

## complaint

Mrs P complained that she shouldn't be liable for a debt to Barclays Bank PLC, trading as Woolwich. Her partner, who had jointly held the mortgage, had accrued the debt on the mortgage current account.

## background

Mrs P bought a property around 15 years ago, and in 2011 she re-mortgaged with Barclays. Although the property was owned by Mrs P alone, she took a joint mortgage with her partner Mr L.

Barclays' mortgage offer set out the terms and conditions. One of these said that a Mortgage Current Account (MCA) had to be taken out with the mortgage. As the balance on the repayment mortgage reduced, money became available on the MCA for Mrs P and Mr L to borrow. The statements show that by 3 August 2017, the balance owing on the MCA was nearly £23,000.

Mr L died in July 2017. And Mrs P then became aware of the balance owing on the MCA. She complained to Barclays, saying that all the MCA statements had been sent to Mr L and she hadn't seen them. Mrs P said she didn't think she should be liable for the debt on the MCA because she had no knowledge of the spending, and didn't know the borrowing facility had been available.

Barclays offered its condolences on Mr L's death, and sympathised with the concern and frustration the issue had caused Mrs P. The bank explained that although the paper statements had only been issued in Mr L's name, the terms and conditions of the mortgage said that it only had to write to one account holder, because it expected joint holders to keep each other informed. Barclays said it would have issued separate statements either if Mrs P had asked for them, or if it had been notified of any dispute. And it pointed out that statements had been available to Mrs P online.

Mrs P was still unhappy and complained to this service.

The investigator didn't uphold her complaint. He said that joint mortgage account holders have joint and several liability. This means they're each individually responsible for all debt on the account. He looked at the terms and conditions and pointed out that section 4.1 said:

*"Where you hold the Mortgage Current Account in joint names we shall be entitled to accept the signature or instruction or authority of either of you... You shall each as joint account holders be jointly and severally liable for any Mortgage Current Account Reserve, charges or other money owed to us on the Mortgage Current Account. This means that we are entitled to recover the whole amount owing as a debit balance from either of you."*

Mrs P had also sent us a part of a document which Barclays had asked Mr L to sign before the mortgage completed. But the investigator said that from the part which Mrs P had sent in, it looked like an occupancy document. This didn't make a difference. And Mrs P also sent in information which she'd found since Mr P's death, showing he had other debts. But the investigator said this hadn't had an effect on the debt on the mortgage current account.

Mrs P was still unhappy.

### **my findings**

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

I appreciate that it must have been horrible for Mrs P to discover, after the loss of her partner, that there were debts she knew nothing about. It would have been a great shock, and something that would have been especially hard at such a difficult time.

But I have to look at what the terms and conditions say, because these are what Mrs P and Mr L signed up to, when they took out the joint mortgage in 2011.

And as I've set out above, these make it very clear that what one person has spent on the MCA is a liability for all parties to the mortgage. So Mrs P is liable for the money which was built up on the MCA.

I've also looked at Mrs P's argument that the statements were sent to Mr L and not to her. I can see that the statements weren't addressed to Mrs P. I can understand that this seems very unfair when Mrs P was a party to the mortgage and in fact the sole owner of the property. But what's important is what the terms and conditions say. And section 19.2 says: *"If the property is jointly owned, it will be sufficient if any notice served under these conditions is served...on the first named joint borrower."* The mortgage offer lists Mr L as the first named joint borrower. This means that the bank was entitled to send the statements addressed only to Mr L. And we also generally take the view that joint account holders are responsible to each other, and we deem that what one knows they share.

I've also noted Barclays' final response to Mrs P, where it says that it would have sent separate statements if Mrs P had asked for them, or had told the bank of a dispute between Mr L and Mrs P. I find this is sufficient, though I do understand that Mrs P didn't know she had any grounds to ask until the real position became clear on Mr L's death.

Mrs P has also asked us to look at the part of the occupancy form which Mr L signed when they took out the mortgage. And she's told us about Mr L's other debts, and how she didn't know how Barclays could have let Mr L carry on racking up debt.

But I'm afraid neither of these things changes the situation. I've only seen part of the form, but assuming it's a standard occupancy form, it relates to what rights Mr L might have had if Barclays had ever had to take the property into possession, not whether he could build up debt. Looking at Mrs P's complaint about letting Mr L continue to borrow when he had other debts, I don't have information about the full extent of Mr L's borrowing. But I can say that as Mr L was a joint party on the mortgage on Mrs P's property, he was entitled under the terms of that mortgage to use the MCA borrowing facility. I recognise this seems very harsh when Mrs P has told us she didn't know about the borrowing. But it's the terms and conditions which matter, and these allowed Mr L to take out the money.

I do realise that this is all very hard for Mrs P, and I sympathise with her. But my job is to consider whether or not Barclays acted unreasonably when it allowed Mr L to take money out under the MCA. And I find that it didn't, because he was allowed to do so under the terms and conditions of the joint mortgage account.

**my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 December 2017.

Belinda Knight  
**ombudsman**