or MCA since 2016. I'm satisfied that it has known about Mrs L's situation and her difficult circumstances since 2017 at the latest: through Mrs L's earlier complaint and also from a letter sent to it by a housing charity. There were no mortgage arrears, it knew the background to the MCA debt and Mrs L's vulnerability, yet it continued with its standard debt recovery action – instead of referring her to its specialist panel as it had said it would do in 2017. I think it should have done more to try to engage with Mrs L instead of starting possession proceedings when it did.

Mrs L has said she has found this whole matter very stressful. She had to face the prospect of a court hearing and possibly losing her home, because of a debt for which she didn't consider herself responsible and with little engagement from Barclays. I think Barclays has dealt with this whole matter poorly and caused Mrs L a considerable amount of avoidable upset. I provisionally find that Mrs L should receive £750 compensation in recognition of this.

### *Putting things right*

I consider that liability for the MCA debt is for Mr and Mrs L to sort out between themselves once the property is sold. But I consider the way Barclays Bank UK PLC has dealt with this whole matter has fallen short and to put things right it should:

- re-work the mortgage without any legal fees, field agent fees, and other debt recovery costs that have been applied in connection with the MCA debt, in such a way that any interest on those fees is also refunded;
- ensure no further payments, other than interest, can be made from the MCA, if it hasn't already done so; and
- pay Mrs L (directly, not by way of a credit to the mortgage or the MCA) £750 compensation."

### **Responses to my provisional decision**

Neither Mrs L nor Barclays accepted my provisional decision.

Mrs L said she still feels very strongly about the MCA debt and that Barclays is to blame for taking her name off the account and preventing her from doing anything about her ex-husband running up the debt. Other than a car loan being paid off, she hadn't received any benefit from the money spent on the MCA, even if Mr L had paid into policies in her name.

She would prefer the debt to be written off, or that Mr L should pay it, but she is open to discussing paying half of it once the mortgage comes to the end of its term. She is keen to come to some sort of agreement to bring an end to the extreme stress and trauma this matter is causing. She also feels she should receive much more compensation because of the stress Barclays has caused her and the impact of the MCA debt on her credit file.

Barclays said it had a number of questions about Mrs L's situation. It asked for documents setting out the legal advice she had received in 2017, the court order for Mr and Mrs L's divorce settlement, income and expenditure information, and medical evidence. Without all of this it said it couldn't say whether or not it accepted my provisional conclusions.

It also said the main mortgage is in fact in arrears by around £800, and it has concerns about whether Mrs L can afford to pay the mortgage, even leaving the MCA to one side. It is concerned about interest accruing on the MCA, reducing the equity in the property and affecting both Mrs L's and Mr L's credit files if no payments are made. It pointed to attempts it had made to discuss Mrs L's circumstances with her but said she wouldn't engage with it.

### **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.

Having done so, and having taken account of both parties' further comments, I've reached the same conclusions I came to in my provisional decision, for the same reasons.

It wouldn't be fair for me to apportion liability for the MCA debt between Mrs L and Mr L. That is a matter between them, as I explained in my provisional decision. And it wouldn't be fair for me to require Barclays to write off the debt or stop charging interest on it either. That money has been spent, and both Mrs L and Mr L have had some benefit from it.

Mrs L has said she wouldn't be in the position she's in now if she'd sold the property before Barclays put her name back on the MCA. But the MCA debt is secured on the property, just as the main mortgage is – so, had the property been sold at any point, the debt on both the mortgage and the MCA would have been repaid from the sale proceeds. Sale wouldn't have meant the MCA debt could have gone unpaid.

Barclays has said it can't decide whether to accept my provisional decision without knowing more about Mrs L's situation. My decision doesn't prevent Barclays and Mrs L from working together to find a way forward; quite the opposite, in fact – it should help them both to move on, by drawing a line under this complaint. I would expect them to communicate openly with one another to see if an affordable solution can be found. But my role here isn't to relay information between them; it's to come to a fair and reasonable outcome on the complaint I've been asked to decide.

Barclays has also said Mrs L hasn't been prepared to engage with it in the past. I can see that it made some attempts to discuss things with her. But it didn't refer Mrs L to its specialist panel as it had said it would, and its contact with her didn't take into account the context of this dispute about liability for the MCA debt and Mrs L's and her family's vulnerability – all of which it knew about.

I have noted Barclays' point that the main mortgage is currently in some arrears, but this doesn't affect my decision. I see no reason why Barclays shouldn't discuss payment of arrears on the main mortgage with Mrs L, and it may ultimately decide to take debt recovery action if appropriate and bearing in mind Mrs L's particular circumstances. It is only the MCA debt on which it should suspend further action until the mortgage reaches the end of its term in 2028.

The roll-up of interest on the MCA is a relevant consideration, as is the impact of no payments being made on Mrs L's credit file. That's why I said in my provisional decision that Barclays and Mrs L (and Mr L) should discuss the MCA and whether there is scope for any payments to be made to it. I still consider that can only help the situation.

I have also noted what Mrs L has said about the impact of this whole matter on her health and wellbeing, and I recognise that she has found it very stressful. But I don't think I can fairly hold Barclays responsible for the health problems she has had, and I remain of the view that £750 is a fair award for the impact on her of Barclays' failings.

### **Putting things right**

Barclays Bank UK PLC should:

- not take action to take possession of the property because of arrears on the MCA before the mortgage comes to the end of its term in 2028 – subject to Mrs L maintaining the monthly payments to the main mortgage;
- re-work the mortgage without any legal fees, field agent fees, and other debt recovery costs that have been applied in connection with the MCA debt, in such a way that any interest on those fees is also refunded;
- ensure no further payments, other than interest, can be made from the MCA, if it hasn't already done so; and
- pay Mrs L (directly, not by way of a credit to the mortgage or the MCA) £750 compensation.

### **My final decision**

My final decision is that I uphold this complaint and Barclays Bank UK PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or

reject my decision before 20 April 2022.

Janet Millington  
**Ombudsman**