

The complaint

Mrs S complains that Barclays Bank UK PLC was responsible for the delayed completion of her property purchase.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in detail. Instead I'll summarise the main facts that I consider to be fundamental to the outcome and focus on giving my reasons for my decision.

On 11 August 2020 Mrs S obtained a mortgage offer from Barclays to purchase a property. A completion date was agreed by her solicitor via certificate of title (COT) for Friday 28 August 2020.

On Wednesday 26 August 2020 Mrs S's solicitor sent Barclays a fax notifying it of a subsidence claim made against the property in 2012. It asked whether this would affect the valuation of the property.

Due to proximity of the query, the funds were released by Barclays as originally agreed on 27 August 2020 but because of the outstanding query, completion could not go ahead. Mrs S believes it was Barclays who initiated this query at a late stage in the process and blames it for the delayed completion.

The mortgage funds were returned to Barclays and a new completion date was set by Mrs S's solicitor for 7 September 2020. It's in dispute whether Barclays requested the funds back under its delayed completion process or whether the funds were voluntarily sent back by Mrs S's solicitor. The mortgage funds were re-released on 4 September 2020 and Mrs S subsequently completed her purchase thereafter.

Mrs S says that as a result of the delayed completion, her and her family - consisting of her young son and clinically vulnerable husband - were made homeless during the Covid-19 pandemic. She complained to Barclays seeking compensation for the ongoing distress and inconvenience caused to her and her family as a result. She also sought reimbursement for the expenses incurred during the delayed completion period.

Barclays upheld the complaint in part. Whilst it didn't think it was responsible for the delayed completion, it did offer Mrs S £300 compensation – partly for not answering her complaint within 40 working days and to also acknowledge having to stay in a hotel for the duration, for reasons outside of her control.

Unhappy with Barclays' response Mrs S brought her complaint to our service. Our investigator looked into things. He initially thought Barclays wasn't at fault here. After considering new information, he upheld the complaint because he thought Barclays could have replied to Mrs S's solicitor sooner, in time for the planned completion to go ahead. He said Barclays should reimburse Mrs S for her incurred costs and increase the compensation award.

This matter was passed to me for a decision. I issued a provisional decision. An extract of my provisional findings is below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I fully empathise with the difficult position Mrs S was left in when the completion of her property purchase couldn't take place on time and the impact this had on her and her family. But I can only ask Barclays to compensate her in the circumstances if I'm satisfied it was at fault.

Barclays issued Mrs S the relevant mortgage offer on 11 August 2020. A mortgage offer is only issued after the lender has fully assessed the applicant's circumstances and is satisfied with the valuation of the property. There is no evidence to suggest Barclays raised additional queries post offer.

It's worth noting that the valuation carried by the appointed surveyor was a desktop evaluation for Barclays' benefit only. This means that the scope was limited and was for the purpose of checking how much the property was worth. A more rigorous survey such as a home buyer's report or full structural survey can be carried out by the buyer for their own benefit. It's likely the matter of the subsidence claim was identified through conveyancing and not something I'd expect Barclays' evaluation to pick up.

The evidence suggests Mrs S's solicitor raised the query about the subsidence claim. This was two days before completion and after it had sent Barclays the COT – suggesting all pre completion conveyancing was complete in readiness for release of funds.

By this matter arising so close to completion, Barclays' position was compromised. It was required to consider whether the property was still good security in light of this key new information. This involved referring to the surveyor and obtaining further sign off from the completions team or an underwriter. All within a very short timeframe.

The fax was sent by Mrs S's solicitor around 2pm on 26 August 2020 - the day before the funds were to be released in time for completion on 28 August 2020. The fax wasn't marked as urgent. It was uploaded to Barclays' system the following day and due to the nature of the enquiry, upon review, Barclays asked for an urgent response from the surveyor. Mrs S's solicitor called Barclays a few times for an update between 27-28 August 2020. The last call on the day of intended completion was around 2pm. Barclays couldn't confirm its position yet as the matter was still under review. To manage expectations the delayed completion process to return the funds was discussed. Which I don't consider to be unreasonable in the circumstances as it was unlikely completion could go ahead as planned.

Mrs S's solicitor emailed her on the morning of completion to manage her expectations. It said to expect a response from Barclays by Wednesday 2 September 2020, due to the upcoming bank holiday. Later that day Barclays was able to respond - sooner than anticipated. It sent a letter (at around 8pm) to Mrs S's solicitor confirming it was willing to proceed with the mortgage.

Our investigator upheld the complaint on the basis that standard post was used to communicate the response to Mrs S's solicitor instead of using fax or phone considering the urgency. Although the surveyor may have provided its response around mid-day, I must consider reasonable processing times and the fact that final sign off was still required internally. Whilst in hindsight Barclays could have used a more instant method of communication, I think its unlikely completion could take place as planned as it was already too late in the day by that point.

When considering the series of events that took place, I'm unable to say that Barclays was

entirely responsible for Mrs S's delayed completion. If it hadn't been for the subsidence query, the funds were released by Barclays as agreed on 27 August 2020 and completion would have taken place in time. Based on everything I've seen Barclays did what it could in the circumstances to answer the query in time and it would be unfair for me to hold it responsible for the untimely query raised which was most likely the fundamental reason why completion was compromised. As such I won't be asking Barclays to compensate Mrs S for the impact she's described.

I've considered Mrs S's other points about her address being prematurely changed to the purchase property without her consent. I don't find any failing here as this was done when the funds were initially released, and the mortgage account initially opened on that day. Which is usual practise.

Barclays has upheld this complaint in part by offering Mrs S £150 for its delayed response to her complaint and a further £150 as a goodwill gesture towards her hotel expenses. I think this is fair, considering its more than I'd award in the circumstances. I say this because I don't find Barclays at fault here and whilst it may have agreed to respond sooner to Mrs S's complaint, it was ultimately answered within the required eight weeks from receipt. More information about the rules relating to this can be found [here](#).

I know this will come as a disappointment to Mrs S, especially as our investigator thought she should receive more compensation. But for reasons I've explained I'm satisfied the offer (still available to Mrs S) is fair and reasonable in the circumstances”.

Both parties responded to my provisional decision. Barclays agreed, Mrs S didn't. In summary she said:

- The available information doesn't evidence her solicitor raising the query of the subsidence claim. The fax sent on 26 August 2020 from her solicitor was in response to a query raised by Barclays.
- It was Barclays, who at the last minute, wanted to check some documents provided by the sellers for the underpinning carried out on the property in 2012, even though it had already released the funds to her solicitor for completion.
- Barclays shouldn't have requested the loan funds back on 28 August 2020, hours after releasing the money. Why did Barclays wait until 5 September 2020 to re-release the funds.
- The blame is being passed to her solicitor.

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've also given careful consideration to all of the submissions made before arriving at my decision, including Mrs S's response to the provisional decision. Having done so, I've reached the same conclusions as set out in my provisional decision and for the same reasons.

I'll now address Mrs S's response to the provisional decision. When doing so, I must courteously point out that a decision is intended to be read and understood in its full context. In her responses to my provisional decision, Mrs S has focused on isolated parts, disregarding the wider surrounding context that supports the reasoning.

Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to

have happened in the light of the available evidence and the wider circumstances.

I am making no finding in relation to the actions of Mrs S's solicitor. There may be wider circumstances relevant to the conveyancing process that impacted things - that do not form part of this complaint and not something I've considered or have the jurisdiction to either. This complaint has been raised against Barclays and I am only looking at whether Barclays was a fault here for the delayed completion and whether it can be held responsible for the impact on Mrs S and her family as a result.

I'll now turn specifically to Mrs S's response.

So far as I am aware, from the parties' submissions and the evidence provided to me, the first time the matter was raised was on 26 August 2020 and that the point was raised by Mrs S's solicitors. I have not been provided with any evidence to demonstrate that the fax was sent in response to an enquiry of Barclays. Further communications were sent afterwards to attempt to confirm that the purchase could go ahead but it was Mrs S's solicitors that raised the matter.

I can reassure Mrs S that the content of the email thread she refers to was carefully considered when reaching my provisional decision. For clarity, I will expand on my considerations whilst explaining how a property transaction works. I will refer to the contents of the emails below.

Email from Solicitor to Mrs S on Friday 28 August 2020 at 08:47

"Barclays have released funds to me to complete today, however they are still checking over documents provided by the sellers for the underpinning carried out on the rear extension in 2012. I will be ringing them later this morning to confirm if they are happy for us to complete, they may ask me to return funds and arrange a new completion date should they want to check the documents further so please be aware that this might happen"

Email from Solicitor to Mrs S on Friday 28 August 2020 at 10:30

"I have spoken to Barclays, they have had to refer the works to the valuer but expect a response by Wednesday next week due to bank holiday. Due to this they have asked me to return the funds and we can re-request them as soon as the valuer confirms we can proceed. I do apologise for this inconvenience and we will work to get a completion date as quickly as possible on receipt of their response"

The first email confirms that the information about the subsidence issue was provided by the seller. For the avoidance of doubt, I must clarify that during a property transaction the seller is not in direct contact with the buyer's lender. Information about a property is shared through the buyer and seller's solicitors. This happens during the conveyancing process which includes the buyer's solicitor carrying out the relevant checks and searches on the purchase property.

I've seen a fax dated 26 August 2020 from Mrs S's solicitor to Barclays which has been shared with Mrs S. The content of the fax is as follows:

Fax from Solicitor to Barclays on Wednesday 26 August 2020 at 13:51

"please find attached details of a subsidence claim made for the property in 2012 in relation to the rear extension. Works have been completed and registered with the local council. Please confirm you are still happy to proceed"

Mrs S is adamant that this issue was raised by Barclays in the first instance. She says her solicitor was *replying* to Barclays' enquiries on 26 August 2020. This email is the first mention I've seen of the subsidence query in the submissions from both parties. And, I've explained why I think it's unlikely that Barclays raised the query.

But for the avoidance of doubt and in fairness to both parties, I made several attempts to obtain information from Mrs S and her solicitor that evidences Barclays raising the query first for example in the form of a prior email, fax or system notes. I've not had a response from either Mrs S or her Solicitor. Barclays has however confirmed to me once again that the matter was raised with them by Mrs S's solicitor on 26 August 2020. That leaves me to decide what reasonably happened considering the available evidence. As such, I'm more persuaded this issue was raised for the first time by Mrs S's solicitor on 26 August 2020. As I've seen no evidence to suggest otherwise.

So, when Mrs S solicitor emailed her on the morning of completion to say Barclays was still checking over documents provided by the sellers, I'm satisfied the solicitor was referring to fax it sent Barclays two days prior.

It's also worth mentioning that it's in a buyer's best interest to flag any information which may affect the mortgage offer – such as a previous subsidence claim which was the case here. This is why the solicitor raised the point – because the information had to be disclosed. It's unclear when the subsidence claim became known to Mrs S and her solicitor, but had this been raised with Barclays sooner, it would have likely had a reasonable amount of time to consider the information and provide its response, in time for completion.

That brings me on to the matter of the funds being returned and a new completion date being set.

In the circumstances it was unlikely completion was going to take place on the 28 August 2020 as planned, which for reasons I've explained, wasn't Barclays' fault. As such, the delayed completion process was discussed which I don't think was unreasonable in the circumstances. If the funds were held on account, Mrs S would be liable for interest charges until the new completion date. And at this point it was unclear if the purchase would go ahead. As the bank holiday weekend followed, that would inevitably mean possible completion couldn't take place for at least three days – depending on agreement between Mrs S and her seller.

Regardless of who requested the funds back, I've explained why this was the reasonable thing to do in the circumstances - because on the morning of completion, it was expected by both parties that this matter wouldn't reasonably be resolved until after the bank holiday weekend. For reasons I've explained, it was not appropriate for Mrs S's solicitor to hold on to the funds until a new completion date was set.

It was for the buyer and seller to agree a new completion date. Barclays couldn't reasonably be expected to re-release the funds until it was made aware of the new completion date. The new COT was issued by Mrs S's solicitor on Thursday 3 September 2020 for a new completion date of 7 September 2020. It's unclear why a new completion wasn't agreed for an earlier date, but in any event that decision wasn't for Barclays to make, so I can't conclude that it was unfair or unreasonable because of acts or omissions of Barclays for completion being unable to take place until then.

As I've not seen enough evidence to suggest Barclays was responsible for the delayed completion, I won't be asking it to compensate Mrs S for the losses and impact she's

explained in the submissions. For the reasons I've explained in my provisional decision I'm satisfied Barclays' offer of £300 is fair and reasonable in the circumstances.

My final decision

My final decision is that I uphold this complaint and direct Barclays Bank PLC to pay Mrs S the £300 compensation offered to her in its final response letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 November 2022.

Arazu Eid
Ombudsman