

The complaint

Mr B and Mrs B have complained about delays that occurred when they applied for a remortgage with Barclays Bank UK PLC.

What happened

Mr B and Mrs B held a mortgage with another lender. That mortgage was on a preferential interest rate and would move to the lender's Standard Variable Rate ("SVR") on 1 July 2024.

Mr B and Mrs B applied for this remortgage through a mortgage broker at the end of April 2024. On 16 May 2024 Barclays issued a mortgage offer, and the matter was then passed to Mr B and Mrs B's appointed solicitor.

On 3 July 2024 Barclays was sent a letter by a third-party company. That said:

"We refer to your recent communication with [Mr B and Mrs B's solicitor] over the notice period we would give you should their client default on the rentcharge in any way, that Barclays are given notice of the breach and an opportunity, should you wish to do so, to resolve unpaid rent charges, prior to any enforcement action being considered by ourselves in respect of creating a lease.

Although it is possible that we may look to create a lease over a property we have not done so since our conception in 1997. Our procedure is to first go through the County Courts to pursue any outstanding rent charge payments. Should this fail we would contact yourselves (The Lender) where there is a charge on the property and ask you to intervene (should you so wish), prior to us entering into taking possession and creating a lease.

We would give you a minimum of 60 days notice before taking such action. In reality this would be a period significantly longer as the rent charge is paid annually.

In the event that we were to lease the property we would only do so to reclaim any outstanding rent charges and costs, following which we would surrender the lease immediately.

We would however not remove our right to create a lease as it is our only backstop should the rent charge become significantly overdue and we have no other means in which to pursue it.

Please take into consideration that we are a Charity and not an unscrupulous rent charge owner and are only permitted to increase our rent charge by the RPI set by the Bank of England in Mid-February each year.

In our experience though the rent charge has always been settled via a CCJ or the assistance of the lender."

On 8 July 2024 Mr B and Mrs B's solicitor wrote to Barclays:

“We write to advise concerning the rent charge against the title to the property.

We have reviewed the Banks requirements under the UK Finance Lenders Handbook part 2 responses and not that it does not meet the banks requirements.

We have referred the matter to the Rent Owner [name of third-party company] who have stated that a Deed of Variation is unnecessary in their view due to the expense involved for all parties particularly your borrower. They have provided a Letter of Assurance copy enclosed to confirm that they will provide the required minimum 2 months notice before action despite [sic] this not being within the rentcharge terms and will further give the Bank should it wish right to remedy. They further state that Barclays have in the past accepted this letter from them in place of formal variation.

We therefore ask you to consider the same and confirm that you are happy to rely on this assurance.

We look forward to hearing from you as soon as possible.”

Barclays responded the same day to ask for further information about the rent charge.

The solicitor provided the information on 12 July 2024, and on 15 July 2024 Barclays responded:

“We note that under Section 9 of the UK Finance Disclosure Form that the property is subject to an Estate Rent Charge or Service Charge.

To give you some background on why we are highlighting these specific charges, we are trying to determine whether the charge(s) relate to an Estate Rent Charge as some developers are not clearly specifying whether this is the case or not and provisions under an Estate Rent Charge could have a potential impact on the Bank’s ability to lend.

An Estate Rent Charge is a charge payable for the maintenance of communal areas. It is normally payable on freehold houses only. The non-payment of this fee can potentially allow the Estate Rent Charge Owner to create a lease thereby forfeiting the freehold.

Please note that you need to be satisfied that the potential Estate Rent Charge provisions will not have any impact on our Security, and request you refer to Part 2 of the UK Finance Mortgage Lenders Handbook for Conveyancers under section 5.15.2a, to ensure that our requirements are met and you are satisfied there is no potential risk to our security.

At least one of the criteria set out in this section needs to be met if the charge relates to an Estate Rent Charge to allow us to proceed, otherwise we will be unable to proceed unless the Developer agrees to amend the Transfer Deed. If the Estate Rent Charge provisions are acceptable to the Bank, we do not need any further correspondence from you seeking clarification on this matter.

If the Charge relates to Service Charge we will be happy to proceed providing non-payment does not have any impact on our security.

We trust that this clarifies our position in this matter.”

There was some back and forth between the parties, with Barclays asking the solicitor for further information about the type of rent charge and the solicitor confirming the rent charge

didn't meet Barclays' requirements. On 5 August 2024 Barclays wrote to the solicitor to say that it would be unable to proceed unless the deed was amended to meet its requirements.

A complaint was raised which Barclays responded to on 16 August 2024. In its response Barclays acknowledged there were delays and it offered £200 compensation, plus a refund of any additional costs Mr B and Mrs B had incurred due to any delay by Barclays.

The Deed of Variation was completed, and the remortgage went through on 16 October 2024. Following that Mr B and Mrs B provided details of the extra interest they'd been charged due to moving onto the SVR, and Barclays said it would cover two months of that. It said it wouldn't cover the full period because Mr B and Mrs B's solicitor was aware of Barclays' requirements at the start of July, but the Deed of Variation process wasn't started until 16 August. Barclays paid a further £200 compensation for the delay in responding to Mr B and Mrs B's emails.

The complaint was looked at by one of our Investigators. He said Barclays' offer was fair as although it had caused some delays, obtaining the Deed of Variation always would have taken some time. He said Mr B and Mrs B's solicitor was aware of the need for the Deed of Variation on 8 July and so, had the process been started then, completion would likely have happened around two months later, at the start of September 2024.

Mr B and Mrs B didn't agree and so the case was passed to me to decide.

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 trust Mr B and Mrs B won't take it as a discourtesy that I've condensed this complaint in the way that I have. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr B and Mrs B have said that Barclays only notified them of the requirement for a Deed of Variation on 16 August 2024, so they feel the two-month timeframe to obtain it should start from then. But I don't agree.

It seems Mr B and Mrs B's solicitor was aware of this issue at the start of July as the letter from the third-party company on 3 July referred to some recent communication between Mr B and Mrs B's solicitor and Barclays about the rentcharge. And on 8 July Mr B and Mrs B's solicitor wrote to Barclays to say the rentcharge didn't meet Barclays' requirements. So it is clear that Mr B and Mrs B's solicitor was on notice from the start of July that a Deed of Variation may be required.

In addition, Mr B emailed the third-party company on 2 July 2024 to say:

“Could you let us know how to proceed with this requirement of Deed of variation mentioned in the attached letter please?”

Mr B then entered into email correspondence with both the third-party company and the solicitor that he and Mrs B had appointed, with emails such as “Does the rent charge meet any of the 3 requirements below?” on 1 August, and an email from the solicitor to Mr B also on 1 August which said the rentcharge doesn’t meet Barclays’ requirements, and it was Barclays’ decision as to the level of risk it wanted to take whether it would accept an alternative to a full Deed of Variation.

Barclays then told Mr B and Mrs B’s solicitor on 5 August that it would be unable to proceed unless the deed was amended to meet its requirements.

So whilst Barclays may not have had a direct conversation with Mr B and Mrs B about this before 14 August, that certainly wasn’t the earliest Mr B and Mrs B (and their solicitor) were aware of the issue. I wouldn’t expect Barclays to have spoken directly to Mr B and Mrs B about this as it was dealing with their solicitor. It was up to their solicitor to keep Mr B and Mrs B informed about any potential legal issues like this.

Mr B and Mrs B’s solicitor was aware on 8 July that the rentcharge didn’t meet Barclays’ requirements so it could have started the Deed of Variation process then. I can’t hold Barclays at fault for the fact the alternative kept being pushed instead. Whilst the third-party company had the right to put forward the alternative, I can’t hold Barclays liable for the delays that were caused due to the back-and-forth communication that was needed about that before it gave its answer to Mr B and Mrs B’s solicitor on 5 August.

I also can’t hold Barclays liable for the fact this wasn’t raised until around the start of July as it had issued the mortgage offer on 16 May. Mr B and Mrs B have said that Barclays should have informed them of the requirement for a Deed of Variation with a conditional mortgage offer. But Barclays wouldn’t have known there was an issue with the rentcharge until Mr B and Mrs B’s solicitor informed it around the start of July. I don’t dispute that Barclays may have mortgages over other properties in the area with the same issue, but Barclays wouldn’t cross reference this mortgage application against other mortgages it holds just in case there might be a potential legal issue – that is what the solicitor is for. And Barclays can’t hold a database of every single property it has granted a mortgage on with all the potential issues with that property to check each mortgage application against, that would just be unmanageable. Barclays did its part of the process when it considered the mortgage application put forward and issued a mortgage offer on 16 May. That is all it had to do. Any potential legal issues, like this rentcharge, are for the solicitor to deal with.

In addition, just because Barclays may have granted mortgages in the past without needing a Deed of Variation doesn’t mean it was wrong not to do so here. Lenders’ risk appetites change, as does their legal advice. That can be shown by the fact the third-party company admitted (in an email to Barclays) that previously Barclays had required a Deed of Variation on mortgage applications made about four years ago, albeit on some more recent applications it hadn’t requested it.

Mr B also seemed to accept this wasn’t just Barclays being over-cautious in an email on 15 August to the third-party company in which he said he’d done extensive research on the issue, and found that the third-party company needs to take action by including a specific clause in the rent charge. Mr B said that including the clause would help prevent most property owners with mortgages in the area from experiencing the stress and expenses he

and Mrs B were facing and would reduce the need for costly Deeds of Variation. He said not including the clause could negatively impact property values; if owners struggle to sell or potential buyers can't secure mortgages, demand will drop. He said others were experiencing the same issue as could be seen on the local social media community page.

Having considered everything really carefully I'm satisfied the offer made by Barclays in its response to the complaint – that is a £200 payment of compensation, plus covering the difference in payments for July and August 2024 – is fair and reasonable.

Mr B and Mrs B's solicitor could have started the Deed of Variation process sooner, and had they done so I'm satisfied completion would also have happened sooner. And if Mr B and Mrs B didn't want to wait, they had the option to contact their existing lender and carry out a rate change with them instead. Had they done that on 14 August then that new rate would have been in force for 1 September, and they could still have proceeded with this complaint with Barclays to claim the additional interest for July and August. All they needed to do was to tell Barclays they had decided to stay with their existing lender due to the delays and I've no reason to believe that Barclays wouldn't then have told them to provide evidence of completion of their rate change application and it would then pay the loss based on that.

Whilst I've a great deal of sympathy for the position Mr B and Mrs B found themselves in, I think Barclays has already done enough to put things right and so I don't uphold this complaint and I don't make any order or award.

My final decision

I don't uphold this complaint as I'm satisfied Barclays Bank UK PLC has already done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 25 September 2025.

Julia Meadows

Ombudsman