

The complaint

Mr T is unhappy that Barclays Bank UK PLC are pursuing him to repay an unsecured personal loan taken out in 2014.

What happened

Mr T has said that he doesn't remember taking out an unsecured loan in 2014 and that he has never received any contact or correspondence in relation to it from Barclays. As such he feels, if the loan does exist, Barclays should now accept that the debt is statute barred and therefore Mr T wants Barclays to stop pursuing him for the debt.

Barclays says it disagrees with Mr T's point that the arrears are statute barred due to it not contacting Mr T for six years. It says it issued arrears notices between February 2015 and July 2020 along with yearly statements, to the address it held on file and the address it issued its final response to. Therefore, it said it was its obligation to contact a consumer who is in arrears. Barclays say Mr T raised the argument that the debt was statute barred in August 2022.

Mr T remained unhappy with Barclays' response and referred his complaint to our service. Our investigator looked into Mr T's concerns and said on balance he was satisfied the loan was taken out by Mr T and that he had received correspondence from Barclays regarding the loan during the six years. However, our investigator said as Mr T felt the debt was statute barred and wouldn't be paying the debt, it was unreasonable for Barclays to continue to demand payment for the debt.

Barclays didn't agree. It said, it didn't think Mr T's debt was statute barred because it had continued to be in correspondence with Mr T regarding the debt from 2014 to 2022. As Barclays felt the debt was enforceable, and hadn't been statute barred, it was able to continue corresponding with Mr T regarding the debt. So, it asked for the case to be referred to me to consider.

I issued my provisional findings on 13 February 2023 where I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen so far, I do agree with the investigator's findings but for different reasons, which is why I have issued provisional findings, to allow both parties an opportunity to review my reasons."

Mr T has said he doesn't remember taking out the unsecured personal loan. However, this doesn't automatically mean that the loan wasn't genuine or that Barclays wasn't entitled to contact him about the loan. The loan was taken out in 2014. I have seen a copy of the credit agreement that relates to this loan. I have also been provided with bank statements of an account which appears to be in Mr T's name. On 14 May 2022 £25,000 was credited to that account with the reference 'Barclayloan'. From reviewing the statements, I can see this account was regularly used.

Barclays has provided arrears notices, statements and default notices sent to the same

address which it sent its final response to. This is the address which is on the bank statements of the account the loan was paid into and the loan agreement. Mr T did receive the final response letter and sent a copy of it to our service. Therefore, I am satisfied the correspondence was sent to an address Mr T had access to. It has also been able to show how it traced Mr T through address searches carried out by external tracing companies using the information it held on file. Based on this, I think Barclays has done enough to show it was reasonable for it to contact Mr T in relation to the loan in question.

In August 2022 Mr T has made the assertion that the debt is statute barred. As our investigator has explained it isn't the role of the Financial Ombudsman Service to decide if a debt is enforceable as only the courts can decide this. We can however consider whether Barclays acted fairly by asking Mr T to repay the debt.

The relevant guidance here is in the FCA's handbook (CONC). In section 7.15.1 it says:

"A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt."

Section 7.15.5 says:

"If the lender or owner has been in regular contact with the customer during the limitation period, the firm may continue to recover the debt."

Barclays has provided a considerable amount of correspondence which was sent to Mr T from late 2014 to 2022 in relation to the loan. As explained above, this correspondence was sent to an address Barclays held for Mr T. It also sent its final response to this address. It's not in dispute that Mr T received the final response, as he forwarded it onto our service. So, I think it's more than likely that Mr T did get the letters Barclays sent, and he knew about the loan and the fact he was in arrears. As such, as Barclays has provided evidence it continued to correspond with Mr T between 2014 and 2022, I am satisfied it acted in line with CONC 7.15.5.

That said, section 7.15.8 says:

"A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred."

Given the fact Mr T has now said he won't be paying the debt because he believes it is statute bared, in line with CONC 7.15.8, Barclays should now stop continuing to demand for payment from Mr T. However, I should explain that this provision isn't absolute. As explained above, it is qualified by other guidance in CONC 7.15.5 that does not prevent a firm from attempting to recover a debt where, for example, the lender has been in regular contact with the customer during the limitation period. And as mentioned above, I've seen evidence that suggests Barclays did this. So, based on the CONC provisions and the circumstances in this case, Barclays would still be entitled to attempt recovery of the debt, including – but not limited to – initiating legal proceedings.

CONC 7.5.10 says that a firm shouldn't initiate legal proceedings where we are considering a complaint. And by virtue of this provisional decision our consideration of Mr T's complaint is now coming to an end. And should Barclays initiate such proceedings, Mr T is, of course, entitled to ask the court to consider his Limitation Act defence, albeit he may want to seek legal advice about his options should that happen."

My provisional findings were:

“My provisional finding is that in line with CONC 7.15.8 Barclays Bank UK PLC should now stop continuing to issue demands for payment, but is entitled to attempt recovery of the debt, including – but not limited to – initiating legal proceedings, if it wished to so.”

Mr T responded explaining he was very unwell during that period of time and was suffering greatly with his mental health. And outlined that he had several addresses at that time due to his personal circumstances.

Barclays also responded and said that it has accepted that the loan is statute barred and was in the process of arranging for further correspondence to be suppressed.

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.

To be clear, it isn’t the role of the Financial Ombudsman Service to decide if a debt is enforceable as only the courts can decide this. So, the matter of whether or not the debt is statute barred hasn’t been considered in this decision.

However, Barclays has now accepted that the debt is statute barred and has agreed to my provisional findings in its entirety. Barclays has confirmed that it has instructed its collections department to apply suppression markers to ensure no further correspondence is sent to Mr T.

So my decision remains the same as I outlined in the provisional findings.

Putting things right

No further correspondence should be sent to Mr T in regards to the loan in question.

My final decision

My final decision is that I uphold the complaint and require Barclays Bank UK PLC to act in line with the above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 21 April 2023.

Jade Rowe
Ombudsman