

The complaint

Ms A is unhappy with the way Barclays Bank UK PLC has handled her re-mortgage application. After encountering many difficulties over a number of years, she was told the re-mortgage was finally going to go through, only to then be told it couldn't due to a legal issue that Ms A says Barclays had been aware of for a long time.

What happened

Ms A held a joint mortgage with her ex-partner. As part of the separation, she was looking to have the mortgage in her name only. Ms A has described how this has been a very stressful process over a long period of time, owing largely to difficulties posed by her ex-partner.

Ms A eventually received a court order which she believed meant that she would finally be able to proceed with the re-mortgage.

Ms A has been represented by a solicitor firm (who I'll call 'L') in relation to the re-mortgage and other matters (though not in a formal sense in relation to this complaint).

Barclays engaged one of its panel of solicitors (who I'll call 'E') to deal with the legal work from its perspective as the lender.

In May 2021, Barclays told Ms A that the re-mortgage was going ahead and completion was due in early June 2021.

However, during June 2021, the mortgage offer in place at that time needed to be 're-keyed' by Barclays because the offer was nearly expired. During this process something went wrong and the application was rejected in error. After Ms A complained Barclays upheld the complaint and it offered Ms A £200 to reflect what had happened. Barclays told her that it would still be able to offer her the re-mortgage.

Subsequent to this, Barclays continued to give Ms A the impression that the mortgage was proceeding. In July 2021, E wrote to L to say that it couldn't deal with the re-mortgage given the specific circumstances to do with the transfer of title and Ms A's ex-partner retaining an interest in the property.

Barclays wrote to Ms A in August 2021 saying it was just awaiting certificate of title from L and asking if Ms A had an expected completion date in mind.

In September 2021, E wrote to Ms A to say that it needed an unredacted copy of the court order to be able to proceed. This was provided to E, after which it wrote to L to say that Barclays wouldn't proceed with the mortgage without an undertaking from E in relation to a perceived risk to do with issues relating to Ms A's ex-partner's ongoing interest in the property and land registry. L wasn't prepared to do this as it didn't think it necessary in the circumstances.

Ms A complained and Barclays responded to say that it was unable to proceed with the application due to a clause in the divorce. It apologised for the incorrect information Ms A

had received (presumably being told the mortgage was proceeding when it ultimately didn't) and for the unnecessary stress and inconvenience.

Barclays later said that if Ms A wanted to proceed, she would need to appoint a solicitor on its panel, because it appeared that L was in a stalemate with E over a particular issue. Barclays also said that Ms A hadn't made it aware of her ex-husband's involvement in the property when she first spoke to it about the matter and that Ms A had already appointed a solicitor who wasn't on its panel. Barclays said that the application had gone through to offer but it was a legal issue preventing it from going ahead with the re-mortgage and that this wasn't down to any error that it or E had made.

Ms A remained unhappy and escalated her concerns to the Financial Ombudsman Service. In summary, she said that she had made Barclays aware from outset of her circumstances so it wasn't true of Barclays to say it wasn't aware. She said that when Barclays told her it wouldn't proceed shortly after telling her everything was going as planned, this left her in a really difficult position and had a significant negative impact on her mental health. Ms A also said that Barclays hadn't been clear about what the issues were or what she needed to do.

An investigator reached a view on the complaint. In summary, they said that there was mention of Ms A's ex-husband on the mortgage application made in December 2020, so Barclays did have awareness that Ms A's ex-husband was involved.

The investigator said they didn't think it was fair for Barclays to insist that Ms A appoint a solicitor on its panel and thought that Barclays ought to have either appointed a specialist solicitor for the case or advised Ms A much sooner that it would be best to use a solicitor from its panel, due to the complexity of the case.

The investigator said that Barclays should pay an additional £300 in compensation to bring the total to £500.

Barclays initially didn't respond. Ms A did, saying she didn't agree. In summary, she said her main issue was that Barclays still hadn't explained what the issue was that prevented them from going ahead or what they required to proceed. She said that not being able to re-mortgage continued to cause her financial difficulties. Ms A also didn't think the amount of compensation was enough and that Barclays had caused delays, resulting in her incurring unnecessary additional legal costs.

Ms A then provided further submissions where she described the advice she'd received from Barclays' solicitors over time, to do with the need for her to obtain documentation transferring ownership of the property to her sole name. Ms A emphasised that Barclays was aware of the details of the court order. She also said that she had since been able to pay the mortgage off but might need to try to obtain another mortgage in future.

As the matter hadn't been resolved, it was passed to me to decide.

Barclays eventually let us know that it was prepared to pay the £500 compensation recommended by the investigator. I asked another investigator to let Ms A know this and to check whether this resolved matters for her. This was on the basis that, based on what I'd looked at on the file to that point, it wasn't clear that I would necessarily be recommending any further compensation.

Ms A said she remained dissatisfied and she provided additional information in the form of correspondence between herself and Barclays, herself and L and also between L and E. She said this correspondence evidenced the delays on Barclays part, that L had told Barclays it should cover some of the fees it had charged Ms A (due to delays and also

having done a 'u turn' on requiring a transfer of title to take place before the re-mortgage go ahead) and that Barclays was aware of the court order at all stages.

I issued a provisional decision (PD) in January 2023, in which I said I was provisionally minded to say that Barclays needed to pay £800 in addition to the £200 it had already offered in relation to the 're-key' error. I also said that Barclays would need to pay any unnecessary costs incurred by Ms A that were due to its errors and reasonably foreseeable. Here is an extract from the PD:

"There are two fundamental issues in this case:

- Did Barclays treat Ms A fairly when dealing with her re-mortgage? In particular, did it sufficiently get to grips with the relevant issues at an early enough stage?

- If not, how and to what extent has this impacted Ms A in terms of any unnecessary costs incurred and unnecessary distress and inconvenience caused?

Did Barclays treat Ms A fairly?

This case turns on whether and when Barclays became aware (or ought to have been aware) of the issues and potential issues relating to the re-mortgage, given Ms A's specific circumstances. Barclays says Ms A didn't make it aware of the issues relating to her ex-husband and that the legal issue spotted by E only came to light when E had sight of the unredacted court order and it doesn't consider that it made any error. Ms A says Barclays has been aware of her specific circumstances throughout.

I've seen an e-mail from Ms A to L where she says she believes she had provided Barclays with a copy or copies of the court order at different times and from an early stage. It's possible this is the case, although there is currently no evidence to show if and when this did happen.

However, I've also seen an e-mail from L to the mortgage adviser at Barclays in March 2021, where L enclosed/attached a copy of the title transfer. In the e-mail, L sets out that there is a restriction registered against the title requiring Barclays' consent before the transfer could be registered. The e-mail sets out that the purpose of sending the document to Barclays was to get its approval to it. The e-mail ends with L setting out what it saw as the options going forwards and asked for a response as a matter of urgency.

Other information provided by Ms A shows her and L subsequently chasing Barclays for a response.

Whilst it's not clear when Barclays first saw a copy of the actual court order, I think the e-mail from L to Barclays in March 2021 ought to have put Barclays on notice that there may be issues it would need to get to grips with much sooner than it did. It appears that the fundamental reason E advised much later in 2021 that Barclays shouldn't proceed with the re-mortgage was the issue to do with the restriction on title – something Barclays was aware of no later than March 2021.

This is where I consider that Barclays hasn't treated Ms A fairly and has caused unnecessary distress and inconvenience and potentially costs she wouldn't otherwise have incurred.

To what extent has this impacted Ms A in terms of unnecessary distress and inconvenience caused?

Had Barclays properly explored the issues of the restriction on title sooner than it did (which I think it should have), Ms A may well have ended up in the same place i.e. Barclays still wouldn't have provided her with the re-mortgage. However, this would have prevented Ms A from having false expectation over a number of months that the re-mortgage would be going ahead.

Barclays clearly isn't responsible for the very difficult circumstances Ms A was in, however given her circumstances and what Ms A has said, I think the impact of giving her false expectation over a number of months that the re-mortgage would happen was significant. Ms A has described that finding out the re-mortgage wouldn't be going ahead after months of being told it was going ahead left her with very poor mental health and feeling suicidal. I've no reason to doubt this.

To what extent has this impacted Ms A in terms of any unnecessary costs?

Ms A has been advised by L that Barclays' actions have caused her to incur costs she wouldn't have incurred if it had dealt with things properly. This appears to be in relation to L chasing Barclays for a response in relation to the transfer of title and also a suggestion that Barclays did a 'u turn' as regards the need for the transfer of title to happen before the re-mortgage (with L saying Barclays initially gave the impression the transfer did need to happen first but that the nature of E's subsequent involvement then suggested otherwise).

From what I've seen so far, I think Ms A would always have incurred some costs in terms of the work L was doing for her. However, if Ms A can demonstrate that she incurred costs that can be specifically linked to something Barclays has done wrong that she otherwise wouldn't have incurred and that were reasonably foreseeable - for example L needing to chase Barclays for a response to the correspondence sent in March – then in principle Barclays should cover these costs plus statutory interest.

In terms of the suggestion that Barclays 'u turned' on the need for the transfer of title to happen before the re-mortgage could go ahead, it's not clear to me why L is saying this. I also haven't seen any evidence of specifically what caused L (or Ms A) to understand that Barclays required the transfer of title to happen first.

In terms of the £200 Barclays already offered to pay Ms A for the error when it re-keyed the application in June 2021. I currently think this represents a fair amount of compensation, bearing in mind that this particular issue was resolved quite quickly.

Finally, I know that Ms A feels as though Barclays hasn't provided a clear reason as to why it wasn't prepared to go ahead with the re-mortgage and wants to know what she would need to do if she wanted to obtain another mortgage in the future with Barclays or any other lender.

I think E did communicate the reason why it recommended that Barclays not proceed with the re-mortgage and in the end there was a stalemate between E and L.

As the mortgage has since been redeemed, it's possible the restriction on title is no longer an issue. But regardless, as and when Ms A does wish to seek another mortgage in the future, I can only suggest that she be as up front and clear as possible about her specific circumstances with any lenders, to maximise her prospects of getting the borrowing she is seeking."

I asked for any further evidence and/or arguments to be provided by 2 February 2023. Barclays didn't provide a response. Ms A responded to say that she thought my decision represented a reasonable resolution to her complaint. She said that in terms of getting a

breakdown of costs, she was trying to get hold of the specific solicitor at L, as he had moved to a different firm. She said she was going to contact L to try to get contact details for the solicitor, but didn't know how long it would take for them to respond.

The investigator told Ms A that we can't hold cases indefinitely and gave her until 9 February 2023 to provide any further information. Ms A hasn't been in touch since.

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.

Since Barclays didn't respond to my PD (which forms part of this decision) and that Ms A said she thought it represented a fair resolution to her complaint, I see no reason to depart from my provisional findings upholding this complaint.

I still find that the evidence suggests Barclays didn't sufficiently get to grips with important issues relating to Ms A's application to re-mortgage. I still find that the e-mail from L to Barclays in March 2021 ought to have put Barclays on notice that there may be issues it would need to get to grips with much sooner than it did. It still seems that the fundamental reason E advised much later in 2021 that Barclays shouldn't proceed with the re-mortgage was the issue to do with the restriction on title – something Barclays was aware of no later than March 2021.

I still find that if Barclays had properly explored the issues of the restriction on title sooner than it did (which I still think it should have), Ms A may well have ended up in the same place i.e. Barclays still wouldn't have provided her with the re-mortgage. However, this would have prevented Ms A from having false expectation over a number of months that the re-mortgage would be going ahead.

Barclays clearly isn't responsible for the very difficult circumstances Ms A was in, however given her circumstances and what Ms A has said, I still think the impact of giving her false expectation over a number of months that the re-mortgage would happen was significant. Ms A has described that finding out the re-mortgage wouldn't be going ahead after months of being told it was going ahead left her with very poor mental health and feeling suicidal. I've no reason to doubt this.

In terms of costs, I still find that Ms A would likely always have incurred some costs in terms of the work L was doing for her. In terms of the suggestion that Barclays 'u turned' on the need for the transfer of title to happen before the re-mortgage could go ahead, it's still not clear to me why L is saying this. I also still haven't seen any evidence of specifically what caused L (or Ms A) to understand that Barclays required the transfer of title to happen first.

That aside, although Ms A hasn't yet been able to provide evidence of unnecessary costs she incurred as a result of Barclays' errors, if she can demonstrate that she incurred costs that can be specifically linked to something Barclays has done wrong that she otherwise wouldn't have incurred and that were reasonably foreseeable, Barclays should cover these costs plus statutory interest.

In terms of the £200 Barclays already offered to pay Ms A for the error when it re-keyed the application in June 2021. I still find that this represents a fair amount of compensation, bearing in mind that this particular issue was resolved quite quickly.

Putting things right

To put things right, Barclays must:

- Pay Ms A £800 to reflect the unnecessary distress and inconvenience caused by its errors. This is in addition to the £200 already offered for the 're-key' error.
- Pay Ms A for any unnecessary costs she incurred as a result of Barclays' errors, that were reasonably foreseeable, plus 8% interest from the point she incurred the cost(s) to the point of settlement. Ms A should provide details of any such costs to Barclays. For any costs that Barclays doesn't think were unnecessary, caused by its errors and reasonably foreseeable (bearing in mind my findings), it must explain its rationale to Ms A.

My final decision

My final decision is that I uphold Ms A's complaint about Barclays Bank UK PLC and I direct it to do what I've said above under 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 15 March 2023.

Ben Brewer
Ombudsman