

The complaint

Mr S complains Barclays Bank UK PLC trading as Barclaycard won't let him make a payment to clear one of his credit card accounts.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

For context Mr S brought a complaint related to events prior to those that are the subject of this complaint I'm considering. From reading my fellow Ombudsman's final decision, my brief understanding is:

- *Due to a problem with another bank, two direct debits weren't made for Mr S' two credit card accounts leading to missed payments.*
- *Mr S wanted to make payments, but Barclaycard felt this would put him in a worse position at the time. Mr S was also unhappy Barclaycard didn't tell him he could make bank transfers to clear the balances.*
- *The matter didn't get resolved, so after six months Barclaycard defaulted the accounts.*
- *The Ombudsman found Barclaycard had acted correctly, so wouldn't be asking them to remove the defaults. And because she didn't think Barclaycard had acted incorrectly in not taking payments from Mr S, she also didn't think they'd done anything wrong in not telling him he could make bank transfers.*

This final decision was issued in February 2019. I can't reconsider anything that's already been decided by an Ombudsman – so I can only look at events after this time and can't instruct the defaults to be removed.

In December 2020 one of Mr S' accounts had been sold to a debt purchaser. In either September 2021 or January 2022 (Mr S has given both dates) Mr S was able to contact them, clear the debt and get the default marked as settled. He contacted Barclaycard to do the same with the other account but says he didn't get a reply, so he asked us to look into things.

As part of this, we asked Barclaycard for their file. They said they couldn't trace any contact from Mr S in January 2022 so didn't think they'd made any errors. They said the last contact was in September 2021 and the outstanding balance (at the time of their reply) was £16,363.11.

One of our Investigators considered Mr S' complaints – and ultimately upheld them, but not to the degree he wanted. She found Mr S knew how to make payments as he'd made a bank transfer, had been told the balances and thought Barclaycard hadn't prevented him from making payments. But, she did think Barclaycard hadn't replied to Mr S on several occasions and misunderstood the issues he was raising – so she awarded £200 compensation.

Mr S didn't agree, in summary, he said:

- *When he made payments of £100 this was to test if they'd be received, as previously they'd been rejected.*
- *He never received any confirmation these online payments had been applied to his balance, and actually he prefers to make payments over the phone.*
- *One of our staff was on the speakerphone with him and heard Barclaycard say they wouldn't take payment from him – so despite what they say now their position was always to not accept payment.*

As Mr S didn't accept our Investigators outcome, the complaint has been passed to me to decide. Before doing so, I felt I needed more information from both parties – so I arranged for us to ask a number of questions. I've addressed the relevant information below.

What I've provisionally 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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr S' complaint in considerably less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

As I've set out above I won't be commenting on whether Mr S' defaults should be removed – and because of events since that time, I can see Mr S' remaining concern is about Barclaycard not accepting payment for the remaining account.

Although the default won't be removed, it can and should be marked as settled once the outstanding payment has been made. This could have a positive effect on a credit file – as it means there isn't any funds owed to a creditor for that account anymore.

So, the crux of Mr S' complaint, and what I need to decide, is whether Barclaycard have prevented Mr S from making payment so that the default on his one remaining account could be marked as settled. And, if the answer to that is yes, whether that means the other account should also be marked as settled from an earlier date.

As a starting point, Barclaycard have on many occasions misunderstood what Mr S' complaint is. This has been a complex matter to unravel, as it both relates to a previous issue (the default being reported) and has gone on for many years. Regardless though, I would expect Barclaycard to make reasonable efforts to deal with Mr S correctly and fairly – and I'm not satisfied they've done that.

The first evidence I have of Mr S wishing to pay off the defaulted amounts, after our service's previous final decision in February 2019, is 14 May 2019.

In this email, Mr S says he wants to pay off the debt on both accounts, as he's not in financial difficulties and asks how to do that. I've seen no evidence this contact was ever replied to by Barclaycard.

In more recent contact, when asking Barclaycard about this, they've said even if Mr S was able to pay them, he's not completed an income and expenditure form. Barclaycard also said Mr S says he's not in financial difficulties, but to not assume a defaulted account means someone isn't in financial difficulties is counterproductive.

I think this is unfortunately demonstrating Barclaycard are confusing the two matters. The default was applied, and our service decided it won't be removed. That isn't what this complaint is about. This complaint is about Mr S' efforts to pay off the debt following that. Barclaycard's defence is, as far as I can tell, that Mr S never completed an income and expenditure form with them to demonstrate he was able to make the payments.

I agree that this is necessary in Mr S' circumstances. Two different accounts have been defaulted for quite a significant amount of money. But, what's perhaps more important, is that Barclaycard tell Mr S this is what's required.

Through all of the evidence provided, I've seen nothing to show me Barclaycard told Mr S, in the complaint I'm considering, that he needed to do this. And, even if Mr S had been told prior to this complaint – he's asked how to pay off the debts and Barclaycard have, as far as I can tell, ignored him on most occasions. Where they did reply, I've seen nothing to show they said he needed to complete a new income and expenditure assessment and he refused to do so. And, given his desire to pay off the debts, I think it's likely had he been told to complete an income and expenditure form then he'd have done so.

At various times Barclaycard have asked debt collectors to contact Mr S regarding repayment of the debt. I'm aware this is of significant concern for Mr S – but I don't think I need to address this in detail, because I'm satisfied Barclaycard should have done more following his contact on 14 May 2019.

I've seen Barclaycard said the two accounts were both sold to debt collectors, and they instructed debt collectors. It seems Barclaycard aren't very clear on exactly what happened here, but as the accounts were regularly passed back to Barclaycard, it seems more likely than not Barclaycard simply instructed debt collectors – rather than selling the account. With that in mind, I'm satisfied Barclaycard are ultimately responsible for dealing with Mr S' contact on 14 May 2019, whether they passed this on to a debt collector or not.

So, the next natural question is whether Mr S was in a position to be able to repay the debt. For several years now, since May 2019 in relation to the complaint I'm considering, Mr S has been clear and consistent in saying he's able to afford repayment of the defaults. Following the information I asked for from him, he's also provided a letter from his accountant saying he was in a position at the time to have repaid the outstanding debts.

This letter, combined with Mr S' regular contact over the years asking to repay the debts, mean I'm satisfied he was able to do so.

I'm aware Mr S has had some further issues later on, including in September 2021. I'll factor all of this in the ultimate outcome I reach.

Putting things right

I've seen Mr S' reference to various legal judgments and the Consumer Credit Sourcebook (CONC) rules. But, as I'm upholding Mr S' complaint, I don't need to address the specific points he's raised, as I believe he was making them to justify why Barclaycard hadn't treated him fairly – which I agree with.

There are several factors that need to be addressed to put matters right.

Default

At the risk of repetition, the default won't be removed – but the date the default can show as settled can be amended to reflect what I think should have happened. To be clear, I think had Barclaycard properly engaged with Mr S in May 2019 he'd have paid off the debts for both accounts.

This would have led to the defaults showing as settled after he did this. I've seen suggestions of repayment plans over a few months, so let's say three months – taking us to 14 August 2019.

But, I can't require Barclaycard to mark a default as settled if that debt hasn't been repaid. At this moment in time, the debt with Barclaycard hasn't been repaid. The debt with the debt purchaser has been repaid.

The powers I'm given are to require Barclaycard to take action, I can't compel Mr S to do anything. But, in order for the default on the debt with Barclaycard to be shown as settled (and at the earlier date of August 2019), Mr S will need to repay the outstanding balance.

We put this to Mr S as a possible outcome, and he said "No. This would be a zero-sum game in favour of the bank. Arguably it would be the effect of such refusal that would require addressment. Bank now need to be held accountable."

I think Mr S is saying he's not as concerned about the default date showing as settled now, as he is about the losses he's incurred. Given the aggravation Mr S has been put through by Barclaycard I do understand his point of view. I'll address Mr S' claimed losses shortly. But, in relation to the default it's not fair or appropriate to ask Barclaycard to mark a default as settled until the full balance has been repaid. Ultimately, this is Mr S' choice. He can choose to repay the debt, and once repaid then Barclaycard would be required to backdate the settlement date of the default to 14 August 2019 – or he can choose not to repay it at this point. If he chooses not to, then it won't show as settled.

For the other debt Barclaycard sold to the debt purchaser, they should arrange for the default settlement date to be backdated to 14 August 2019 – as this debt was repaid, and for the reasons I've mentioned above, could have been repaid earlier.

Financial losses

Our service splits financial losses and compensation into separate categories. If I'm satisfied Mr S has incurred financial losses as a direct result of Barclaycard's actions – and these financial losses were unavoidable – then I can require them to repay these plus interest.

We asked Mr S to provide an itemised list of what he was claiming for, along with evidence of those costs where possible. Mr S didn't provide an itemised list – instead referring me to his accountants letter.

I've considered that, but currently I'm not satisfied any financial losses Mr S is claiming for are ones I'd hold Barclaycard responsible for. This, in part, may be because Mr S hasn't clearly explained every loss he's claiming for along with evidence to back up why Barclaycard are mainly or solely responsible for him incurring those losses.

What Mr S has said is he's claiming legal fees and having to take out higher finance for credit than he otherwise would have.

In relation to the legal fees Mr S has incurred it was his choice whether to use legal services to contact Barclaycard or not. As a service we don't generally award legal costs, purely because if someone is unhappy with a financial businesses actions then they can complain to that business, and bring matters to us if they remain unhappy. Mr S was aware of this process, given his previous complaints. So, I don't currently plan to award any of his legal costs.

Mr S' remaining concerns appear to relate to applications which have been turned down by lenders. And his accountant has referred to having to take out high interest rate products as a result of the defaults being present. I've also seen information from brokers, saying they couldn't speak to any of their lenders about getting lending for Mr S, because of the defaults.

What isn't clear though, is whether this is as a result of the mere presence of the defaults, or that they're not showing as settled.

Generally speaking, in order to say Barclaycard have caused Mr S losses when applying for other credit, I'd need to be satisfied they were mainly or wholly responsible for those losses. Lenders can and do take into account a significant number of factors when deciding whether to lend or not – and given Mr S would, even if he'd paid off the debts in May 2019, still have had a default – this makes it even more difficult for me to be satisfied Barclaycard are solely responsible here. The sort of evidence I'd usually expect to see would be a letter from the relevant lender, saying the sole reason they didn't grant the lending was down to the default not showing as settled. I'm aware from some of the broker emails Mr S has shared say he didn't get as far as even making applications to lenders on some occasions. So, as things stand, I've no reasonable evidence on which to uphold those elements of his complaint.

Currently then, I don't plan to award any legal costs or financial losses Mr S has claimed for. That said, if Mr S provides clear detailed information regarding his losses, along with evidence of the fault being Barclaycard's, then I can reconsider this. I'm aware Mr S has said he has a significant amount of other documents – so it's possible he can evidence this.

Compensation

Although I'm not awarding any costs for the financial losses in relation to the lending Mr S has claimed for, this doesn't mean he's not been caused distress over a very long period of time as a result of this default not showing as settled.

I've set out above why I don't agree Mr S should be refunded those costs, but it's clear Mr S believed the reason he was having problems getting credit was solely down to the default not being settled.

On top of that, he regularly contacted Barclaycard in an effort to resolve matters, including in September 2021 without success. So, for three years Mr S has been left in a position of attempting to pay off a debt, feeling ignored by Barclaycard and their debt collection agents, and feeling as though the only reason he was having difficulties is due to the default not showing as settled.

I think it's fair to say this has caused Mr S a substantial amount of distress and inconvenience. To reflect that, I'm planning to require Barclaycard to pay Mr S £1,000 compensation.

Responses to my provisional decision

In summary Mr S' first response said:

- Although he accepts I won't address the original complaint, he asks if having considered the emails and phone calls in March and April 2018, if it'd be appropriate to remove the defaults in their entirety.
- If I'm not prepared to remove the date, I'm asked if I can amend the settlement date back to April 2018 where Mr S says he tried to repay the debt before.
- His legal costs were unavoidable because Barclaycard refused to engage with him.
- He provided evidence of the borrowing costs he says he's incurred.
- He'd also like the cards reinstated, and as a further point to put matters right said he'd been denied credit elsewhere because of these issues.

Barclaycard ultimately accepted my provisional decision. They said they're checking if L can backdate the settlement date, although they said Mr S told them L had removed the default entirely. They reiterated they'd only be able to backdate the default once payment is made – and no payment had been received yet, despite them having a conversation with Mr S and telling him how to do this.

Following Mr S calling Barclaycard, they both then contacted our service again.

Barclaycard reiterated they'd accept my provisional decision in how things should be settled. They said Mr S' expectations go beyond what I've ordered. They added Mr S knows how to make bank transfers to them – and their financial difficulties team will need to look into what support can be offered to satisfy their affordability requirements. They said they understood Mr S intends to share more information to compel me to change my mind. In Mr S' second email, he said:

- He'd called Barclaycard and asked that this call is listened to before I finalise my decision. The reason for this is because I've said costs aren't evidenced – but in the call Barclaycard say legal representation is the only way to take the matter forward because it's unlikely I'll change my findings. Mr S says this is evidence that the legal costs were necessary.
- Barclaycard said they'd do nothing to help fix the position other than to accept payment from him. Mr S says this is as a result of my failure to make an award for costs.
- Throughout the call he made it clear he was willing to work with Barclaycard to resolve the issue, and move on, but they remained resolute in that they'd followed proper protocol. He says Barclaycard said I'd found they hadn't acted incorrectly.

Mr S did make a number of other comments, but I consider them either not relevant to the crux of the complaint, or already made in the first email, so I've not listed those out.

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.

As Barclaycard have ultimately accepted the outcome I reached, I'll focus on Mr S' comments.

Mr S' first email

I won't instruct Barclaycard to remove the default. This was decided previously by our service to have been correctly applied.

I also remain of the opinion the fair date to backdate the default to – if Mr S pays off the balance – is 14 August 2019. I say that because I'm only looking at events after the previous Ombudsman's decision, which was February 2019.

While I understand Mr S' concerns about the legal costs, they were, ultimately, his choice. I can see he's said Barclaycard and our service both advised him to get legal advice. But, even if Barclaycard did, then it'd still be his choice about whether to pursue matters or not. Our service won't advise people on the next course of action – we'd say if someone remains unhappy they can choose to seek legal advice if they like. And, as I've set out in my provisional decision above, Mr S knew he could bring a complaint to us if he remained unhappy with Barclaycard's actions. So, I won't be awarding those costs.

I've next looked at the evidence of the costs he's incurred. As a reminder I said I needed to see something from the relevant lender, explicitly saying the sole or main reason they didn't provide lending to Mr S was due to the unsettled default.

One of the documents is from a broker, dated 13 February 2023, saying lenders specifically turned him down because the default was still outstanding.

Another document is dated 8 February 2023 from a sub-prime lender. They specialise in granting lending to those who otherwise can't get this from the usual high street lenders. In addition to these two documents, I have also carefully reviewed the remaining documents Mr S has sent. But, looking at all of them, none meet the requirements I set out. The broker email I've referred to doesn't confirm anything from an actual lender or demonstrate the sole reason for turning Mr S down was due to the defaults not being settled. The email from the sub-prime lender says Mr S could have got a cheaper loan from a high street lender if the defaults were showing as settled. Again, this doesn't prove to me Mr S was turned down by a lender because of the defaults not showing as settled.

Overall as Mr S hasn't demonstrated what I said he needed to, I can't reasonably say any lending costs he says he's incurred should be paid by Barclaycard.

I've noted Mr S has asked for the credit cards to be reinstated. That isn't a decision our service would generally make – as it's a commercial decision for a lender such as Barclaycard to decide who they lend money to. So, I won't be requiring Barclaycard to do this.

And I've noted Mr S wanted some recognition of the fact he's been without access to other lending while this matter has been ongoing. He's not though provided anything to demonstrate that, and I have factored in how long the matter has been ongoing when thinking about the compensation award.

Mr S' second email

I understand Mr S thinks it's important I listen to this call, but for reasons I'll go on to explain I don't think it's necessary.

I need to make it clear I can't allow either party to direct my investigation. That means it wouldn't be appropriate for Barclaycard to tell me what information I need to get and consider to reach a fair and reasonable outcome – so I hope Mr S understands it's not appropriate for him to do so either.

The reason I don't think it's necessary for me to get the call is because of what Mr S has said about the contents. The key issue he's talking about is the legal costs, and that Barclaycard have told him the best way to resolve this now may be litigation.

The point I was making when I said it was Mr S' choice to get legal advice and use solicitors is that he could have raised a new complaint and brought that to our service. I do fully accept Barclaycard didn't handle things properly – which is why I've made a high compensation award of £1,000 – but I don't agree that means Mr S only had one choice to pursue matters. Ultimately, if Mr S wants to pursue the matter he may wish to seek legal advice about taking this complaint to court. To be clear though, that would be his choice – I'm not advising him to do so.

In his previous conversations Mr S suggested he wasn't going to make any payment – I appreciate his position has since shifted and he's said he wants to pay off the balance. Barclaycard have told him how to make bank transfers – and told him they can't stop themselves receiving those transfers.

Barclaycard would usually take someone through an income and expenditure process – to determine whether the repayment proposals are affordable or not. Barclaycard say Mr S can't meet their requirements – Mr S says Barclaycard aren't working with him and meeting the requirements of my provisional decision.

If Barclaycard are doing what I've said, which it sounds like they are, then I'm unclear on why Mr S wouldn't be able to meet their requirements. But, even if they're not, then Barclaycard have explicitly confirmed to Mr S how he can make payments. So, I can't legitimately say Barclaycard aren't giving him relevant information to move this situation forward.

I will make it clear I do think Barclaycard haven't acted correctly – which is why I've awarded what I've awarded. But I've seen no reason to change the overall outcome I reached in my provisional decision for all of the reasons I've set out above.

Summary

I set out in my provisional decision what needed to happen regarding the default, financial loss and compensation. Here, I'm not satisfied Mr S has proven any financial loss as a direct result of Barclaycard's actions. So, I still think it's right for Barclaycard to backdate the default if Mr S repays the outstanding balance, speak to the debt purchaser to ask them to backdate the default, and pay Mr S £1,000 compensation.

My final decision

I partially uphold this complaint and require Barclays Bank UK PLC trading as Barclaycard to:

- Discuss repaying the outstanding debt they hold with Mr S
- If that debt is repaid, mark the default settled date as 14 August 2019
- Arrange for the account with the debt purchaser to be updated to 14 August 2019
- Pay him £1,000 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 March 2023.

Jon Pearce
Ombudsman