

The complaint

Mr C has complained that Barclays failed to recognise that he was using his substantial overdraft facility to gamble via high-risk investment platforms.

Background

Mr C has had a current account with Barclays since the early 1980s. It currently has an exceptionally large overdraft facility of £50,500, which Mr C has been using to fund a serious and long-term gambling addiction. Mr C believes that Barclays enabled him to build up enormous debt, as well as lose his life's savings, by not querying why he was so reliant on his overdraft, and why large deposits were regularly being transferred to a single spread betting website. Mr C believes Barclays has failed in its duty to protect him as a vulnerable consumer.

Barclays has said that Mr C was managing his account well and within the terms and conditions. While it accepts that he did have a large overdraft limit it says the account was properly maintained and there were no obvious signs that Mr C was becoming financially vulnerable. Therefore, as it didn't think it missed any indication that Mr C was having problems managing his account, it didn't uphold his complaint.

Unhappy with Barclays response Mr C brought his complaint to our service. I issued a provisional decision on the complaint on 26 March 2024. In it I said that Barclays had failed under the duties set out by the regulator to monitor Mr C's accounts for signs of potential or actual financial harm and said the bank should refund all of the charges linked to the overdraft facility from December 2016 onwards. I also said Barclays should pay Mr C £750 in compensation for the distress and upset caused by its failings. I asked that both parties respond to the decision by 24 April 2024 with any additional comments or evidence they wanted me to consider after which time I would revisit the complaint.

Both Barclays and Mr C replied to the provisional decision accepting its findings and confirming they had nothing further to add. For those reasons my opinion on the complaint remains the same. For the sake of clarity, I will repeat those findings here.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Due to the length of time that has passed I'm unable to consider the lending decision made by Barclays when it increased Mr C's overdraft facility to £50,500. This is because it's time barred under our rules. Therefore, this complaint is only considering the account from December 2016.

That means that the only thing I can consider is whether or not Barclays did enough to support Mr C, or whether it failed to pick up on clear signals that he wasn't managing his account well and was at risk of extreme financial harm.

Barclays has confirmed that it didn't review Mr C's overdraft usage prior to his complaint in 2023. And it seems it took a further nine months for the review to happen after the complaint had been responded to. I find this very difficult to understand as there are long standing obligations on credit providers, in particular overdraft providers, to monitor accounts for any indication of financial difficulty. The regulator, the Financial Conduct Authority ("FCA"), sets out all the rules credit providers need to adhere to in the Consumer Credit sourcebook (CONC).

CONC 5D.2.1 states:

A firm must establish, implement and maintain clear and effective policies, procedures and systems to:

(1) monitor and review periodically the pattern of drawings and repayments of each of its customers under an arranged overdraft or an unarranged overdraft, and other relevant information held by the firm; and

(2) identify, by reference to an appropriate collection of factors, any customers in respect of whom there is a pattern of repeat use, and then sub-divide those customers into the following two categories:

(a) customers in respect of whom there are signs of actual or potential financial difficulties;

(b) all other customers who show a pattern of repeat use

That provision, which is specific to overdraft usage, has been in CONC since December 2019. However, prior to its insertion CONC 6.7.2R stated:

(1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

And CONC 6.7.3 states:

The action referred to in CONC 6.7.2 R should generally include:

(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

[Note: paragraph 6.16 of ILG]

(2) providing contact details for not-for-profit debt advice bodies.

[Note: paragraph 6.2 (box) of ILG]; or

(2) where a Debt Respite moratorium is in effect for the customer's debt for the purposes of CONC 6.7.2R, complying with its obligations pursuant to the moratorium, with respect to that moratorium debt.

So, I'm satisfied that there were existing regulatory requirements on Barclays, long before 2023, to monitor Mr C's account to ensure he was maintaining it properly. And that the rules stated Barclays needed to check the overdraft facility wasn't being misused or leading Mr C to financial harm.

That leads me to how Mr C was managing his overdraft facility and whether or not there were clear signs of actual or possible repayment difficulties.

Overdraft facilities can be recalled at short notice by lenders and so it's important that upper limits don't exceed what someone can comfortably repay within a reasonable period of time. By December 2018, the point at which our investigator upheld the complaint, Mr C was already £49,000 overdrawn. Over the course of the previous year, he had only managed to get his account into credit and out of the overdraft for approximately nine days in total. So, there is no doubt in my mind that he was absolutely showing signs of someone who was experiencing actual or possible repayment difficulties.

Barclays has said that during this time it sent automated letters to Mr C about the charges he was paying for the facility. These would have invited Mr C to speak to the bank if he had any questions or concerns. Because he didn't phone the bank after receiving the letters Barclays doesn't think it did anything wrong as it believes the onus was on Mr C to contact it. I disagree. In the first place I don't think a letter that highlights the cost of the facility is the same thing as something which indicates you may be misusing the facility. And I think the bank should have been in contact with Mr C about removing the facility, or at very least reducing it to a more manageable upper limit. And of course, Barclays should have sign posted Mr C to adequate support.

I appreciate the bank has said Mr C didn't tell it he was spending compulsively but one look at his statements would have allowed Barclays to understand what was going on. Mr C was using the same high risk investment website and transferring hundreds, sometimes thousands of pounds into it on a near daily basis. I don't accept that the bank was unable to identify him as potentially vulnerable once it had properly reviewed his spending pattern.

So, I agree with the findings of our investigator and think that by December 2018 it was beyond doubt that Mr C was struggling to manage his account properly and was showing clear and obvious signs of financial insecurity. However, I think this pattern was apparent before December 2018, which is why I'm proposing Barclays refund all the interest and charges associated with Mr C's overdraft facility from December 2016.

I say this because by December 2016 I think it was already clear that Mr C wasn't managing his overdraft facility well and therefore Barclays should have contacted him to offer support and assistance as per the regulations set out in CONC.

Looking at Mr C's account statements I can see that in December 2016 he started the month overdrawn by over £25,200 and finished the month overdrawn by over £43,800. In January 2017 the balance, which started with the overdrawn balance from the previous month, ended up overdrawn by nearly £31,000. This pattern continues throughout the entirety of 2017, with Mr C starting and finishing each month overdrawn somewhere between £30,000 and £46,000. In October 2017 he managed to end the month in credit by £1,157.92 but finished the month overdrawn by nearly £20,000 so I don't think this is evidence that he was in a position to get the account back into good order.

Barclays failed to follow the rules set out in CONC. It should have monitored Mr C's account for evidence of potential or actual financial harm. If it had done that it would have been apparent very quickly that Mr C was at risk of serious and devastating harm. I think it should have engaged in conversations with Mr C in 2016 about removing the facility and repaying the debt owed before he lost any more money.

Putting things right

Therefore, I'm upholding Mr C's complaint and asking Barclays to refund all the interest and charges linked to the overdraft from Mr C's account from December 2016 onwards. Mr C does have an outstanding balance of approximately £45,000 on his account and Barclays can offset any refund due to him against this debt.

Barclays should also pay Mr C £750 compensation in recognition of its failures to offer support to a vulnerable consumer and the impact that failing has had on him.

My final decision

For the reasons set out above, and in my provisional decision from 26 March 2024, I'm upholding Mr C's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 May 2024.

Karen Hanlon
Ombudsman