

The complaint

Mr H complains that Barclays Bank UK PLC destroyed original documents he sent them in relation to the ownership of his property. He says that as a result, he's been unable to release equity from the property, or sell it, in order to repay the mortgage he has with Barclays.

What happened

Mr H has an interest only mortgage with Barclays that is jointly held with his ex-partner. The term of the mortgage ended in 2023. Mr H called Barclays in February 2023 and explained that he was trying to obtain a lifetime mortgage that would repay his existing mortgage with Barclays, but was in the process of getting his ex-partner removed from the title deeds of the property and he wasn't sure how long that would take. He offered to send Barclays documents related to the matter.

Mr H sent Barclays a bundle of documents by post. This included a document he and his ex-partner had signed in 2013 which stated that Mr H had paid his ex-partner £25,000 and in return, she had relinquished all claims and rights for the property they jointly owned. Mr H called Barclays again in March and asked for the documents he sent them to be returned to him as they were originals. He explained that he was still trying to get his ex-partner removed from the title deeds so that he could take out a lifetime mortgage.

Mr H called Barclays again in April 2023 to request that the original documents he sent were returned to him as he still hadn't received them. In May 2023 Barclays wrote to Mr H to tell him that they'd requested for the documents to be sent back to him, but that he should allow 10 to 15 working days to receive them.

Mr H contacted our service in August 2023 as he still hadn't received the documents he'd sent to Barclays. He said that the process of getting his ex-partner removed from the title deeds for the property was now going to take much longer as Barclays had destroyed the original copy of their agreement. Mr H had decided to try and sell the property to repay the mortgage, but he still needed his ex-partner removed from the title deeds before he could do that. He'd asked Barclays to freeze the interest on the mortgage whilst he was trying to sort things out so the mortgage could be repaid.

Barclays discussed Mr H's complaint with him on the phone, and offered to pay him £300 by way of an apology for the distress and inconvenience they'd caused him. They also told him to keep hold of evidence of any additional costs he was incurring as a result of the document being destroyed. They issued their final response letter on 13 November 2023. They said they shouldn't have told Mr H that they would send his documents back to him in May 2023 when they'd been destroyed.

Mr H asked our service to look into what had happened. Our Investigator concluded that Barclays didn't need to do anything further to put things right.

Mr H disagreed and said that when he spoke to Barclays before he sent the documents, they assured him the original documents would be returned to him. Our Investigator listened to the conversation Mr H had with Barclays in February 2023 before he sent them the documents but didn't agree that Barclays had discussed what would happen with the documents after they were received. She wasn't persuaded that Mr H would have been able

to redeem his mortgage last year if it wasn't for the fact that Barclays had destroyed that document.

As Mr H still disagreed with the Investigator's outcome, the complaint has been passed to me to issue a decision.

My provisional decision

I issued a provisional decision on 4 April 2024. This is what I said.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having read through all the information provided by both parties, it's clear that Mr H has been through a very difficult time and is doing what he can to try and repay his mortgage with Barclays that has reached the end of its term. As his property is jointly owned, he is having great difficulty progressing his plans to either re-finance or sell the property as he is no longer in contact with the other party. I can see this has been very distressing for him.

I've listened to the conversation Mr H had with Barclays in February 2023, and it's clear that Mr H was being pro-active and trying to keep Barclays updated with what was going on and his plans. He offered to send them the documents that gave context to his current situation, and Barclays agreed he could send them, and they would be added to his account. Mr H did not explain to Barclays in that call that he would be sending original documents that he would need to retain, nor did Barclays say what would happen to those documents after they were scanned onto the system. I'm satisfied Barclays did not give Mr H any assurances that they would send him back the original documents before he sent them in.

However, as it was standard practice at Barclays to destroy documents they'd received by post once they'd been scanned onto their systems, I think it was important that they told Mr H that before he sent in the documents. Whilst Mr H didn't specifically ask Barclays if his documents would be returned, or specify the need for the original documents to be kept, he did not know that he needed to ask about that as he wasn't aware that they would be destroyed once he'd sent them in. I'm persuaded it was Barclays' responsibility to let Mr H know what would happen to the documents he would be sending, so he could make an informed decision about whether to send in the original documents or send in copies instead. Had they done that, I don't think Mr H would have sent in the original version of the documents that he did send, and he would have sent copies instead.

I'm also satisfied Mr H has received poor customer service from Barclays whilst trying to get to the bottom of this matter. Mr H asked for his original documents to be sent back to him multiple times. In May 2023 Barclays told him he should receive the documents within 10 to 15 days. But that was incorrect information as the documents had already been destroyed by then. Barclays have paid Mr H £300 to apologise for the service he received, and I've thought about whether that's sufficient to put things right.

Mr H has asked that Barclays freeze the interest on his mortgage whilst he's trying to sort out his repayment plan, as the legal process is now going to take much longer after Barclays destroyed the original agreement he had with his ex-partner about the ownership of the property. But I'm not persuaded Barclays have been unreasonable in declining that request. I say that because Mr H has said he's been trying to remove his ex-partner from the title deeds of the property for the last eight years. He's been corresponding with her solicitors, who are aware of the agreement she made, but he's struggled to make any progress. His own solicitors were in possession of the original agreement whilst he's been trying to sort this out, but unfortunately, they've not yet been able to resolve things. As a result, I think it's unlikely that the absence of the original version of that document is what is holding up the

legal process needed to transfer the ownership of the property into Mr H's sole name.

Mr H has said that the lifetime mortgage provider he's applied to would have given him the mortgage if he could provide the original version of that document. But I think that's unlikely. It seems that whilst Mr H has made enquiries with a lender, he hasn't progressed a full application or received any illustrations or mortgage offers. And I think it's likely the issue of the title deeds will need to be resolved before Mr H will be able to take out any more secured lending on the property in his sole name whilst the property is jointly owned. So I'm not satisfied it's Barclays' actions that have caused the delay in Mr H being able to repay the mortgage balance.

Whilst I don't think Barclays' error is the reason that Mr H has not yet been able to resolve the issue with the title deeds or secure alternative finance, I am persuaded that £300 does not go far enough to recognise the distress and inconvenience Barclays have caused. This document was very important to Mr H, and not only did Barclays destroy it, they led him to believe that they would be able to return it to him for months when that wasn't the case. Mr H contacted Barclays regularly to chase up the return of the documents, both over the phone and in writing. Barclays also gave Mr H the impression that they would consider further redress during their conversation in November 2023 and pay for any resulting legal costs Mr H incurs as a result of their error, when they did not intend to pay anything further. This led to further disappointment for Mr H. As a result, I'm satisfied that £750 is a more reasonable reflection of the distress and inconvenience Mr H has suffered here as a result of Barclays' actions. So I think they should pay Mr H an additional £450 to what they've already paid.

Based on what's happened so far, it's likely that Mr H is going to face significant legal costs transferring the ownership of his property into his sole name. For the reasons I've already explained, I think those costs would have been incurred regardless of Barclays' actions as it's clear that the 2013 agreement has not resulted in any legal resolution to date.

However, in the event that Mr H faces additional costs as a direct result of no longer having the original agreement from 2013, it might then be reasonable that Barclays should pay for those. For example, it might complicate any legal proceedings that Mr H needs to take that the original document is no longer available – increasing his costs as a result. This is unknown at the moment, so I make no findings about that here. If Mr H does in the future think that he's incurred additional costs as a direct result of the original document no longer being available, he'll need to complain to Barclays about those costs – and, if he's not happy with what they say, bring his complaint to us. For now, I simply make clear that any future losses do not form part of this complaint, and therefore my proposed award in this complaint will not prevent Mr H making a further complaint about that in the future should it become necessary.

There's no doubt Mr H is in a difficult situation here, and he's understandably worried about maintaining the interest payments on the mortgage whilst he is paying a variable interest rate. It's not clear whether Mr H has applied for an extension of the mortgage term with Barclays whilst he's going through the legal process of transferring the property ownership. But I would encourage him to have a conversation with them about what they could do to help, and the options available to him given this issue is unlikely to be resolved quickly. Particularly if he's struggling with the monthly payments. Barclays should engage positively with any reasonable requests Mr H makes and give serious consideration to forbearance options such as extending the term or applying a lower interest rate whilst Mr H is trying to get himself in the position to redeem his mortgage."

Responses to my provisional decision

Barclays didn't provide any further comments.

Mr H responded and said in summary:

The solicitors he was using to resolve the issue with the title deeds were closed down. Since his ex-partner has been released from prison, she's changed her name and his new solicitors haven't been able to track her down despite extensive searches.

He said that he's contacted the land registry about the problem, and they've said he could submit the original agreement with a sworn affidavit regarding the circumstances and then they would be able to remove Mr H's ex-partner from the title deeds of the property.

He's received two offers for the property but he's unable to complete on a sale. He still maintains that had Barclays not destroyed his original documents, he would not have been in the situation he finds himself in now.

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.

Whilst I empathise with Mr H's situation, I'm still satisfied the outcome I reached in my provisional decision is a fair and reasonable way to put things right.

I appreciate Mr H is trying to do what he can to repay his mortgage with Barclays, and that's likely to take time and resources. But I'm not persuaded the reason he hasn't been able to repay the mortgage by the term end date is a direct result of Barclays' actions.

As I set out in my provisional decision, if, during the legal process of Mr H removing his ex-partner from the title deeds of the property, he incurs additional costs as a direct result of no longer having the original agreement between him and his ex-partner, he can ask Barclays to reimburse him for those costs. Should he be unhappy with their response to any request, he can complain about that as a new event.

In the meantime, Barclays should engage positively with any reasonable forbearance requests Mr H makes whilst he is trying to resolve the issue and redeem the mortgage balance.

Putting things right

To put things right, Barclays should pay Mr H £450 in addition to the £300 they've already paid for the distress and inconvenience they've caused.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint in part and instruct Barclays Bank UK PLC to pay Mr H £450 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 May 2024.

Kathryn Billings
Ombudsman