

The complaint

Mr E complains on behalf of the estate of his late sister Ms E. He complains that Barclays Bank UK PLC wouldn't accept payments to Ms E's mortgage from him, tried to take payments from Ms E's bank account, and took legal action to repossess the property.

What happened

The late Ms E had a buy to let mortgage with Barclays. Sadly, she passed away in June 2018. The beneficiary of her estate is her son, and the executor is her brother Mr E, who brings this complaint on behalf of the estate.

At the time of Ms E's death the mortgage was still outstanding. Mr E told Barclays that she had passed away in June 2018, and Barclays requested a copy of the death certificate. Mr E says that he took a copy of the death certificate into a Barclays branch in December 2018. He says that he couldn't apply for probate immediately because he was trying to locate documents, including a trust deed his sister told him she had drawn up. He was also trying to obtain medical evidence for a life insurance claim.

When Ms E passed away there was an overpayment balance on her mortgage of around £1,400 – this is the total amount above the regular monthly payments that Ms E had overpaid. Barclays used the overpayment balance to cover the regular monthly payments until it ran out in October 2018. From November 2018, it resumed trying to collect payments via the direct debit Ms E had set up on her bank account. By December 2018 there wasn't enough money left in Ms E's account. So the direct debits bounced and the mortgage went unpaid.

Barclays continued to try to collect payments every month without success. Eventually, in September 2019, it cancelled the direct debit. It had added a monthly fee of £8 to Ms E's mortgage balance to cover the costs of the direct debit failure.

Mr E says he asked to make payments to the mortgage himself. He says that Barclays told him it wouldn't accept payments from a third party. Barclays doesn't agree that it would have said that, and says it would have accepted payments in these circumstances. But in any case no further monthly payments were made and the mortgage went into arrears.

Mr E says that he still didn't feel able to apply for probate because he hadn't been able to locate important documents needed to finalise Ms E's estate. And then, in March 2020, the coronavirus pandemic started. Mr E says that because of lockdown he wasn't able to take any further action.

Mr E applied for probate in March 2022. Because of delays at the probate registry, probate was only granted in November 2022.

Under the terms and conditions of the mortgage, the full balance becomes repayable on the death of the borrower. It's generally expected that the estate repays the balance, either from estate funds or by selling the property.

Barclays allows two years from the borrower's death for this to happen. In this case, the two years ended in June 2020. This was during the coronavirus pandemic. During lockdown there was a moratorium on taking repossession action, which ended in October 2021.

Barclays says it put matters on hold for some time to allow Mr E to make arrangements to repay the mortgage. But by 2022 no monthly payments had been made for almost three years and the balance was still outstanding. Barclays therefore instructed its solicitors to begin repossession action.

Mr E complained about the repossession action. He paid around £218,500 to the mortgage balance. But Barclays said this left around £18,000 still outstanding. It said it had added around £1,165 to the balance in respect of legal fees for the possession action.

Barclays said that when Mr E notified it of Ms E's death, it only recorded her death on the mortgage account, not on the current account. That meant it didn't freeze her current account as it should have done, which meant payments including the November 2018 mortgage payment could still go out of the account. It also said it could have offered more support to Mr E in dealing with matters. It offered £700 compensation. But it said the mortgage balance was correct, including the fees. And it said it had acted fairly in taking legal action when the mortgage still hadn't been repaid four years after Ms E had passed away.

Our investigator reviewed Mr E's complaint. Overall, he didn't think it was unfair that Barclays had allowed almost four years for the mortgage to be repaid and then taking action when it wasn't. But he said Barclays shouldn't have charged fees for the returned direct debits. He said that Barclays should refund those fees to Ms E's estate.

Barclays accepted that. But Mr E didn't. So the complaint comes to me for a final decision to be made.

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.

First of all, I'd like to express my condolences to Ms E's son, Mr E, and their wider family on their loss. I'm sure this has been a very difficult time for them all.

It's important I make clear at the outset the limits on what I can consider as part of this complaint. The Financial Ombudsman Service can only consider complaints from an eligible complainant – that has a number of different meanings, but for the purposes of this complaint means Barclays' customer. That's Ms E; this is her mortgage. We can consider a complaint from Mr E in his capacity as the representative of Ms E's estate about how Barclays has handled the resolution of her estate following her passing away. But we can't consider a complaint about the impact that has had on Mr E – or the wider family – in his own capacity. That's because Mr E is not Barclays' customer in respect of this mortgage.

When a borrower dies, the mortgage comes to an end and the entire balance becomes due for payment. It's reasonable for Barclays to allow time for that to happen. There are processes that have to be gone through before the representatives of an estate are able to pay off a mortgage – such as obtaining probate, and either selling the property or realising other funds or life insurance policies.

Barclays therefore allows a year after death before it will take any action. And even then, if steps to repay are in progress but taking longer, it will allow more time. I think that's

reasonable.

In this case, Ms E passed away in June 2018. Although Mr E notified Barclays of her death at that time, he didn't provide a copy of the death certificate until 2019. This put Barclays in a difficult position. It had been informed of Ms E's death, but it hadn't been given official notification or confirmation that was the case.

In the meantime, payments were no longer being made. The overpayment reserve was used for a time, but from November 2018 the mortgage went into arrears – and Barclays still didn't have official confirmation of Ms E's passing away.

In those circumstances, I don't think it was unreasonable that Barclays instructed its solicitors to make enquiries in 2019. The solicitors wrote to Mr E and Mr E gave them a copy of the death certificate. But there was no movement towards the mortgage being repaid, and no grant of probate authorising Mr E to manage the mortgage on behalf of the estate.

Mr E said that it took time to be able to apply for probate because he was looking for relevant documents, and then because of the coronavirus lockdown. I don't doubt this was a difficult time. But I think Barclays showed reasonable forbearance in waiting until 2022, almost four years after Ms E passed away, before taking further action. By the time it instructed its solicitors again in 2022 there was still no grant of probate, no indication of when the outstanding balance would be paid, and interest was increasing in the meantime.

Mr E says that he tried to make payments to the mortgage but was told that Barclays wouldn't accept payments from a third party. There's no evidence of that conversation in Barclays' notes, though it's possible Mr E was given incorrect information in a branch. But in any case I can't see that he took steps to resolve matters before applying for probate in 2022 despite knowing the mortgage was going unpaid and the balance was increasing. It was still possible to apply for probate during the pandemic.

It's fair and reasonable that Barclays continued to charge interest throughout this period. Even though Ms E had passed away, the balance was outstanding and interest was due until it was repaid. I don't think Barclays placed any barriers in the way of the mortgage being repaid sooner than it was.

However, I don't think it was fair that Barclays charged fees for rejected direct debits. Although it had been told about Ms E's death in June 2018, it had asked for – but not received – a copy of the death certificate. Without that formal notification, it couldn't put in place normal procedures on the death of a borrower. So it continued to try to collect mortgage payments via the direct debit that was in place.

I don't think this was unfair of itself, since I agree that it was difficult to take action without the death certificate. But I've also taken into account the rules of mortgage regulation. The rules say that where a direct debit has failed for two months in a row, a firm shouldn't try to collect further direct debit payments without considering whether that's the appropriate thing to do. This was an unregulated buy to let mortgage, so that rule doesn't apply to this mortgage – but I nevertheless think that it represents good practice that Barclays ought to have applied in this case. I therefore don't think it was fair that Barclays continued to try to collect payments by direct debit, and charged fees when that wasn't successful, after the direct debit had failed two months in a row. It should therefore refund these fees.

Apart from that, I've not seen any evidence that the balance Barclays said was outstanding was incorrect. As I've said, it was reasonable to continue to charge interest until the mortgage was repaid. Mr E says that it gave contradictory figures in the legal proceedings and in a letter in May 2022. But I don't think that means the balance Barclays asked him to

repay on behalf of Ms E's estate was wrong. The figure given in the legal proceedings was the total amount due at that time, whereas the figure quoted in the May 2022 letter was the outstanding capital balance which didn't include the arrears, or interest on arrears, which had accrued since 2018.

Mr E has also complained about matters related to transactions on Ms E's current account with Barclays after her death. But as our investigator explained, those don't form part of this complaint. Mr E would need to complain to Barclays about that first, and then bring a separate complaint to us if he's unhappy with its response.

Finally, I note that Barclays has offered Mr E compensation of £700 for delays and problems responding to his complaint. As I explained, I can't consider the impact of Barclays' actions on Mr E as he's not an eligible complainant in his own right. I simply leave it to him to accept that offer if he chooses to do so.

Putting things right

I'm satisfied that, taken as a whole, Barclays acted fairly in allowing almost four years for the mortgage to be repaid, and then taking action when it wasn't. Under the terms of the mortgage, it's allowed to add any costs it incurs to the mortgage balance, so I won't be asking it to refund the legal fees.

But for the reasons I've explained, I do think the unpaid direct debit fees – other than the first two – charged in 2018 and 2019 should be refunded.

The most recent update I had was that around £18,000 of the mortgage balance remained outstanding. If that is the case, Barclays should reduce the outstanding balance by the amount of those fees, together with all interest charged on them.

If, on the other hand, the outstanding balance has now been repaid, Barclays should calculate how much lower the final redemption balance would have been without those fees and interest, and pay that amount to Ms E's estate, adding simple annual interest of 8% running from date of redemption to date of refund. Barclays may deduct income tax from the 8% interest element of my award, if applicable, but if it does it should tell Mr E what it has deducted so that he can recover the tax from HMRC on behalf of the estate if entitled to do so.

My final decision

My final decision is that I direct Barclays Bank UK PLC to put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E on behalf of the estate of Ms E to accept or reject my decision before 15 April 2024.

Simon Pugh
Ombudsman