

The complaint

Mr M's complaint is about a mortgage he holds with Barclays Bank UK PLC, jointly with his former wife. There are two broad strands to the complaint; these are:

- that Barclays didn't pursue possession proceeding in 2019 when he wanted it to; and
- that when Mr M's former wife stopped co-operating with an imminent sale in 2024, Barclays refused his request to intervene and take possession.

In an earlier decision, I explained why my remit to deal with this complaint is confined to the second bullet point above; that is, the events of 2024.

What happened

In what follows, I have set out events in rather less detail than they have been presented. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. 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.

Our decisions are published and it's important that I don't include any information that might result in Mr M being identified. Instead I'll give a summary in my own words and then focus on giving the reasons for my decision.

The mortgage was originally taken with a lender I'll call S, but was transferred to Barclays in 2012. Mr M, and his former wife separated many years ago, and the mortgage has been in long-term arrears. A matrimonial settlement in court decided who should make the regular payments and who should clear the arrears, but Barclays wasn't a party to that settlement. From its point of view, both borrowers were jointly and severally liable for all payments to the mortgage, arrears included.

Over the years, Barclays sent regular letters to both borrowers regarding the arrears, as it is required to do by the rules of mortgage regulation. In 2019, Mr M asked Barclays to start possession proceedings; it didn't do so, and rejected the complaint he made at the time. I've already explained why that complaint is outside my remit.

More recently, Mr M contacted Barclays at the beginning of 2024. In the intervening years, the equity in the property had eroded, despite which a sale had been agreed and was close to going through. However, Mr M said his former wife had stopped co-operating with the sale process. He wanted Barclays to either re-possess or find a way to expedite the sale without her involvement. Barclays wasn't willing to do so, and in response to Mr M's complaint, explained that it couldn't take any action without the consent of the joint borrower.

Mr M referred the complaint here; our investigator didn't think Barclays had treated Mr M unfairly over his 2024 request for intervention when it looked like the sale might fall through.

Mr M has asked for the case to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

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

It's never an easy situation when joint borrowers separate from each other. Even where a financial settlement reached in court apportions responsibility for joint debts separately, such agreements are solely between the separating parties. They don't bind lenders, which are at all times reasonably entitled to regard both borrowers as equally responsible for making all payments.

FCA regulations also require lenders to keep both parties equally informed as to the status of an ongoing joint debt; at the same time however, lenders can't reveal to one party what they may or may not have discussed and agreed with the other. One potential effect of this is a borrower feeling that they're receiving letters that aren't appropriate to them and/or believing that the lender is treating the other borrower more favourably.

So I do understand Mr M's frustration, but that doesn't mean I can find that Barclays has treated him unfairly. I must keep at the forefront of my mind that Barclays' obligation to treat consumers fairly applies equally to Mr M and his former wife. To put that another way, it has to give equal consideration to her interests as it does to his.

The other limiting factor is that Mr M's former wife isn't a party to this complaint, and I have to guard against the risk of making a finding in a decision that could potentially prejudice her interests. However much Mr M might have wanted Barclays to intervene in the sale in early 2024, it would have been inappropriate for it to do so.

Also, there's no guarantee that any action it did take, such as the possession process that was Mr M's preference, wouldn't have prejudiced both him and his former wife. Mr M was on record as concerned about the erosion of equity over time. Taking possession of a property that is on the brink of being sold carries a high risk of additional costs being incurred that end up being added to the mortgage debt, thus eroding the equity still further.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 March 2025.

Jeff Parrington

Ombudsman