

The complaint

Ms O complains that her mortgage lender Barclays Bank UK PLC hasn't consented to the removal of her former husband from the title of her property.

What happened

Ms O and her former husband have a mortgage with Barclays. The mortgage remains in joint names though Ms O is living in the property and making the payments.

During the marriage Ms O was a victim of domestic abuse. They separated in 2020. Ms O's former husband was subsequently convicted of offences against her and also given a restraining order.

Following the separation, he no longer contributed to the mortgage or supported Ms O in any way. The mortgage fell into arrears as a result, though more recently Ms O has resumed making the payments in full and is reducing the arrears.

Their divorce was finalised in 2022, and the court ordered Ms O's former husband to transfer his interest in the property to her, and ordered Ms O to use her best endeavours to release him from the mortgage. This is a standard formulation used in divorce proceedings, on the basis that the court can't require Barclays to release one party from the mortgage – but can require one of the borrowers to apply to Barclays to take it over in their sole name.

Following the divorce order Ms O wrote to Barclays asking it to agree to the property title being transferred from joint names to her sole name. The mortgage was in arrears at this point, and she didn't also ask for the mortgage to be transferred to her sole name.

Barclays wrote back on 11 October 2022. It said:

“We confirm we have no objections in principle to the property only transfer, but we will require solicitors acting on your behalf to contact us regarding this matter before our formal consent can be sent.

Please confirm with your chosen solicitor that they are registered on the Bank's panel of approved solicitors.”

Ms O's solicitors wrote to Barclays in November 2022, and several times thereafter. Barclays didn't reply until March 2023, when it told Ms O that it wouldn't consent to the transfer because the mortgage was in arrears and because her solicitors weren't on its panel.

Ms O complained. She accepted that the mortgage was in arrears, but said that was because of very specific personal circumstances – which Barclays was aware of. She didn't think it was fair that Barclays hadn't taken account of those circumstances, or of the fact that she was by then making the full payments and reducing the arrears. She said it had told her in October that it would consent and it shouldn't go back on that. And she said she'd incurred significant legal costs because Barclays hadn't responded to her solicitor.

Ms O also said that it was important that the transfer be progressed as soon as possible –

she was concerned that if her former husband still legally owned the property when the restraining order expires he might try and return to it. She was also worried that one of his other creditors might put a charge over the property in the meantime even though the court said he no longer has an interest in it. And Ms O complained that Barclays was continuing to address all correspondence to her and her former husband jointly – even though it knew he was no longer at the property – and she found this distressing.

Barclays accepted that its October 2022 letter hadn't made the position clear. It said it couldn't agree to the transfer of ownership until the arrears were cleared. It also said that Ms O's solicitor wasn't on its panel so she would need to find a new solicitor once the arrears were cleared and she was able to re-apply. It also said that it couldn't remove her former husband from correspondence while he remained a joint account holder. If he were to provide a new correspondence address it could write to him separately. But as it had no address for him it would continue to send jointly addressed correspondence to the mortgage property. However it accepted it hadn't handled her complaint well – not least in the time taken to reply to it – and offered compensation of £500.

Ms O wasn't happy with that and brought her complaint to us. Our investigator didn't think Barclays had acted fairly in Ms O's specific circumstances. He thought it ought to have recognised the importance to her of removing her former husband from the property title, and taken into account the reason for the arrears and that Ms O was now reducing them. He said that Barclays ought to have agreed to Ms O's request. He didn't think it was unreasonable that Barclays required one of its panel solicitors to carry out the work – but he said that Barclays should have made that clear at the time. The failure to do so has resulted in substantial delay and meant that Ms O incurred additional costs because her solicitors needed to keep chasing Barclays. He said Barclays should allow the transfer now and should reimburse the extra costs Ms O had incurred. He also said that Barclays shouldn't address correspondence jointly – if it had no other address for Ms O's former husband it should at least send him separate letters to the mortgage property rather than addressing correspondence to both of them. He said Barclays should increase its compensation offer to £750 in recognition of the distress caused.

Ms O accepted what the investigator said. She said her priority was to get matters resolved as soon as possible. Barclays said it didn't agree with the investigator and asked for more time to provide its reasons. But it didn't provide any reasons even by the extended deadline, and so the case 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.

Having considered everything, I don't think Barclays has treated Ms O fairly. I'll explain why.

Changing ownership of a property – amending the title – at the Land Registry requires the consent of a mortgage lender with a charge over the property. So Ms O asked Barclays to consent.

Barclays noted that it had only received a request from Ms O and not from her former husband. So it asked to see a copy of the court order. I think it was reasonable for Barclays to check that both parties were agreeable to the change – or, if not, that it had been ordered by a court as was the case here.

Barclays then sent Ms O a letter in October 2022 – I've quoted it above. The letter seems to confirm Barclays' consent to the change, subject to Ms O using a panel solicitor. It makes no

mention of the policy for the mortgage not to be in arrears.

In any case, I'm not entirely convinced this *is* Barclays' policy. I've reviewed its complaint handling notes, and it repeatedly confused Ms O's application to transfer ownership of the property with changing the borrowers named on the mortgage (what it calls a transfer of equity) – a separate thing. Even when our investigator asked Barclays to explain its position, it sent him a copy of its transfer of equity policy – not its policy on transfers of ownership. I'm not therefore persuaded that Barclays gave proper consideration to what Ms O was actually asking it to do.

In any case, even if Barclays' policy is not to agree to transfer of ownership where a mortgage is in arrears, that wouldn't necessarily mean that a rigid application of the policy resulted in a fair outcome. In my view, in this case, it didn't.

There doesn't seem to be any dispute that Ms O was a victim of domestic abuse, and that this and her separation was the cause of the arrears – which, by the time of her application, Ms O was repaying and had substantially reduced. A court had ordered that her former husband should have no further interest in the property and that – subject to the mortgage – ownership was to be transferred to Ms O. And Ms O has given cogent and compelling reasons why she needed this to happen as soon as possible.

Granting the application wouldn't have impacted Barclays' security or increased its risk. The mortgage would remain in joint names. It would remain secured over the property. Its ability to hold two parties liable for the repayments, and to recover the debt by repossession if necessary, would be unaffected by the change.

In all the circumstances, even if the arrears were a barrier under Barclays' policy it ought to have made an exception in the particular circumstances of this case – but there's no evidence it gave that any consideration. In my view it ought to have done – and ought fairly to have given consent to the transfer of ownership.

Barclays said that it couldn't have given consent in any case, because Ms O's solicitor wasn't on its panel and it required her to use a solicitor who was.

I don't think it's unreasonable that Barclays wanted the legal work done by a solicitor on its panel. However, I don't think it's fair to tell Ms O that, as it did in the October 2022 letter, without telling her which firms are on the panel. Without that information Ms O wouldn't know which firms to approach; it's not reasonable to expect her to contact solicitors' firms at random until she finds one on Barclays' panel. I think that if Barclays had this expectation, it ought to have given Ms O a list of panel firms in her local area so that she could select one.

In any case, Barclays has since confirmed that the firm Ms O used was in fact on its panel – though not the specific office of that firm. In those circumstances, and taking into account the importance of resolving this matter quickly, I think it would be fair to expect Barclays to allow the transfer to go ahead using Ms O's existing solicitor. Requiring her to select a different solicitor now, even at a different office of the same firm, would add further delay and expense.

Turning now to the correspondence, I don't think it's reasonable in the particular circumstances of this case that Barclays continues to address correspondence to Ms O and her former husband jointly. He remains a party to the mortgage and so Barclays has obligations to write to him, just as it does to Ms O. But it doesn't have to address letters and statements jointly, even if it doesn't have a separate correspondence address for him. Given the upset this is causing Ms O, I see no good reason why Barclays cannot send separate letters and documents to each of them, even if both are addressed to the mortgage property.

Putting things right

To put matters right Barclays should consent to the transfer of ownership, using the solicitors Ms O has already instructed. It should ensure that future correspondence is sent separately to each of Ms O and her former husband, not jointly to both of them, whether or not it is sent to the same address.

Barclays ought to have responded to Ms O and her solicitors promptly – I've said it ought fairly to have allowed her application, but even if it didn't it ought to have explained that in good time. The failure to do so has resulted in Ms O's solicitors doing extra work, at cost to Ms O, and so Barclays should reimburse these additional costs.

Finally, Barclays should recognise the distress and inconvenience its delay and failure to think about Ms O's application fairly has caused. This is a very distressing situation for Ms O, and the delay – including delays in responding to her complaint and to our investigator – has only compounded the upset she's been caused over many months. I agree £750 compensation is fair in all the circumstances.

My final decision

My final decision is that I uphold this complaint. I direct Barclays Bank UK PLC to:

- Provide consent to the transfer of ownership within 14 days of the date we notify it that Ms O has accepted this decision, if she does.
- Allow the transfer to proceed, using Ms O's current solicitors.
- Subject to receiving proof such as an invoice, pay Ms O the legal costs incurred in dealing with the transfer application to date, but not the legal costs of implementing it from now on (since Ms O would always have needed to pay those costs). It should add simple annual interest of 8% running from the date Ms O paid the costs to the date of refund. Barclays may deduct income tax from the 8% interest element of my award, as required by HMRC, but should tell Ms O what it has deducted so she can reclaim the tax if she's eligible to do so.
- Increase its offer of compensation to a total of £750.
- Ensure that copies of all future correspondence, statements etc are sent separately to Ms O and her former husband and not addressed jointly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 7 February 2024.

Simon Pugh
Ombudsman