

The complaint

C – a limited company – complains that Barclays Bank UK PLC delayed removing a charge held against a leasehold property it owned. As a result, the sale of the property fell through.

What happened

C has secured loan facilities with Barclays. It is represented by its director, Mr H. The security for the loan included a leasehold property, property P. In January 2022, the lease was extended on the property. Barclays asked for its charge to be secured against the new lease. But when C's solicitor applied to register the new lease and charge, the Land Registry said it was unable to do so because Barclays had not discharged its existing charge against the property. C said it did not do so until October/November 2023 – despite continually asking Barclays to remove the charge.

C said that in February 2023, the property in question was put up for sale and an offer was received. But the sale fell through because of the issue with the lease. The property sold again on 10 August 2023. But there was a delay because of Barclays. As a result, C said it had to reduce the sale price. C said it had incurred losses of over £80,000 in costs for the aborted sale, including the difference between the original and eventual sale price.

I issued a provisional decision proposing to uphold the complaint in part. Subject to further submissions, I found:

- Barclays said that it only found out it needed to remove the charge over the existing title on 25 June 2023. I'm not sure that is correct. It has accepted that it agreed to the lease extension and it wanted to register a new charge against the new title with the extended lease. But it could not do that unless it released its existing charge first. So there were steps that Barclays were required to take for the new title to be registered.
- While Barclays might have only found out about the problems that C was experiencing in the aborted sale because of the issue with the title in June 2023 – it was aware of the underlying issue before then. There is no evidence that Barclays did what it should have in releasing its charge and registering the new charge.
- When Mr H contacted Barclays there was a great deal of confusion and delay. And it did not actually remove the charge for a number of months. It has not provided a clear explanation for the delay.
- C had not exchanged contracts. There was no guarantee that the sale would complete for the price that had been agreed. I know Mr H considers things were at a late stage and that it was solely the issue with the title that meant the sale fell through. But I do not have sufficient evidence to support that. And even if the buyer had shown they were committed to the sale, there was nothing to prevent them pulling out. So I do not consider I could fairly say that Barclays should meet the financial losses that C is claiming.

- C had to spend around six months resolving the initial issue. And Barclays failure to investigate or understand the complaint prolonged this matter by around nine months – so around fifteen months of avoidable inconvenience for C to deal with this matter. I consider that £500 would be a fair amount to reflect that.

Barclays agreed to pay C £500. Mr H on behalf of C did not accept my provisional findings. He responded to make a number of points, including:

- The initial sale fell through because a contract and clean title could not be provided as the lender could not proceed without that.
- C revised its claim for the loss of the initial sale to £32,950.
- Barclays' acts and omissions delayed the sale of the property until October 2023, so it sat empty for that time. It should therefore meet the costs of maintaining the property and for lost rental income.
- C's solicitors "incurred significant resources" trying to assist Barclays.
- Barclays should add interest to the losses it has claimed.
- £500 would leave C significantly out of pocket.

I said I was not minded to change my view on the sale that fell through. I did not consider the evidence we had supported that the second sale took longer than it otherwise would have because of Barclays' delays. I said that if C wanted to claim any legal fees we would need evidence they had been paid and that they related solely to the failure of Barclays to remove its charge.

Mr H responded on behalf of C to re-emphasise his position that Barclays frustrated the ability to sell the property between February and December 2023 and that as a result C incurred various costs and inconvenience. He accepted that until exchange a sale can fall through, but finding a buyer was not the issue it was delivering a contract and that was down to Barclays.

Mr H said C had paid one solicitors £162. But it had incurred further costs with tow other firms to cover their time and settlement will be due upon this matter being finalised. #he considered it would be around £8,000.

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 understand everything Mr H has said on behalf of C. But after carefully considering everything that both parties have said and provided, I see no reason to reach a different outcome to what I proposed in my provisional decision.

I don't dispute that it was relatively straightforward for C to find buyers for the property. But contracts had not been exchanged when the initial sale fell through. There was nothing to prevent the buyers from walking away from the transaction for any number of other reasons. So while the sale *might* have completed but for Barclays' error – equally it might not. In view of that I do not consider it would be fair for me to say that Barclays should meet any costs relating to the sale falling through.

Looking at the timeline provided by C's solicitors, it appears that Barclays released its charge in September. But the time taken to complete the sale from August until December 2023 – around four months – is not necessarily unusual or excessive. I don't consider the evidence we have is sufficient to say it was solely any acts or omissions by Barclays that meant it took as long as it did. Therefore, I do not consider that Barclays is responsible for any costs incurred by C relating to the property during that period.

In view of the above, I can see no reason why Barclays could fairly be required to meet the costs and/or lost rent that C suffered because of the time it took to sell the property. It was always likely there would be some void periods when selling a property that had previously been let and some cost associated with that. The evidence I have is not sufficient to say that those costs would not have been incurred in any event, even if Barclays had dealt with the new title properly.

I agree that it would likely have been fair for Barclays to meet any additional legal costs that C can show it has paid because of this matter. I would clarify that would not include any legal cost relating to the original lease extension, any costs relating to the aborted sale or any costs relating to the sale that did go through. It is likely there would have been some additional legal costs even if Barclays had acted fairly in the first place. It would not be fair for Barclays to meet any legal costs that C has actually paid that it would otherwise have always had to pay.

I asked C to provide evidence of its legal costs broken down to show what they related to. It gave us a copy of an invoice for £162. But it said it was for obtaining and reviewing Land Registry documents. It was not clear in what context that was necessary or that it would not have been a cost that C would always have had to pay. So I do not consider Barclays should meet those costs.

C said that it had not yet paid any other legal costs. It is not clear how much it will actually have to pay or if it will have to pay anything. I don't see how I could fairly tell Barclays to meet C's legal costs on that basis.

For the reason I have explained, I do not consider that many of the losses C has claimed are attributable to Barclays. And it has been unable to show that it has actually paid any additional legal fees because of this matter. Putting those costs aside, it has not given us a sufficiently detailed breakdown of any other additional costs it has incurred as a result of this matter. In view of that – and as there was likely to be a significant amount of inconvenience to C in any event even if Barclays had dealt with things better than it did – I consider £500 is a fair amount to reflect the inconvenience to it.

My final decision

My final decision is that Barclays bank UK PLC should pay C £500.

Ken Rose
Ombudsman