

The complaint

The executor representing the estate of Mrs S complains that Barclays Bank UK PLC trading as Barclaycard lent irresponsibly to Mrs S.

What happened

In 2021, Mrs S passed away and her executor was appointed to her estate. When going through paperwork relating to Mrs S's finances, the executor found two credit card debts to Barclaycard which she considered shouldn't have been lent to Mrs S. She says Mrs S was vulnerable and the bank didn't carry out sufficient checks before agreeing to lend to her.

Barclaycard responded to the executor. It said the accounts were opened in 1998 and 2004, and each defaulted in 2009. It said due to the amount of time that had passed since the accounts were opened, the regulator's rules meant the complaint had been raised too late for Barclaycard to be able to investigate further.

The executor didn't accept Barclaycard's response, so referred her complaint to our service. Since then, another ombudsman at the Financial Ombudsman Service has considered whether we can consider this complaint and has explained to both parties why he thought the complaint was brought in time. So, an investigator then looked into the substance of the executor's complaint and considered whether or not Barclaycard had lent responsibly.

Barclaycard approved Mrs S' first credit card application in August 1998 and set a credit limit of £5,500, which remained unchanged for the duration the account was active. Mrs S fell behind with her repayments in 2008 and her balance exceeded the credit limit. By mid-2009, Barclaycard had recorded the account in default and transferred it to a third party.

Barclaycard approved Mrs S' second credit card application in April 2004 and set a credit limit of £5,200, which was reduced to £1,800 in November 2007. Mrs S fell behind with her repayments in 2008 and by late-2009, Barclaycard had recorded the account in default and transferred it to a third party.

The investigator explained that the rules and regulations that are in place today to protect consumers from irresponsible lending, including vulnerable consumers, didn't exist at the time Mrs S applied for her Barclaycard credit cards. He didn't think it was fair to say that Barclaycard had lent irresponsibly because he had not seen enough information about Mrs S' circumstances and the checks Barclaycard carried out at the time of her applications.

The executor replied to the investigator's assessment and provided some more information about Mrs S' circumstances. This included a payslip from 2001 showing Mrs S took home £1,025 in October; details of a secured loan used to consolidate several unsecured debts in February 2002; and her mortgage statement from 2007. But this information wasn't enough to persuade the investigator to change his assessment – because he still would need to know what Barclaycard knew about Mrs S' circumstances at the time of her applications.

As the investigator didn't think Mrs S' complaint should be upheld and the executor didn't agree, this complaint has been passed to me to make a decision.

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.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding this complaint. That said, Mrs S applied for her Barclaycard credit cards before much of the rules and regulations that were introduced to protect consumers from irresponsible lending. So, I've drawn on the law and what good industry practice would have looked like at the time. And I think that included lending in such a way that would not cause undue repayment difficulty.

When the evidence is incomplete, inconclusive, or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more than likely to have happened given the available evidence and the wider circumstances. And as more than two decades separate Mrs S' first credit card application and the complaint (and almost two decades separate the second), the evidence is inevitably incomplete.

Having done all of that, I think the evidence available is not enough to uphold this complaint – I'll explain why.

The executor has provided some information to show Mrs S' wider financial position from around the time she applied for her Barclaycard credit cards. The executor provided a copy of a secured loan agreement from February 2002 which detailed a number of Mrs S' creditors this new loan would consolidate. It references Mrs S' first Barclaycard credit card and shows she owed £1,365 – but at that time, the credit card was run by a different lender, which Barclaycard later acquired in 2008. So, I don't think it is reasonable to hold Barclaycard responsible for the decision to grant Mrs S the credit card she took out in 1998 with a £5,500 limit. I think it also shows that when Mrs S applied for her Barclaycard credit card in 2004, she was a new customer. So, Barclaycard would not have had the same level of insight on how Mrs S ran the credit card account she had open in 1998 in comparison to an existing Barclaycard customer.

Barclaycard has told us that it hasn't retained the application data for the credit card it granted in 2004. I find that unsurprising given the length of time that has passed and noting the closure of the account predates this complaint by some 12 years. The executor has provided a list of Mrs S' active credit and store card accounts and their credit limits from around the time – but no information about her indebtedness to the various lenders or how Mrs S had been maintaining the accounts.

The executor also has provided a list of Mrs S' mortgage and secured lending and I've seen that she remortgaged in December 2004, increasing her mortgage debt by £52,000. Of course, it doesn't necessarily follow that she used this new borrowing to repay her existing debts – she had credit and store card accounts with limits (balances unknown) totalling around £24,000 and the £21,000 secured consolidation loan I referenced above.

It is important that I don't hold Barclaycard to the standards that apply today and which didn't at the time of her application in April 2004. From the information the executor has provided, I've learnt that Mrs S was employed and earning £18,500 a year; several different lenders considered Mrs S good for revolving credit and store card accounts with credit limits ranging between £700 and £8,000; and that Mrs S had remained eligible (and sufficiently creditworthy) for a £85,000 mortgage with a high street lender eight months later. So, on the available information, I think on balance it was reasonable for Barclaycard to have agreed Mrs S' credit card account application with a £5,200 limit in 2004.

In summary, I don't find Barclaycard responsible for the decision to grant Mrs S the credit card she took out in 1998 and I think it was reasonable for Barclaycard to have agreed Mrs S' new credit card account application in 2004.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs S to accept or reject my decision before 6 January 2023.

Stefan Riedel
Ombudsman