

## **The complaint**

Mr C is unhappy that Barclays Bank UK PLC is unwilling to write off a loan he says he ex-wife applied for in his name, without his knowledge or consent.

## **What happened**

Mr C says that in August 2019 he discovered money had been transferred from his savings account from a different bank to an account held at Barclays in his name. Mr C says his wife had made these transfers and used the account for a loan she'd fraudulently taken out in his name.

Mr C says a loan for £15,000 was taken out by his ex-wife which he didn't know about or consent to. When he discovered the debt, he started to repay it, to avoid his credit file being impacted. Mr C is looking for a refund of the payments he made towards the loan totalling £8,331.60 and would like the remainder of the loan written off.

He says his wife has admitted, to the police, to taking out this loan and creating several other debts in his name, without his knowledge or consent. He said his ex-wife used the loan funds to pay off her father's debt, buy clothes for her and the children, and for other household items. Mr C says she changed his salary to be paid into this account as well.

Barclays has provided evidence to show the loan was taken out via online banking on 13/02/17. It says in order to do this the applicant would have needed the sort code, account number and online banking passcode for the existing Barclays account.

Mr C says his ex-wife had control of the finances and the Barclays account. Mr C says he didn't have access to this account. But in later correspondence he's told us he did know about the account but thought it had been closed when he asked his ex-wife to pay off his mortgage, with what he thought were his savings.

Barclays looked into the matter and decided not refund Mr C's payments or write off the loan. It said that a large proportion of the loan was used to pay Mr C's mortgage, so he directly benefitted from the loan – even though it accepted he hadn't applied for it. The loan credited Mr C's account in 2017 and regular statements were issued. Barclays believes Mr C was grossly negligent for not raising a claim sooner as he should have checked his statements. It said Mr C wasn't able to identify the transactions on his account that he did not authorise and those that his ex-wife made. But overall it offered £150 in compensation for the length of time it took to investigate the complaint and provide an answer.

Mr C received debt collection letters, but he'd understood these would be paused whilst his complaint was looked into. Barclays apologised and said it would hold off on debt recovery until the ombudsman service had looked at the complaint and it offered £100 for the distress and inconvenience caused to Mr C for sending those letters.

As Mr C was unhappy with the outcome from Barclays, he brought the complaint to our service. One of our investigators looked into things and said:

- he didn't think Mr C took out the loan, his ex-wife had admitted doing so without his consent and she had been cautioned by the police;
- reviewing the account statements, he was satisfied that all of the loan funds were used to pay Mr C's mortgage and household bills, so Mr C and his family benefitted from the loan;
- although there were some cash withdrawals it would be impossible to know what these were used for and who benefitted from them; and
- Mr C gave his ex-wife full access to the account and therefore she had his authority to carry out transactions on the account.

The investigator recommended:

- Barclays should remove any reference of the loan on Mr C's credit file; and
- Mr C only be held liable for the capital loan repayments and not any interest as he didn't agree to any of the terms of the loan.

Mr C disagreed in summary he said:

- his ex-wife had been found guilty of fraud so doesn't believe he should have to pay back the loan;
- he feels misled as he recalls being told he wouldn't need to pay anything back;
- other businesses had written off debts that his wife accrued, even if he and his family had benefitted from the proceeds of them; and
- he would like his ex-wife to be pursued for the debt instead of him.

As Mr C didn't agree, the complaint has been passed to me.

Since then Barclays has responded to say it accepts the investigator's recommendations but made an amended offer to resolve the complaint. It said it would need to liaise with the Credit Report Team to implement the interest free loan and create an open and active loan. It may be able to cleanse Mr C's credit file of the fraudulent loan, but the interest free loan would still reflect on his file. But this does not adversely affect Mr C as his mortgage has been paid off with the funds from the loan – which would have otherwise incurred interest.

In the course of my consideration of the complaint I asked the investigator to contact Mr C for some additional information. As a result:

- Mr C has confirmed the mortgage was in his sole name;
- we asked Mr C if any of the financial disputes with his ex-wife had been settled as part of any financial separation order with his ex-wife – he has said he doesn't think this is relevant and hasn't provided us with any information about this. He believes our questions about this evidence show that we are not acting impartially.

Mr C didn't accept the investigator's findings, so I have reviewed the complaint.

### **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.

Having done so, I've come to the same conclusions as the investigator for largely the same reasons. I'll explain why.

### **Did Mr C apply for the loan?**

Section 83 Consumer Credit Act 1974 outlines that a debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from the use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent. In simple terms, Mr C can't be held liable for a debt that another person, not acting on his behalf, took out.

All parties agree that Mr C didn't take out the loan and his ex-wife was not acting as his agent so I've not had to make a finding on this point. But the starting position is that Barclays cannot hold him liable for the loan. But that's not my only consideration here. I have to consider where the funds went and who benefitted from them.

### **Who benefitted from the loan?**

Mr C feels strongly that his ex-wife is responsible for this debt. Despite her taking out the loan I can't disregard who had the benefit of it. And looking at the account statements I can see that the vast majority of those funds were used to pay Mr C's mortgage – to confirm that's a mortgage in Mr C's sole name. So he has had the benefit of these funds even if he may have lost out overall from his ex-wife's actions, when considering all the financial affairs of the marriage. Here I'm looking at the loan and those funds in isolation, not Mr C's ex-wife's actions and the debts she accrued in his name overall. And I'm looking at whether it's fair for Barclays to hold Mr C liable for that debt.

I appreciate that Mr C feels strongly that he shouldn't be held responsible for this loan but, ultimately, he's had the benefit of the funds so I can't fairly ask Barclays to write it off or to refund his payments. I know he feels his ex-wife should be held responsible for the loan but that would be something he needs to discuss and resolve with her.

As part of the course of my consideration of this complaint we asked Mr C if there had been any financial separation order. In some earlier correspondence Mr C said he was divorced but the financial separation was outstanding but when asking about this later he hasn't been willing to provide an update on this. I meant no offence to Mr C when asking this question. Where there have been allegations of fraud between married parties then this can often be settled when a financial separation order is taken to court, and it's generally the most suitable opportunity for such matters to be settled. That's not always the case, but it if there is a dispute about the finances that is most often the route for consumers to settle these matters. Sometimes those financial separation orders take place during the course of our investigation into complaints like Mr C's. So it is prudent for to find out if that has been the case here.

Mr C has decided not to share this information with us. And I must take that into account. It's possible that the financial separation order has already been resolved in which case Mr C has had the opportunity for his overall financial position and disputes to be considered and settled. Or Mr C could explore this option in the future if it hasn't yet happened. This will include considerations of the marital assets and liabilities, as well as how they are to be distributed. Which means Mr C has had, or will have, the opportunity for this loan to be taken into account as part of the financial separation order.

Mr C has said he has benefitted from other items where his ex-wife took out credit in his name. I can't comment on the actions of other businesses. Their commercial decision to allow Mr C to benefit from those items and not repay any debt is their choice. That doesn't impact my decision on whether he should repay the loan to Barclays.

But I do agree with the investigators findings that his credit file should be amended to reflect the fact he didn't take the loan out and he shouldn't be charged interest. Barclays has said it can amend Mr C's credit file of the fraudulent loan, but an interest free loan would need to

remain on his file. I'm satisfied this is a fair and reasonable solution. Mr C's credit file needs to reflect the reality of this particular financial situation and this solution resolves that issue. I will leave it with Mr C if he wishes to accept this offer of settlement and liaise with Barclays. And he's in, at least, an equitable position if not better off, as he's not paying interest on his mortgage.

In setting up this new loan its likely Mr C will need to interact with Barclays which I also think is reasonable in the circumstances. And if Mr C decides not to repay this new loan then it would be fair for Barclays to record that on Mr C's credit file

Barclays has paid £150 in compensation for the delays in providing Mr C with an initial answer to his complaint and paid a further £100 for sending debt collection letters when he was told the activity would be paused. I can see that Mr C has suffered a great deal of distress because of the actions of another person, but these are not because of the actions by Barclays. And so, I think its offer of compensation is fair and I don't recommend that it pays anything further to Mr C.

### **Putting things right**

I partially uphold this complaint. I direct Barclays to remove all interest and charges regarding the loan, and cleanse Mr C's credit file as it has suggested. I also think the compensation offered is fair and I don't recommend that it pays anything further

### **My final decision**

I am partially upholding Mr C's complaint against Barclays Bank UK PLC in line with the summary above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 March 2022.

Sophia Smith  
**Ombudsman**