DRN-4883149

The complaint

This complaint is brought by Messrs B and Mrs B trading as BF against Barclays Bank UK PLC. For ease of reference I will refer to submissions being made by Mrs B, as she has largely dealt with the complaint throughout.

The complaint is that in 2016 Barclays failed to remove an historic 1991 charge from their property. This later caused difficulties in relation to third party mineral rights, and resulted in BF incurring unnecessary legal fees of £5,373, which Mrs B would like Barclays to pay.

What happened

The evidence in the case is detailed, running to over a thousand pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented. The history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, our decisions are published, so it's important I don't include any information that might lead to Messrs B and Mrs B being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

No discourtesy's intended by that. It's a reflection of the informal service we provide. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Briefly, in 1991 Barclays took a charge over land owned and operated by BF as part of BF's commercial operations. In 2007 BF entered into an agreement, with Barclays (amongst others) also entering into a Deed of Variation (DoV), with a third party, S, for the extraction of minerals on the land. There had also been a Deed of Release in 2010 where Barclays had agreed to release part of the security.

In 2016 BF says Barclays wanted to update the 1991 charge due to changes in regulations. Mrs B says that Barclays told them in 2016 that the 1991 charge was to be released to allow a new charge to become a first legal charge.

In 2018 this separate legal charge was taken out with Barclays, over a smaller piece of land than the 1991 charge (as some land had since 1991 been released from the security). Mrs B said she believed the arrangement was that the 2018 charge would replace the 1991 charge, as Barclays had said in 2016 that this first charge would be released.

However, Mrs B says that in 2022 BF was advised by S that Barclays was causing delays in relation to a new DoV relating to a s.106 agreement. This was because the 1991 charge

was still in place. In addition, the 1991 charge had been in the name of a subsidiary of Barclays. Therefore it appeared to S that there were two charges in the names of different companies.

Mrs B says the problem arose because the 1991 charge had not been released, and she believes that this was an error by Barclays. Amongst the documents Mrs B has sent to our service are emails from Barclays sent in 2016 which she said supported her contention that the 1991 charge was to be released.

Barclays, however, said that the arrangement had changed during the course of setting up the new charge, which was finally completed and registered in 2018. The bank said that its process was that the first charge (in this case the 1991 charge) would be retained if Barclays waived the requirement for new searches to be carried out, as this would save costs for the customer. Mrs B said this had never been explained to her or Messrs B.

Barclays also said that the 1991 charge had been retained at the request of BF for Inheritance Tax (IHT) purposes.

To resolve the matter, Barclays offered the following options:

- BF could opt to keep the current security, i.e. the 1991 and 2018 charges, but this might result in the same issue arising in the future.
- Alternatively, the bank could take a new charge of the reduced land area and discharge all existing charges.
- If not, then Barclays could partially discharge areas of land captured by its two existing charges, neither of which covered the mineral land. This would be the most simple and cost-effective solution, but again confusion might arise if there were future s.106 agreements.

However, BF didn't want to agree to any of these options.

A complaint was made to Barclays about the failure to release the 1991 charge, and the delays and expense that had been caused to BF as a result. Mrs B wanted Barclays to pay the additional the legal costs BF had incurred, a total of £5,373. Barclays offered £1,000 as a gesture of goodwill but said it wasn't responsible for the additional legal costs. BF accepted the £1,000 payment.

Subsequent to this, the complaint was brought to our service. An Investigator looked at what had happened but didn't think Barclays needed to do anything more.

Mrs B didn't agree with the Investigator. She said that Barclays has never had a charge over the mineral land, and that BF made sure of this when Barclays was party to the DoV taken out in 2007. However, Barclays 'frustrated' the later DoV for the s.106 agreement in 2022, which Mrs B says it didn't need to do, as the bank didn't have a charge over the relevant part of the land. As a result, additional legal fees were incurred in trying to resolve this. Mrs B says that Barclays could easily have updated the legal charge rather than requiring a new charge.

The Investigator looked at these further points. She noted that Barclays had been a party to the 2007 DoV. The Investigator explained that in June 2022 BF's solicitors contacted Barclays stating that the bank was required to be a party to a new DoV, as it was a mortgagee. The Investigator looked at the plans of the sites defined in the 2007 DoV compared with the land covered in the 2018 charge. The Investigator was satisfied Barclays *did* have a charge over some of the land in question, which explained why BF's solicitors contacted the bank in 2022.

Overall, the Investigator wasn't persuaded to change her opinion. She was satisfied Barclays had provided BF with options, but Messrs B and Mrs B didn't want to go ahead with them.

Mrs B didn't accept the Investigator's findings and asked for an Ombudsman to review them. She said that a comparison of the site defined in the DoV compared with the plan for the 2018 charge wasn't possible as such plans didn't exist.

Mrs B also sent us a copy of a 2010 Deed of Release which she said she'd told Barclays was incorrect in 2014 as it only covered half the mineral land. BF had wanted to ensure Barclays wasn't involved in any way with the mineral extraction.

Mrs B also sent an email which she said was from her solicitors dated 25 January 2012 which said that she (the solicitor) wasn't able to provide a clear plan as it didn't exist. Mrs B said that BF's solicitors had only contacted Barclays in 2022 because S had asked them to do so.

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 will explain that my remit is to review the complaint, not to re-investigate the matter. I confirm I've read everything provided by the parties, including the further documents Mrs B has recently sent.

The issue in the complaint is rather simpler than has been presented by BF; did Barclays agree to release the 1991 charge in 2016? This is the issue which Mrs B says resulted in the issues which arose in 2022 relating to the s.106 agreement with S, and which has resulted in BF incurring additional legal costs.

This therefore is the issue upon which I have focussed. As I said at the outset, whilst there are multiple other issues Mrs B has raised, I consider those to be peripheral and not material to the outcome of the complaint. Having reviewed the documentation, I'm afraid I don't agree with Mrs B that the bank made an error in 2016.

First of all, I've taken note of the email Mrs B has provided from BF's solicitors dated 25 January 2012 in which BF's solicitors appear to say that they are unable to provide a plan showing what exactly is subject to Barclays charge, or provide a list of secured properties, as those things don't exist.

However, whilst I note what the email purports to say, I have some difficulty accepting its contents. I say this because it I can see that the sections of the email which appear to support Mrs B's position – that there is no plan and that the bank had released part of the land leased to S – appear to have been inserted into the original email in a different size font from the rest of the email. Given this, the evidential weight that can be attached to this email is minimal.

But in any event, whatever BF was, or wasn't, told by its solicitors in 2012 isn't relevant to what happened in 2016 or in 2022 when on both occasions different solicitors were acting for BF.

I'm also not persuaded of the relevance of the 2010 deed of release, as this doesn't impact on what was, or was not, agreed with the bank in 2016, which is the crux of this complaint. The issue isn't whether Barclays agreed that *land* should be released from the security;

rather, the issue is whether Barclays agreed in 2016 that the 1991 *charge* should be released.

I've looked at the emails from 2016 which Mrs B says supports her contention that the 1991 legal charge would be released. An email from 31 March 2016 does state that the whole of the old legal charge would be released on completion of the new charge.

However, I note that by November 2016 the situation had changed, as Barclays said:

> *"*[Our] *understanding is that if we took a second charge* ***but do not release the first charge*** *then this should not conflict with the existing charge which would remain in place for IHT, so no change to IHT. In this instance I presume that we could exclude* [named property] *from the new charge but as it would still be captured by the original charge you would still have the IHT benefits. Perhaps you could consult your advisers on this."*

Barclays' historic contemporaneous account records from 2016 state:

> *"With the solicitors' active co-operation we are now proposing to issue a new 2nd charge over 607.25 acres of land … but excluding the main house and cottages... The First charge is to be retained at the customer's request – there are some potential IHT benefits for them."*

Barclays allocated a nil valuation to the existing first charge and a valuation of £5,000 per acre to the 607.25 acres of land to be charged under the new second charge. Barclays also recorded that the requirement for local searches was waived in 2016, which I am satisfied is in line with the bank's policy that it would not require new local searches if the existing charge remained in place.

In the circumstances, I'm not persuaded that Barclays agreed to release the 1991 legal charge in 2016 or that this should have been done on completion of the new legal charge in 2018. Whilst this had initially been agreed, the evidence is persuasive that the charge was retained at the request of Messrs B and Mrs B for IHT purposes, and to avoid the need for new searches to be carried out.

Given this, I'm satisfied that any later issues that arose with S and the 2022 DoV due to the continuing existence of the 1991 charge cannot be attributed to any error, act or omission on the part of Barclays.

Barclays offered BF £1,000 as a gesture of goodwill, which BF accepted. As I've identified no bank error, I'm not persuaded there is any basis on which it would be fair or reasonable for Barclays to pay the additional legal costs BF is seeking.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Messrs B and Mrs B trading as BF to accept or reject my decision before 20 August 2024.

Jan O'Leary
Ombudsman