

The complaint

Mr and Mrs C complain about their mortgage and associated mortgage current account (MCA) with Barclays Bank UK PLC. In particular, they're unhappy its solicitors sent them a "notice to quit", and that legal fees were added to the mortgage balance after they thought they had repaid it.

What happened

Mr and Mrs C have an interest only mortgage with Barclays. Alongside the mortgage, Barclays gave them a linked MCA – an account which they could use as a current account and with an overdraft facility (known as a reserve), where any borrowing on the reserve was also secured by the mortgage over their property. The mortgage term ended in 2017.

Mr and Mrs C have previously complained about the existence of the MCA and increases to the reserve limit, and we said that complaint had been made out of time.

In this case, Mr and Mrs C complain about how Barclays handled other complaints they've made, as they believe it has deceived and misled them. They also complain that its solicitors sent them a "notice to quit" their property, which they say was designed to be intimidating and was inappropriate. They also say that they paid off their mortgage balance in full, but then Barclays added legal fees to the balance, is still charging interest on those fees and won't close their account until the fees are paid.

Barclays said the "notice to quit" had been sent by its solicitors, so the solicitors were responsible for and should answer that complaint. It said that it was entitled to add legal fees to the balance of the mortgage, the fees were justified in this case, and the mortgage account would not be closed until they were repaid. And in any case the MCA reserve balance remained outstanding.

Our investigator didn't think the complaint should be upheld, so Mr and Mrs C asked for it to be reviewed by an ombudsman.

I agreed with that outcome, but because some of my reasoning was different to the investigator's, I issued a provisional decision to allow the parties a further chance to provide any additional evidence or arguments for me to consider.

My provisional decision

I said:

"As our investigator explained, I can't consider the complaint Mr and Mrs C made previously about how the MCA came about, because the Financial Ombudsman Service found that complaint to be out of time on an earlier occasion. Mr and Mrs C accept that, but they nevertheless want us to consider a complaint arising out of the handling of that earlier complaint.

Mr and Mrs C complained about the mortgage and MCA in 2019. They received an

email from a Barclays complaint handler who said she had a “resolution” for them. But Mr and Mrs C say they didn’t receive the resolution communication despite repeated requests. They were sent what Barclays says was a copy of it in 2022. But they don’t agree that was a resolution to their 2019 complaint and say it contained many inaccuracies. They say they were deceived in 2019 in that they were told their complaint would be resolved, but that wasn’t true – it was dismissed and not handled appropriately, and they were not told the outcome for over two years.

It’s unfortunate that Mr and Mrs C didn’t receive Barclays’ response to their complaint at the time. I don’t know why that was – whether it was because of an error at Barclays which meant it was never sent, or because of problems in transit which meant it was never received. It’s not possible to say. But I’m not persuaded that the copy of the response they were sent in 2022 was a later fabrication. I don’t think it’s likely Barclays would simply make up a final response it hadn’t sent to cover up not having sent it, especially where – as here – the response said that the complaint was out of time and wouldn’t be considered. Nothing in the text of the letter suggests to me that it couldn’t have been, or wasn’t, written at the time in 2019.

Mr and Mrs C have made much of the fact that they were promised a “resolution” in 2019, but that the copy letter they were sent in 2022 does not give them a resolution, it says Barclays wouldn’t consider their complaint because it felt it was out of time. I’m afraid I don’t attach the same significance to that word that Mr and Mrs C do. I don’t think that by promising them a “resolution” in 2019, the complaint handler meant that their complaint would be upheld or resolved in their favour.

To my mind, and in context, by “resolution” the Barclays adviser simply meant that she would tell them the outcome she had reached, bringing their complaint (unless referred to us) to an end. “Resolution” does not necessarily mean a positive (from Mr and Mrs C’s point of view) outcome; it just means reaching an outcome. Barclays’ final response that it would not deal with their complaint because it considered the complaint to be out of time is a “resolution” of their complaint, even if not the resolution they wanted or hoped for. I don’t therefore think that Barclays deceived or misled them, either about the outcome it reached in 2019, or about the genuineness of the copy letter they were sent in 2022.

By late 2019, the mortgage term had ended more than two years ago and the MCA reserve was over the limit. But Mr and Mrs C had not repaid either balance, or come to any arrangement with Barclays to do so. I appreciate they didn’t feel it appropriate to come to a payment arrangement while they disputed the validity of the MCA in particular. But the fact is that they did borrow the funds in question and had agreed to make payment in 2017 – but hadn’t done so.

In those circumstances, it wasn’t unreasonable for Barclays to instruct solicitors to begin legal action to recover the debt. Its solicitors sent Mr and Mrs C a letter warning them that legal action might be taken if they didn’t make payment. The letter was accompanied by a document headed “notice to quit”, which Mr and Mrs C complain about. I don’t think including that document was unreasonable or inappropriate. I appreciate Mr and Mrs C found it intimidating. But it said, in essence, that Barclays intended to go to court to seek repossession of the property unless Mr and Mrs C agreed to surrender it. Including the notice was in line with legal requirements in this part of the United Kingdom. And, difficult as facing those consequences were, it wasn’t unreasonable that Barclays – via its solicitors – made clear the potential consequences of Mr and Mrs C’s situation and the options open to them.

When Mr and Mrs C complained about being sent the “notice to quit” and the terms in which it was drafted, Barclays referred the complaint to its solicitors to deal with rather than respond to the complaint itself. Barclays should have responded itself. The solicitors weren’t carrying out a regulated activity in their own right, they were acting as agents of, and on the instructions of, Barclays. Barclays might have delegated part of the process of managing the mortgage to solicitors, but as the regulated entity dealing with a regulated mortgage contract it is as much responsible for the acts and omissions of its agents as if it had done them itself.

The regulator’s rules do allow firms to forward complaints to third parties where they are, or are also, responsible. But as the solicitors weren’t carrying on a regulated activity in this case (even though they are also regulated for other things), that doesn’t apply here. Barclays should have responded to their complaint. However, because the solicitors did respond, and because Mr and Mrs C were still able to bring the complaint to the Financial Ombudsman Service, I don’t think this failure resulted in particular detriment to them.

Mr and Mrs C say that they paid £24,450 to settle their mortgage balance in November 2019. They were told that this might not be quite enough, as there may be some interest to be added before the payment cleared. They paid a further £34 to cover the interest, and say they understood that was sufficient to repay the mortgage and the account would be closed, leaving just the MCA. But then Barclays added solicitors’ costs to the mortgage and has since charged interest on those costs, meaning there remains a balance on the mortgage. Mr and Mrs C say this shouldn’t have happened. They repaid their mortgage in full. Even if the legal costs were justified – which they don’t accept – they should have been added to the MCA not the mortgage.

Barclays is entitled to recover costs incurred in dealing with the mortgage, including legal costs, from Mr and Mrs C. Those costs were incurred because Mr and Mrs C hadn’t repaid either the mortgage or the MCA even though the term had ended. Ultimately, whether they were added to the mortgage or to the MCA makes little difference, in my view. It is still Mr and Mrs C’s debt to Barclays, and it continues to attract interest at the same rate until repaid – and the charge over their property will not be removed until both accounts are repaid in full.

I appreciate Mr and Mrs C believed their mortgage had been repaid until they discovered the fees had been added. They had paid enough to clear the balance (other than the fees) on the main mortgage – but not the MCA. Their secured borrowing remained in place, and included the fees charged following the involvement of solicitors. Whether Barclays included those fees on the MCA or the mortgage does not change the fact that Mr and Mrs C are liable for them, does not change the amount they have to pay, and does not change the fact that the borrowing is secured over their property. I think it was reasonable for Barclays to add the fees to the main mortgage account rather than put the MCA further over the reserve limit. But either way, the balance remains outstanding and Mr and Mrs C will need to come to an agreement with Barclays for repaying it if further recovery action is to be avoided.”

The responses to my provisional decision

Barclays said it had nothing further to add and accepted my provisional decision.

Mr and Mrs C didn’t accept my provisional decision. They said they had never disputed they owed the MCA borrowing. But they did dispute the additional amount owing caused by the

various delays.

Mr and Mrs C said it was the bank, not them, that chose the word “resolution”, rather than the normal “response” or “decision”. And the complaint handler came from a department Barclays called its “advocacy” section, which also has a particular meaning. From that Mr and Mrs C reasonably concluded that she would have proposals to progress matters. But the complaint handler never communicated with them again. Given the number of attempts Mr and Mrs C made to contact Barclays which weren’t responded to, and the inconsistencies in the document, it is more likely that Barclays deliberately decided not to tell them the outcome of their complaint than that it was lost in transit. To conclude otherwise suggests I lack impartiality. Barclays fabricated it later to placate Mr and Mrs C when they complained again.

Mr and Mrs C also said that the “notice to quit” was a requirement of a landlord / tenant situation, not mortgage possession proceedings, for which it wasn’t appropriate. Sending it to Mr and Mrs C while their complaint was outstanding amounted to intimidation and harassment. This may be why Barclays tried to dodge responsibility by passing the complaint on to its solicitors.

Mr and Mrs C say that I found Barclays was wrong to pass their complaint to its solicitors – yet I imposed no censure or penalty. It is incomprehensible to say that there was no detriment and again suggests I lack impartiality.

Mr and Mrs C say they were assured they had paid enough to repay the main mortgage balance. While it might not make any difference to the overall amount outstanding, adding the solicitors’ fees to the mortgage, rather than the MCA, after that assurance shows a lack of trust and integrity. Acting honestly, Barclays ought to have told them those fees were pending.

Mr and Mrs C said Barclays’ mistakes and delay have caused serious consequences for them. Had it replied to their complaint when it should have done, Mr and Mrs C would have been able to come to an arrangement to pay and would have cleared much of the debt by now. Barclays prevented that from happening. Yet my decision means there are no consequences for that for Barclays – only for Mr and Mrs C. This is unfair.

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’ve also considered the findings I made in my provisional decision and Mr and Mrs C’s response to it. But I haven’t changed my mind. I’m sorry Mr and Mrs C are disappointed with my conclusions and feel I wasn’t impartial. But I’ve looked at all the evidence carefully and impartially in reaching my findings. I’m not persuaded that there’s any credible evidence that Barclays fabricated, or deliberately withheld, the 2019 complaint response, or later changed its outcome. I think it’s most likely it was not sent, or was sent and not delivered, through error at the time rather than any deliberate decision then to withhold it, or later attempt to fabricate it.

It’s not my role to censure or penalise Barclays – only to compensate Mr and Mrs C for their losses (if any). I said that I didn’t think referring the complaint on to its solicitors was the right thing to do. But ultimately that didn’t prevent Mr and Mrs C having their complaint answered (even if they don’t agree with the answer), so it didn’t cause them any detriment for which it would be fair to compensate them. And while Mr and Mrs C no doubt found the “notice to quit” upsetting, it was sent because they were several years beyond the end of the term of their mortgage.

I'm also not persuaded that Barclays did, or failed to do, anything which prevented Mr and Mrs C repaying some or all of their outstanding debt before now. They've always known it existed and what they owed, and there was nothing to stop them making any payment at any time. I can't fairly hold Barclays responsible for them not having done so while pursuing their various complaints. As I said in my provisional decision, the balance remains outstanding and if Mr and Mrs C are unable to come to an agreement for repaying it, Barclays will be entitled to take further action to recover it.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 14 August 2025.

Simon Pugh
Ombudsman