

The complaint

Mr H is complaining about Barclays Bank UK PLC because he says it lent to him irresponsibly by granting him a loan he couldn't afford to repay.

What happened

Mr H had overdraft facilities and a credit card with Barclays. On 2 November 2017, it gave him a loan for £9,900 over a term of five years with an annual interest rate of 4.793% and a monthly repayment of £185. Mr H says he was contacted by Barclays about taking the loan and the stated purpose was to consolidate existing debt.

Once the loan was finalised, Mr H repaid the above overdrafts in full and the remainder was used to clear his credit card. But these facilities remained in place and Mr H soon began using them again, building up further debt in the process.

Barclays didn't uphold the complaint. It said it carried out appropriate affordability checks that showed the loan was affordable, noting the monthly repayments were lower than those associated with the debts it was used to clear. While Mr H then went on to build up further debt using his overdraft facilities and credit card, Barclays said it wasn't responsible for that. It also said that Mr H could have asked for these facilities to be removed when the loan was granted if he'd wanted to.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld. My reasons were as follows:

Before lending to Mr H, Barclays was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- *Did Barclays complete reasonable and proportionate checks to establish that Mr H would be able to repay the credit in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

The rules, regulations and good industry practice in place at the time the loan was approved required Barclays to carry out a proportionate and borrower-focused assessment of whether Mr H could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Barclays had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr H.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;*
- the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;*
- the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

To the extent that the loan was to be used to clear existing debt and thereby reduce Mr H's monthly payments, I agree it improved Mr H's immediate position and was potentially beneficial. But I'm also conscious that by not removing his overdraft and credit card facilities at the same time, Barclays effectively increased the credit available to him considerably. Given the size of the loan and substantial monthly repayments over a protracted period, I think there was an onus on Barclays to conduct comprehensive affordability checks before approving this amount of additional credit.

Barclays has provided a copy of its income and expenditure assessment, which it believes shows the loan was affordable. After carefully reviewing the information Barclays did have, I think there were factors that should have prompted it to carry out further checks before approving further credit for Mr H and I don't agree the affordability assessment was reasonable and proportionate in this case.

In particular, I'm mindful that the statements for Mr H's Barclays accounts show he was consistently overdrawn in the months before the loan with a combined negative balance of around £2,500 and actually exceeded his limit on at least one occasion. In addition, he had extensive debt on his credit card - he paid over £7,000 to clear the balance – and, if what Mr H tells us is correct, I understand Barclays had recently reduced his credit limit. Presumably that would have prompted by concerns over the affordability of the previous limit.

Barclays also says it obtained information from credit reference agencies but hasn't provided this to us and I'd encourage it to do so if it wishes to continue defending this complaint. But from the information I do have, it's not clear this would support the decision to grant Mr H additional lending. In particular, Mr H has told us he was already heavily indebted to the tune of £60,000, which was considerably higher than his annual income at the time. He's also told us he had a number of revolving credit accounts that were on introductory interest rates and the monthly repayments were set to rise.

I can't know exactly what further checks Barclays might have carried out at the time, but I think a full consideration of Mr H's actual income and expenditure would have been reasonable. So we've obtained copies of bank statements for his main current account (with another bank) for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of these statements shows the account was consistently overdrawn up to his limit of £3,300 and appears to have been living beyond his means. When this information is taken into account with everything else Barclays knew about his situation, I think it should have concluded that it wasn't appropriate to grant further credit to Mr H.

As I've already acknowledged, the loan was intended to be (and was) used to repay existing debt and to this extent was beneficial for Mr H. So I'm not concluding that Barclays was wrong to approve the loan for debt consolidation purposes. But where I believe it did act inappropriately was in not removing his existing overdraft and credit card facilities. By not doing this, it effectively extended Mr H further credit of almost £10,000 that I think the evidence shows he couldn't afford to repay.

I understand that Barclays couldn't have known Mr H would go on to use his overdrafts and credit card again so quickly, and I understand this may have coincided with him losing his job, which nobody could have foreseen. But that doesn't change the fact that it was unfair for Barclays to leave open credit facilities that weren't affordable.

In summary, I think the decision to grant the loan for Mr H was reasonable in view of its intended purpose. But I think Barclays should have closed the overdraft and credit card facilities at the same time and it's for this reason that I'm currently proposing to uphold this complaint.

Mr H accepted my provisional decision. Barclays said it didn't agree with my decision but didn't provide any further comments and confirmed it would settle the complaint as I proposed.

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 neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously. Although there are two points I'd like to clarify:

- One of the accounts with an overdraft is in joint names. We've been told that Mrs H agrees to the proposed changes to the account, but Barclays may wish to clarify that with her directly before paying any settlement in respect of that account only.
- Mr H does have a separate complaint about the overdraft, which pre-dates the loan. That complaint will still need to be investigated but, if it's upheld, he won't be entitled to a further refund of any sums already refunded in settlement of this complaint.

Putting things right

The principal aim of any award I make must be to return Mr H to the position he'd now be in but for the errors or inappropriate actions of Barclays in not removing his overdraft and credit card facilities when the loan was granted. But that's not entirely possible here as the borrowing he went on to make using those facilities can't be undone.

Because I don't think the overdraft and credit card facilities should have remained available to Mr H, I don't think it's fair for him to pay interest or charges on the amount borrowed after he used the loan to clear them. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Barclays should now take the following steps in respect of each overdraft facility and Mr H's credit card

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the balance was cleared using the loan.
- If the reworking results in a credit balance, this should be paid to Mr H with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Barclays to deduct tax from any interest. It must provide Mr H with a certificate showing how much tax has been deducted if he asks for one. If Barclays intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess the amount borrowed, Barclays should arrange an affordable payment plan with Mr H for the shortfall.
- Remove any adverse information recorded on Mr H's credit file relating to this credit after the balance was cleared using the loan, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. Subject to his acceptance, Barclays Bank UK PLC should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 June 2024.

James Biles
Ombudsman