

The complaint

Mr M has complained that Barclays Bank UK PLC (“Barclays”) acted unfairly by continuing to apply charges to his account when he was in financial difficulty.

What happened

Mr M held an account with Barclays with an overdraft facility. The account was closed with an outstanding balance of £2,153 in May 2021 and was the subject of a Debt Relief Order (“DRO”) which ended in July 2022.

Mr M complained to Barclays about the service that he had received regarding information on his account and that the charges applied to his account were unfair as he was struggling financially.

Barclays said it tried to get in touch with Mr M on a number of occasions to support him with his overdrawn balance and that overdraft pricing letters were sent explaining the charges and didn’t uphold this element of his complaint. But it agreed the service he received was poor and apologised for this.

Mr M was dis-satisfied with this and brought his complaint to this service.

One of our adjudicators looked at this complaint and thought that Barclays acted unfairly when it continued charging overdraft fees from 1 January 2017 as Mr M’s statements showed that Mr M hadn’t seen or maintained a credit balance for an extended period of time.

Our adjudicator thought Barclays should put things right by:

- Re-working Mr M’s current overdraft balance so that all interest, fees and charges applied to it from January 2017 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Barclays should contact Mr M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr M’s credit file, it should backdate this to January 2017.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr M, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Barclays should remove any adverse information from Mr M’s credit file.

HM Revenue & Customs requires Barclays to take off tax from this interest. Barclays must give Mr M a certificate showing how much tax it’s taken off if she asks for one.

They also thought Barclays should make a distress and inconvenience award of £150 to compensate.

Barclays agreed to settle Mr M's complaint in-line with our adjudicator's recommendations. Barclays have told us that the amount of refund due is £2,174.82 which it will offset against the outstanding debt and that it would pay any overpayment and interest and the compensation directly to Mr M.

Mr M disagreed with this and felt the full charges refund should be paid directly to him as he is discharged from his DRO to which the overdraft was part of and has asked for an ombudsman's 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.

Why I think we can only look at part of your complaint

The rules applying to this service say that, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

Mr M raised his complaint in July 2022 in relation to bank and overdraft charges dating back to when his account was opened in 2006. Six years before he raised his complaint is July 2016. And as Mr M would've been notified of any charges being applied to his account around the time they were being applied I think Mr M ought to have known enough to decide whether the charges Barclays applied were unfair or causing financial difficulty. So, I don't think that three years from when he ought to be reasonably aware he had reason to complain provides Mr M with a longer period than the six year rule. So, I will only be looking at Mr M's overdraft usage and the charges applied from July 2022.

I can still look into Mr M's complaint about overdraft charges outside this time if I'm satisfied the failure to complain earlier was due to exceptional circumstances. Mr M has told us that over the years he has suffered from ill health and was vulnerable following the breakdown of his marriage and he is only now able to make a complaint.

In coming to my decision I have to be fair to both Mr M and Barclays and what I have to decide is whether I think the circumstances outlined by Mr M would've *prevented* him from referring his complaint earlier had he chosen to do so.

I have thought carefully about everything Mr M has told us about his circumstances during the relevant period. And I can see that despite all he was going through he was able to request a DSAR in February 2018 and had previously got in touch with Barclays about his financial difficulties in November 2020. So although I sympathise with Mr M and his circumstances I can't say this prevented him from raising his complaint earlier.

I understand why referring the complaint may not have been a priority for Mr M. But I think he still could have raised his complaint about the overdraft charges before he did especially as it only takes an email or telephone call to do so.

And as such I don't think that exceptional circumstances apply so I am unable to look at Mr M's overdraft and the charges applied to it before July 2016.

Having carefully considered everything, I think that what Barclays has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have.

So where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

In this case after reviewing Mr M's statements, I'm in agreement with our adjudicator that by January 2017 it was evident Mr M wasn't managing his overdraft in a sustainable way and hadn't seen or maintained a credit balance for a number of months and his overdraft wasn't reducing.

Barclays has agreed to settle Mr M complaint in-line with this finding and Mr M will be 'refunded' all of the interest, fees and charges caused by the overdraft facility. I understand Mr M would like to be refunded all the charges directly rather than having this set off against the outstanding balance of his overdraft as he believes that as the account was the subject of a DRO that has come to an end, that this debt has now been discharged.

But although Barclays can no longer pursue Mr M for his overdraft debt, it does have the right to set off closely connected debts. This means Barclays can deduct from what it owes Mr M, money that Mr M owes it as the overdraft charges refund is connected to the same overdraft account on which there is an outstanding debt. And I don't think it would be fair or reasonable for Mr M to receive the funds directly when there is still an outstanding balance to Barclays.

So bearing in mind all of this, I'm satisfied that what Barclays has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Mr M to decide whether he now wishes to accept Barclays's offer.

My final decision

For the reasons I've explained, I'm satisfied that what Barclays Bank UK PLC has already agreed to do to put things right for Mr M is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2023.

Caroline Davies
Ombudsman