

The complaint

Ms J complains that Barclays Bank UK PLC made a payment to a third party and added it to the balance of her mortgage.

What happened

In 2007, Ms J took out a mortgage with Barclays to buy a shared ownership property. A housing association retained ownership of a share of the property – and Ms J was required to pay rent to the housing association along with other costs including service charges.

In 2021, Barclays paid over £8,000 to the housing association and added that amount to the balance of Ms J's mortgage. Barclays said that the housing association said it was going to start legal action to repossess the property because of rent and service charge arrears. So it paid the amount requested to protect its security.

Ms J complains that Barclays paid the amount to the housing association without her permission and added it to her mortgage balance.

The investigator did not think the complaint should be upheld. She said that Barclays was entitled to make the payment to protect its security.

Ms J did not accept what the investigator said. She made a number of points, including:

- Barclays had provided incomplete information to us.
- The copy of the mortgage agreement provided was not part of her mortgage offer. She'd never received that document either at the time of the sale or when she made subject access requests. She noted the quality of the document was not as good as other evidence provided by Barclays and suggested that it was trying to obscure the date on the document. She also pointed out the document was marked "internal". And she had evidence that suggested the document was not valid at the time in question.
- Before Barclays made the payment she had an agreement with it that no payments would be made and that it would keep her up to date with any developments. But it did not keep her up to date and it made a payment. So it had breached the agreement they had.
- Barclays made payments that were unlawful.
- Barclays acted contrary to her best interests as it was legally required to do. It behaved as if the landlord was its client.
- There was no risk to Barclays' interest at the time the payment was made. She was not going to forfeit her lease or lose her property because there was a freeze on repossessions at that time.
- The landlord did not give any details of a court date other than a notice of seeking

possession dated May 2020. But it was only valid for 12 months and would have expired before the repossessions freeze was lifted.

- It was very difficult to contact Barclays during the pandemic.
- Barclays would not give full details of the member of staff she was dealing with. It also refused to confirm if an email address was still operational and did not reply to her emails. Yet, Barclays did communicate with the landlord by email.
- Barclays sent a threatening letter. That along with the payment being made caused her severe distress and impacted her mental and physical health.
- Barclays also made a payment to the landlord in April 2018. Barclays claimed not to have received a completed form from her which set out the issues she was having with her landlord – and it did not contact her before it made the payment.
- She set out the problems she'd experienced with her landlord, her attempts to deal with this matter and the reason why she did not want to make any payments.
- When she made the complaint to Barclays in November 2023 there were three phone calls. But Barclays refused to read the details of the complaint to her. Barclays said it had called her twice but that was not true. It told her the complaints team would contact her so she could discuss the complaint but it did not do so. The details she has not received show that the complaint was not logged properly and the information she shared was missing.
- Barclays said it won't get involved in the dispute with the landlord. But by making payment it has effectively done so while also worsening her position. The entire situation has severely impacted her wellbeing and health.

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 was sorry to hear about the impact of this matter on Ms J. I don't doubt anything she's told us about how this has affected her health and wellbeing – it must have been an extremely stressful and difficult thing to deal with, particularly in view of her strength of feeling about the conduct of the landlord. But for the reasons I've set out, I don't consider Barclays has acted unfairly. I have not made any finding about whether Ms J has a valid dispute against her landlord or not – my findings are limited to whether Barclays acted fairly and reasonably.

Payment to landlord

When Ms J took out the mortgage with the Woolwich – which was a trading name of Barclays – she accepted its offer. The offer said that it included the terms and conditions of the mortgage. This was an important document and there was a reasonable expectation that Ms J would read it. Therefore, if the mortgage offer did not include a copy of the terms and conditions, Ms J had an opportunity to query it at the time in question.

Barclays has given us a copy of the terms and conditions it says applies to Ms J's mortgage. The front page says, "*The Woolwich, mortgages from Barclays Mortgage Conditions (England and Wales) 2007 Edition.*" Ms J took out a Woolwich mortgage in 2007 on property in England. She has not provided her own copy of any different terms and conditions that would apply. I consider it more likely, on balance, that the terms and conditions Barclays has

supplied are the correct ones for this mortgage.

I note the points that Ms J has made about why she does not consider that terms and conditions that apply are genuine. But it would be a serious step for a regulated lender to falsify evidence in the way she alleges. And ultimately, the term that Barclays is relying on is not unusual. In my experience many, if not all, residential mortgages contain a term that allows a lender to make payments to a third party if it considers its security is at risk.

I agree that the document Barclays has provided is poor quality. But again, that is not necessarily unusual in my experience, bearing in mind the document is from 2007. I do not find Ms J's arguments persuasive that the terms and conditions are not the ones that apply to her mortgage.

The terms and conditions say, as relevant:

8. Expenses

1. *All our reasonable costs, charges and expenses incurred by us...in connection with the Property or in connection with any matter arising from the Mortgage or the enforcement of it and any other indebtedness liability secured by it shall be recoverable from you. All these costs and expenses shall be treated as Expenses and which shall be deemed to be principal money owed on the Mortgage and shall carry Interest at the Interest Rate...*

9. Your Obligations in respect of the Property and to make payments.

1. *You are obliged to do the following:*

...

- (i) *To pay promptly any rents, rates, taxes charges or other [illegible] which are at any time charged or imposed on the Property by any landlord, management company or competent authority, if you fail to do so and we, or the Receiver, pay them you must reimburse us if the Receiver as appropriate and these [illegible] will be treated as Expenses.*

I am satisfied that the terms and conditions allowed Barclays to pass on any reasonable costs it incurred in connection with the mortgage and to add them to the balance of the mortgage. The terms go on to say that Ms J should pay any amounts due to the landlord promptly and if she does not then Barclays may pay them and treat them as expenses.

Barclays was entitled to pay any overdue amounts due to Ms J's landlord. Ultimately it is likely to be reasonable for a mortgage lender to pay such costs if it reasonably believes its security is at risk. It did not need Ms J's agreement to do so.

I accept that Ms J told Barclays that she was disputing the amounts claimed by her landlord. But Barclays had evidence that in May 2020 the landlord had served a notice of seeking possession because of the arrears. It was reasonable for Barclays to consider that its security was at risk. That is not to say whether Ms J would have a reasonable prospect of success in any dispute with the landlord. Rather, it is that Barclays had good reason to consider that its security was at risk.

Ms J considers that because the notice of seeking possession only lasted 12 months, it could not have been executed because there was a freeze on repossessions during that time due to the pandemic. I'm afraid that is not entirely correct. There was a stay on

evictions until May 2021. But the stay on possession proceedings because of the pandemic ended in September 2020. So while Ms J's landlord would not have been able to evict her, it could still have obtained a possession order.

It was reasonable for Barclays to pay the amounts claimed by the landlord to protect its security, in line with the terms and conditions of the mortgage. If Ms J were to later successfully challenge the landlord about the amount of rent and/or service charge and returns any overpayment to Barclays, then it would usually be reasonable for Barclays to adjust the interest accordingly. But as things stand, I consider it was reasonable for Barclays to pay the amount claimed by the landlord.

I accept that Barclays knew that Ms J was disputing the amounts claimed by the landlord. We don't have evidence that supports that Barclays agreed that it would never make any payments to the landlord. Nevertheless, in the circumstances it was reasonable for it to make the payment it did because of the threat to its security.

Barclays wrote to Ms J in January 2021 to confirm it had paid the amount claimed by the landlord – so I can't say that it did not tell her when it did so. The letter stated that Barclays may be unable to make further payments and it may be necessary to take legal action for breach of mortgage contract. I can understand why Ms J found that upsetting. But by not making payments to the landlord, she was in breach of the terms of the mortgage. In those circumstances, legal action by Barclay was a possible outcome. I do not think it was unreasonable for Barclays to say that in its letter. But that should be a last resort.

Barclays is required to act in Ms J's best interests. That does not necessarily mean that it must do what she wants. It had the power under the terms of the mortgage to make the payment to the landlord to protect its security. It does not prevent Ms J continuing to dispute the amount that was paid – and there was a risk that the landlord could obtain possession and Ms J could be evicted based on the information available to Barclays.

Barclays was not required to get involved in the dispute between Ms J and the landlord. I do not consider it would be reasonable for it to evaluate whether Ms J had a case against the landlord or not to the extent Ms J believes. I consider it was reasonable for Barclays to conclude that paying the disputed amount was in Ms J's best interests. I know that Ms J will not see it that way. But she has asked us as for an impartial opinion on her complaint and that is my decision, taking into account all of the relevant factors.

Complaint

Barclays has provided evidence of the phone calls or attempted calls to and from Ms J. the evidence shows that it only has one call recording. That was from 29 November 2023.

During that phone call Ms J said she did not want contact by phone. So it was not unreasonable for Barclays to contact her in writing. Barclays said it would contact her again within five days. But its next contact was its final response it sent on 21 December 2023. Looking at the evidence I consider that was a reasonable next step for Barclay to take.

When Ms J spoke to Barclays it read out how it had recorded the complaint. It told her that it had not set out everything that Ms J had said about her dispute with the landlord. I think that was reasonable. I say that because Barclays was only recording details of the complaint against it. It did not need details of Ms J's dispute with the landlord to record and address her complaint about what Barclays did or did not do.

Under our rules we need a written acknowledgement or other record of a complaint being received by a business to be able to consider a complaint. Looking at all of the evidence we

have, I can't see that Ms J complained to Barclays in 2023 about the payment made in 2018 – there is no record of that in the evidence I have. So I do not have the power to deal with that matter here. I note that Ms J said she raised the 2018 complaint with us before. If that is correct, then it is unlikely we would be able to consider that matter again.

Ultimately, Ms J has been given several opportunities to set out what her complaint is. I am satisfied we have dealt with all of the matters she referred to us that we are able to deal with – albeit with an outcome that Ms J does not agree with.

Other matters

There was no requirement for the member of staff that Ms J spoke to regarding the payment to give their surname or direct contact details.

I accept that Ms J might have found it difficult to contact Barclays at times during the pandemic. That reflected the changes in working arrangements that affected many businesses at that time. I do not consider I could fairly or reasonably uphold that part of the complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 3 March 2025.

Ken Rose
Ombudsman