

## **complaint**

Through their solicitors, Mr and Mrs R have raised a number of complaints against Barclays Bank Plc, as follows:

- Barclays incorrectly registered a legal charge over both their commercial and residential property;
- Barclays refused to provide them with a copy of the valuation report, even though they had paid the fee for it;
- Barclays has refused to extend the mortgage term by a further five years, to give them time to sell their property.

## **background**

In 2007 Mr and Mrs R took out a mortgage with Barclays. It's an interest-only mortgage, repayable over eight years. As at July 2015, when the mortgage ended, Mr and Mrs R owed about £275,000 on the mortgage and £182,000 on the related Mortgage Current Account (MCA), giving a total due to Barclays of about £458,000.

In 2013 Mr and Mrs R say they discovered that Barclays had taken a legal charge over both their business and residential premises. They asked Barclays to release the charge over their business premises.

In order to consider the request Barclays requested a valuation fee of £75. Barclays said it would release the charge over the business premises if the capital balance of the loan was reduced by £91,000.

A complaint was raised with Barclays about the legal charge. Barclays issued its final response letter on 24 November 2014.

The title to the property has now been rectified. The mortgage account matured in July 2015. Barclays granted an extension of 12 months to Mr and Mrs R, but they want a further five-year extension to enable them to sell their property.

They say that, were it not for the mistakes and delays by Barclays in relation to the legal charge, they could have sold their commercial property in time to repay the mortgage at maturity. They estimate their total losses to be £1,130,000.

Barclays didn't agree to us looking at the complaint about the legal charge being incorrectly registered. It said it had issued its final response on this on 24 November 2014, but the complaint wasn't brought to us within six months of that date. Our adjudicator agreed the complaint had been brought out of time.

Barclays has refunded the valuation fee, so the adjudicator didn't think it needed to do anything more about this. Barclays had also reimbursed solicitors' fees and offered compensation of £250 for trouble and upset, which the adjudicator thought was fair.

The adjudicator was also satisfied that Barclays had acted reasonably in granting an extension of twelve months. She didn't think Barclays was acting unfairly in declining a five-year term extension.

Mr and Mrs R asked for an ombudsman to review the complaint.

In summary, they dispute that the complaint about the incorrect legal charge is out of time. That's because Barclays issued other final response letters after that date dealing with the complaint. They also reiterate that, had Barclays not made this mistake, they could have sold their commercial property at a higher price some years ago, and that this is the central issue in the complaint.

### **my findings**

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

**legal charge over the wrong property:** Our rules say that, if a business doesn't agree, we can't look at a complaint if it's been brought more than six months after the final response letter. Barclays issued its final response on this part of the complaint on 24 November 2014 and it doesn't consent to us looking at the complaint.

Although Barclays issued further final response letters, I'm satisfied those are in relation to other aspects of the complaint. The later final response letters explicitly refer to "*new issues*". These do not re-set the clock on the earlier complaint. As there are no exceptional circumstances to explain the delay, we can't look at this part of the complaint.

**valuation fee:** the valuation was for Barclays' own purposes, but it's now refunded the £75 fee. I don't require Barclays to do anything more about this.

**term extension:** The mortgage term ended in July 2015. In June 2015 Barclays agreed to extend the mortgage term for 12 months. This is because Mr and Mrs R had put their commercial property on the market for sale at a price of about £1 million. They told Barclays they expected the sale to go through by July 2016. A sale at that price would repay the mortgage debt in full. The MCA reserve of £182,000 is repayable immediately on demand, but Barclays has included it in the term extension.

Mr and Mrs R say that they marketed the property at this price as they were panicking about repaying the mortgage. They have now changed their plans, and intend to sell off part of the commercial property. According to Barclays' notes, they planned to do this from Spring 2016, but I have no up-to-date information about the sale.

Barclays has acknowledged that the error with the title meant that it needed to extend the term. The title was fully rectified by August 2015. There is no up-to-date information about how the sale of the commercial property – either as a single property or in separate units – is progressing. Instead all that seems to have happened is that Mr and Mrs R have asked for a further five years to sell their property.

I do appreciate that the error by the solicitors who originally registered the title incorrectly resulted in Mr and Mrs R not being able to sell their commercial property in time to repay the mortgage in July 2015. But I don't think it would be fair or reasonable to expect Barclays to extend the term for a further five years.

I think that six months from the date of this decision is a reasonable amount of time for Mr and Mrs R to have put in place a firm strategy to repay the mortgage and MCA reserve.

During that time I would expect them to provide Barclays with full details of the estate agents marketing the commercial properties, and give Barclays permission to contact those agents for updates on how the sales are progressing.

If Barclays is provided with clear evidence that sales are progressing, then I would expect it to hold off any recovery action. But if there is no confirmation of any marketing or progress on sales, Barclays would, in my opinion, be entitled to look for repayment of the debt by some other means.

I'm aware Mr and Mrs R are claiming losses in excess of £1 million. The maximum binding award we are able to make is £150,000. Because I can't look at the complaint about the incorrect title registration, Mr and Mrs R are free to pursue that aspect of the complaint in court if they wish to. And if they reject my findings on the valuation fee and term extension, they can also take those matters to court.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 14 October 2016.

Jan O'Leary  
**ombudsman**