

The complaint

Mr M has complained that, without his knowledge or consent, Barclays Bank UK PLC allowed his ex-wife to increase the Mortgage Current Account (MCA) reserve.

To settle the complaint Mr M wants Barclays to acknowledge that he is not responsible for the debt incurred by his former wife, to repair his credit file and to compensate him for legal costs, distress and inconvenience.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letters dated 15 February 2022 and 8 June 2022, so there is no need for me to repeat the details here.

I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr M being identified. So for these reasons, I will keep my summary of what happened quite brief.

Mr M and his former wife have a joint mortgage with Barclays. The mortgage comes with an MCA. The MCA is an overdraft facility, which works like this: as capital is repaid off the mortgage, the overdraft limit on the MCA increases by the same amount, due to what Barclays calls 'rebalancing'. This can be spent by the borrower, through the mortgage current account.

Although Barclays had been aware since 2010 that there was a marital dispute, and that its notes recorded the MCA reserve limit as being set at £500, Barclays nevertheless allowed the joint party to the mortgage to increase the MCA reserve limit, without Mr M's knowledge or consent. By 2018 it had reached £51,200.

Mr M had also told Barclays that he was no longer living at the secured property and gave the bank his new address. However, Barclays didn't update its records and so the MCA statements were sent to Mr M at the secured address, where he was no longer living. He was therefore unaware of the spending by his ex-wife on the MCA.

Mr M complained. Barclays acknowledged it had made a mistake and offered compensation of £1,200. Mr M didn't think this was sufficient and so the complaint was brought to our service. Mr M complained about a number of issues:

- Barclays' failure to advise him of the increase in the MCA reserve;

- Barclays not sending him MCA statements to his address;
- the impact of Barclays' actions on his credit file;
- Barclays agreeing to a payment holiday on the account.

An investigator looked at the complaint. He noted that Mr M had a 2012 court order in the divorce proceedings which stated that his ex-wife would indemnify him for any liability under the mortgage. It was after that date that the joint party substantially increased the spending on the MCA, the majority of which was transfers to her personal account.

The investigator didn't think it was fair or reasonable for Barclays to hold Mr M responsible for this. This was because Barclays had been aware of the marital dispute on the account, yet on the instructions of only one party, reinstated the rebalancing feature, to Mr M's detriment. He thought that, other than where withdrawals from the MCA had been used to pay the mortgage, Mr M shouldn't be held liable for any other part of the debt.

The investigator was also satisfied that Mr M had given Barclays his new address, yet the bank had continued to send the MCA statements to Mr M at the mortgaged property, despite the bank knowing he wasn't living there.

However, the investigator didn't think Barclays should be liable for future legal costs Mr M might incur, as these were speculative. In addition, the investigator noted that Mr M had consented to a payment holiday on the account, and so he didn't uphold that part of the complaint.

The investigator thought Barclays should increase its offer of compensation by £800, making a total payment of £2,000, to include the £1,200 already offered.

Neither party accepted the investigator's findings. Mr M didn't think the compensation was sufficient; he wanted £20,000 for his legal costs and £5,000 for distress and inconvenience.

Barclays said that it would be possible to ensure that Mr M wasn't contacted to pursue any of the debt, and the bank noted the terms of the court order between Mr M and his ex-wife in relation to the mortgage.

Barclays said that it was under a duty to report accurately the transactions on the mortgage to credit reference agencies, and was unable to prevent this until Mr M was removed from the account. Barclays also thought the £1,200 it had offered was fair and reasonable in all the circumstances.

Because the matter is unresolved, it falls to me to issue a 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.

Because Barclays has accepted it made a mistake, I don't need to establish what went wrong; all I need to decide is what Barclays should do to put things right.

I'm satisfied that Mr M agreed to the payment holiday on the account, so I'm not upholding this part of the complaint. However, the main concern for Mr M is the MCA.

Barclays has acknowledged it shouldn't have allowed Mr M's ex-wife to reinstate the rebalancing feature. The bank also acknowledges that Mr M had changed his address in its records, but statements were not sent to him. I'm glad to note that Barclays has confirmed

that it will take steps to ensure that Mr M isn't contacted to pursue payment any of the debt. That is what I would have expected Barclays to do.

However, I agree with the investigator that if the usage of the MCA shows that withdrawals from it were used to make the mortgage repayments, these should be factored into the equation, when working out liability for the debt. This is because there is a benefit to Mr M in the mortgage being paid, even though the MCA is not meant to be used for that purpose. Mr M should not be held liable for any other spending on the MCA.

With regard to the credit file, Barclays is under an obligation to report arrears on the mortgage. If Mr M thinks the information recorded with credit reference agencies is inaccurate, he can file a Notice of Correction with those agencies to clarify his position. This will be available to potential lenders when looking at Mr M's credit report on any application for credit.

I'm not persuaded, therefore, that there is an argument for Mr M to be paid £20,000 for potential future legal costs. We don't award compensation for speculative losses, and so I'm not persuaded it would be reasonable for Barclays to pay this where it is not an expense Mr M has, in fact, incurred, and which he may not incur in the future.

I've noted what Mr M and Barclays have said about compensation for distress and inconvenience; Mr M wants £5,000 but Barclays thinks the £1,200 it already offered is fair, rather than the £2,000 recommended by the investigator.

After careful consideration, I think an award of £2,000 is appropriate in the circumstances. Mr M has been caused considerable upset over a situation that could have been avoided if Barclays had obtained his consent before reinstating the rebalancing on the MCA. In 2012 Mr M thought that matters between him and his former wife were settled with the court order, and it must have come as a great shock to him to learn what had happened. In the circumstances, I think £2,000 compensation is fair, reasonable and proportionate in all the circumstances.

Putting things right

To settle this complaint, in addition to its confirmation that Mr M won't be held liable for the debt on the MCA (other than any withdrawals used to pay the mortgage), Barclays Bank UK PLC must pay Mr M compensation of £2,000.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, I direct Barclays Bank UK PLC to settle the complaint as set out above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 January 2023.

Jan O'Leary
Ombudsman