

The complaint

The estate of Mrs M complains that Barclays Bank UK Plc has not acted fairly in its dealings with the estate and in recovering a second charge debt.

What happened

Mr and Mrs M had a mortgage with Barclays that was repaid in 2018. Mr M died in 2006 and Mrs M died in 2023. The executor of Mrs M's estate, her son, discovered that both a first and second charge was held by Barclays over the property. The estate said that was contrary to what Barclays had told Mrs M when the first charge mortgage was repaid.

Barclays said that £20,000 was still owed in respect of a second charge mortgage. The estate has repaid that amount and sold the property.

The estate complains:

- Barclays told Mrs M the charge had been released on 2018 therefore it should be estopped from recovering the second charge debt.
- Barclays was not aware of either charge until it was brought to its attention by the estate's solicitor.
- There was no evidence that Mr and Mrs M signed the charges.
- No annual statements were sent in respect of the disputed debt.
- Barclays did not remove the charge in 2018 when it should have.
- There was confusion by Barclays about Mr and Mrs M's birth dates and death certificates.
- Barclays said it would take control of the situation, but it then asked the estate to provide copies of letter it had previously sent – and one letter said it had been “nice to talk to...” Mr M who had been dead for some time by that point.
- Barclays was aware of Mr M's death, yet it wrote to him requesting a copy of Mrs M's death certificate.

The investigator thought that Barclays was entitled to require the estate to repay the second charge debt. He explained that the executor of the estate was not an eligible complainant under our rules so we could not make any award to him.

The executor of the estate did not accept what the investigator said. He responded to make a number of points, including:

- Barclays incorrectly told Mrs M that she was free to sell the mortgaged property when it ought to have been aware of the existence of the second charge mortgage. It failed to

cancel the first charge and were only made aware of the existence of the second charge by his solicitors.

- The second charge was to support Mr M's business interests and the loan did not require any payments of interest. There was a gap of around ten years between the second charge being agreed and Mr M's death. At that point Mrs M became legally and beneficially entitled to the property and the sole mortgagor. Barclays had a duty to notify her of the existence of the second charge – she had no other statements or correspondence about it.
- Mrs M was a housewife who relied on Mr M. Barclays does not have its file so we do not know if it told her to obtain independent legal advice, as required by the law.
- We'd upheld a complaint in similar circumstances.

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.

Second charge

The circumstances around the second charge are unusual. But it appears to relate to lending secured against land – so I think we can look at it.

We have evidence that in 1996 Mr and Mrs M agreed for a charge to be placed against their home limited to £20,000. I have not seen any evidence to show that amount had been repaid. Therefore it was reasonable for Barclays to look for the estate to repay that sum on the sale of the property.

I agree that there might have been circumstances where there was a presumption of undue influence that would have required Barclays to make sure that Mrs M received independent financial advice before agreeing to the second charge. But I don't think that makes any real difference here. I say that for a few reasons.

First, the second charge was agreed in 1996, almost thirty years ago. There is little paperwork to support what happened. And Mr and Mrs M are not here to explain what they remembered. It is possible that Mrs M did receive independent legal advice.

Second, the evidence we do have suggests that the second charge was agreed after Mr and Mrs M jointly fell behind with their payments. So it is not clear that Barclays had any reason to believe that the amount secured by the charge was solely or primarily for Mr M's benefit and not Mr and Mrs M jointly. A lender might not have been expected to presume undue influence in those circumstances. And other than what the executor has said, there is no evidence to support that Mr M did exercise undue influence over Mrs M.

Third, even if I were to find that Mrs M should have been told to obtain independent legal advice, it is possible that Mrs M would have chosen to go ahead anyway.

Fourth, where there is undue influence, the remedy would not be to say that Barclays should write off the amount due. Rather we would likely say that Barclays should not have enforced

its charge against Mrs M. But Mr M's charge would remain valid and Barclays would only be required to remove the charge upon the sale of the property and once the associated debt had been repaid. So the debt would still have been due and payable.

I do not consider the letter Barclays sent Mrs M in 2018 would prevent Barclays recovering the second charge debt bearing in mind I've found that Mr and Mrs M agreed to repay it and Barclays had a valid charge against the property for the debt. I accept that there is no evidence that there was any further correspondence to either Mr or Mrs M regarding the second charge. But it was not a conventional mortgage and was not regulated – so I don't consider there was any requirement for Barclays to do so.

So whichever way I look at things I don't see how I could fairly require Barclays to do any more.

I note the executor has referred to a decision on another case. I'm afraid I don't think the circumstances in this case are sufficiently similar – and it does not set any precedent. In the circumstances of this case I've set out why I do not consider it would be fair and reasonable for Barclays to do anything else.

First Charge

I agree Barclays made an error when it did not remove the first charge when the mortgage was repaid in 2018. But the estate has not set out that caused it any financial loss.

Service

Barclays knew that Mr and Mrs M had died and their son was acting as executor for Mrs M's estate. I accept everything he has told us and I agree that Barclays should have exercised a great deal more sensitivity and care in dealing with him.

But the poor service did not cause the estate any loss. I accept that it will have caused the executor a lot of unnecessary upset and inconvenience. But as the investigator explained it is the estate not the executor that is an eligible complainant under our rules. So I do not have any power to tell Barclays to pay him anything.

In saying that Barclays has offered to pay the estate £500 for any distress and inconvenience. The estate can't suffer distress – so I can't make any award for that. But in the circumstances, I consider it is fair to reflect any inconvenience caused by the way Barclays handled this matter.

My final decision

My final decision is that Barclays bank UK Plc should pay the estate of Mrs M £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 5 January 2026.

Ken Rose
Ombudsman