

Complaint

Mrs P has complained that Barclays Bank UK PLC (trading as “Barclaycard”) irresponsibly provided a credit card as well and subsequent credit limit increases to her.

She says that Barclaycard would have realised that it shouldn’t have provided this credit card or the limit increases to her had it carried out credit checks and asked her for information on her circumstances. She’s also said that this credit caused her to experience severe financial trouble which resulted in her falling behind on her mortgage, council tax and energy payments.

Background

Barclaycard initially provided Mrs P with a credit card, which had a limit of £5,250.00, in December 2007.

Barclaycard subsequently offered the following limit increases on the corresponding dates set out below:

Date	Existing limit	Limit increased to
May 2010	£3,680.00 ¹	£5,680.00
December 2010	£5,680.00	£8,080.00
August 2011	£8,080.00	£10,480.00
April 2012	£10,480.00	£12,000.00
April 2014	£12,000.00	£13,000.00
June 2015	£13,000.00	£16,000.00 ²

In February 2023, Mrs P complained saying that the credit card and the limit increases Barclaycard provided were unaffordable and caused her continued financial difficulty as the repayments resulted in her struggling to make payments to her mortgage, council tax and energy providers.

Barclaycard did not uphold Mrs P’s complaint. This was because it considered that Mrs P’s complaint was made out of time and therefore it wasn’t required to consider it. Mrs P was dissatisfied at Barclaycard’s response and referred her complaint to our service.

One of our investigators reviewed what Mrs P and Barclaycard had told us. He eventually reached the conclusion that he hadn’t seen enough to be persuaded that Barclaycard failed to act fairly and reasonably either when initially providing Mrs P with her credit card or when providing the credit limit increases. So the investigator didn’t recommend that Mrs P’s complaint be upheld.

Mrs P disagreed with the investigator’s conclusions and asked for an ombudsman to look at

¹ Barclaycard reduced Mrs P’s initial credit limit from £5,250.00 to £3,680.00 in March 2010.

² Barclaycard decreased Mrs P’s credit limit from £16,000.00 to £14,650.00 in February 2017 and then from £14,650.00 to £12,000.00 in July 2020.

her complaint.

My findings

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

The role of the Financial Ombudsman Service

Bearing in mind Mrs P's response to our investigator's assessment, I do think it's important for me to set out that the Financial Ombudsman Service was set up by Parliament to resolve complaints between firms that provide financial services and their customers.

The Financial Ombudsman Service is not a consumer protection organisation and it resolves disputes impartially without representing either side. Although as it has the power to put things right where something went wrong, I can understand why a consumer may believe that consumer protection is part of its role.

Furthermore, it may also help for me to explain that in determining what is fair and reasonable in all the circumstances of the case, I have to reach my decision on the balance of probabilities. When considering events that are historic and the evidence is incomplete, as it is here, I have to consider what is more likely than not to have happened in light of the evidence that is available. It is only fair and reasonable for me to uphold a complaint where there is sufficient evidence to demonstrate that not only did things go wrong, but the customer complaining clearly lost out as a result of this.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Barclaycard has argued that Mrs P's complaint was made too late because she complained more than six years after the decisions to provide the credit card and all of the credit limit increases, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mrs P and Barclaycard was unfair to Mrs P as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mrs P's complaint. Given the reasons for this, I'm satisfied that whether Mrs P's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs P's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Mrs P has not only complained about the respective decisions to lend but has also alleged that payments she had to make to Barclaycard unfairly impacted upon her ability to make her mortgage and other priority bill payments.

I'm therefore satisfied that Mrs P's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Barclaycard was unfair to her. I acknowledge Barclaycard has reiterated its disagreement to us being able to look at Mrs P's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mrs P's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs P's complaint can be reasonably interpreted as being about that her lending relationship with Barclaycard was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Barclaycard) and the debtor (Mrs P), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mrs P's complaint, I therefore need to think about whether Barclaycard's decision to lend to Mrs P and increase her credit limits, or its later actions resulted in the lending relationship between Mrs P and Barclaycard being unfair to Mrs P, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs P's relationship with Barclaycard is therefore likely to be unfair if it didn't carry out reasonable enquiries into Mrs P's ability to repay in circumstances where it doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Barclaycard didn't then remove the unfairness this created somehow.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mrs P's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the

requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Barclaycard's decision to provide Mrs P with a credit card which had a credit limit of £5,250.00 in December 2007

Barclaycard says it initially agreed to Mrs P's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Mrs P would be able to make the monthly repayments required. On the other hand, Mrs P says that the credit card, as well as the subsequent limit increases, were unaffordable and caused ongoing hardship as she was unable to pay her priority bills because of the payments that she had to make to Barclaycard.

I've considered what the parties have said.

What's important to note is that Mrs P was provided with a revolving credit facility rather than a loan. This means that to start with Barclaycard was required to understand whether Mrs P could repay £5,250.00 within a reasonable period of time.

Barclaycard has been able to provide some information from the checks that it carried out before initially agreeing to provide a credit card to Mrs P. The information that has been provided appears to show that Mrs P declared she was in receipt of an annual income of £30,000.00 at this stage.

The credit check also shows that Mrs P had total unsecured credit balances of around £7,700.00 of which around £3,250.00 was on existing credit cards. Furthermore, Mrs P didn't have any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") recorded against her at this time.

I also need to consider this lending decision in relation to the obligations and expectations that were in place on a lender at this time. Mrs P's credit card was initially provided in December 2007. This not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came into effect in April 2014, it also predates the main guidance on irresponsible and unaffordable lending that was introduced by the previous regulator of consumer credit (the Office of Fair Trading ("OFT")) in March 2010.

That's not to say that there weren't any or standards or expectations which lenders were expected to adhere to at the time Mrs P applied for a Barclaycard. Indeed, Barclaycard was a subscriber to then British Bankers' Association's Banking Code ("banking code"), which was in place. But it would be fair to say that even taking into account the content of the banking code, a lender's obligations and responsibilities were not the same as they are now.

For example, the concepts of borrower focused assessments and proportionate checks were not part of the expectations or requirements in December 2007.

As a result of being a subscriber to the banking code, at the time of Mrs P's initial application for a credit card, what Barclaycard agreed to do, was assess whether it felt that she would be able to repay any lending. Bearing in mind Mrs P's declared income, the amount of existing unsecured credit in her name, as well as Mrs P not having any significant adverse credit information recorded against her at the time, I cannot reasonably conclude that Barclaycard acted unfairly in providing Mrs P with her credit card.

Barclaycard felt that Mrs P could repay £5,250.00 within a reasonable period of time and I've not seen anything which clearly shows me that this wasn't the case. As this is the case, I've not been persuaded that Barclaycard's decision to provide Mrs P with her credit card was unfair or that it resulted in unfairness going forward.

Did Barclaycard carry out reasonable and proportionate checks before deciding to offer the credit limit increases to Mrs P?

As I've explained in the background section of this decision, Barclaycard increased Mrs P's credit limit on six occasions until it eventually reached £16,000.00 in April 2015. These limit increases took place between May 2010 and June 2015.

The first four of these increases were provided after the OFT had published its Irresponsible Lending Guidance ("ILG") in March 2010. By this stage, the ILG set out that a lender was required to carry out proportionate checks into a customer's circumstances in order to reach a reasonable determination on whether they could repay any credit provided.

Furthermore, while the final two increases were provided to Mrs P after the regulation of consumer credit (and the carrying out of credit regulated activities) had passed to the FCA, it's fair to say that other than the change of regulator, there was little that altered in terms what was expected of a lender prior to lending. And a lender was still required to carry out proportionate checks into a customer's circumstances in order to reach a reasonable determination on whether they could repay any credit provided.

Barclaycard hasn't been able to provide details of any credit checks that it carried out before offering to increase Mrs P's credit limit. It has only been able to provide information on Mrs P's other credit commitments from October 2015 onwards, which is sometime after all of the lending decisions I'm looking at took place. Given the length of time that has passed since any checks would have been carried out and it wasn't mandatory to carry them out in the first place, I've not drawn any adverse inferences from Barclaycard be able to provide the results of any credit checks.

Furthermore, I've not seen anything to suggest that Mrs P had any significant adverse information such as defaulted accounts or CCJs recorded against her at the time of these limit increases. The information Mrs P has provided shows she had defaulted accounts in 2018 – although I accept it's possible that this is simply because the copy of the credit file she has provided only goes back six years, rather than it definitively being the case that Mrs P first defaulted in 2018. Nonetheless, I've not seen anything to show that Mrs P had any defaulted accounts between May 2010 and June 2015.

In any event, whether or not Mrs P did have defaulted accounts at the respective times, as Mrs P was being provided with limits of between £5,680.00 and £16,000.00, I would have expected Barclaycard to have found out more about Mrs P's income and expenditure before providing these credit limit increases. As Barclaycard has been unable to evidence having

done this, I'm not in a position to say that the checks it carried out before it increased Mrs P's credit limit on any of the occasions that it did were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or significantly increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

Mrs P has provided us with some information in respect of other credit cards that she had during this period. She's also provided us with the transaction history for an account, which while it shows that there were payments to and from it, there is no description of where any credits were from and where any payments were being made to.

So the reality is that the information I've been provided with does not contain any indication of Mrs P's income, or her committed expenditure, which I think that Barclaycard needed to find out about when offering these limit increases. Therefore, this information does not show me that when Mrs P's committed expenditure was deducted from her income she did not have the funds to make the payments she could have been required to make. And I've simply not been provided with sufficient evidence to reasonably conclude that these limit increases were as a matter of fact unaffordable for Mrs P.

I appreciate that Mrs P has said it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Barclaycard isn't required to have retained all of this information either and it was Mrs P that chose to make her complaint in February 2023. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Mrs P has said about not being able to make the increased monthly payments required should she owe the full amount of the new credit limits. I can't clearly see that Mrs P's finances were worsening in the way she has said either.

For the sake of completeness, I would also add that I'm mindful that these credit limit increases were offered over a period of seven and a half years. Furthermore, while I've seen what Mrs P has said about the payments to this credit card resulting in her being unable to make her payments to priority bills such as her mortgage payments, council tax and energy bills, Barclaycard has provided details of the monthly payments that Mrs P was able to make, on this credit card, from April 2012 onwards.

Having considered this payment history, particularly as Barclaycard was entitled to consider its previous lending history with Mrs P, it does show Mrs P was making much larger payments to her Barclaycard than she was obliged to make, from the period after the increase to £12,000.00 was granted and before the increases to £13,000.00 and £16,000.00 were granted.

For example, in 2012 Mrs P made a payment of £3,583.97 in September and then £1,906.71 in December. In 2013, Mrs P made payments of £2,005.14 in February; £3,024.26 in April; £1,731.75 in May; £10,513.22 in June; £1,657.07 in July; £3,167.12 in September; and £1,433.58 in November.

Finally, in February 2015, Mrs P made a payment of £9,178.74. Not only were these payments in excess of what Mrs P was contractually obliged to pay, but it's also fair to say

that these were more than enough to clear a balance of £16,000.00 within a reasonable period of time, if this was what Mrs P went on to owe.

I do appreciate that Mrs P has argued that it was, in itself, irresponsible to provide her with credit limits of up to £16,000.00. However, I'm afraid that this isn't a case where I can reasonably say that the limit increases and Mrs P's account usage ought reasonably to have shown Barclaycard that Mrs P's indebtedness, on her credit card, was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Barclaycard to conclude that the facility had become demonstrably unsustainable for Mrs P either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Mrs P, I've not been persuaded that proportionate checks would have shown that Barclaycard that it shouldn't have offered the credit limit increases on this credit card. Furthermore, I don't think that Mrs P's pattern of borrowing meant that Barclaycard offered the credit limit increases in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either.

As this is the case, I've not been persuaded that Barclaycard's decisions to offer Mrs P her credit limit increases were unfair, or that it resulted in unfairness going forward either.

In reaching my conclusions, I've also noted that Mrs P did eventually go on to have difficulty making the payments on her credit card. As this was sometime after the limit increases took place, I can't say that this, in itself, is demonstrative of the fact that the limit increases shouldn't have been provided in the first place.

Nonetheless I've also considered Barclaycard's actions when Mrs P fell into arrears and it became aware she was having difficulty making her payments. In doing so, it looks like Barclaycard made reasonable attempts to set up payment arrangements with Mrs P in order to clear her arrears.

Indeed, as part of the correspondence Mrs P supplied it looks like Barclaycard took steps to try and ensure that any repayment plan had payments which Mrs P could make as well. Therefore, from the information I've been provided with, it seems to me that Barclaycard did attempt to exercise forbearance in accordance with its regulatory obligations when it became aware of Mrs P's difficulty making her payments.

Overall, and based on the available evidence I don't find that the relationship between Mrs P and Barclaycard was unfair to Mrs P. I've not been persuaded that Barclaycard created unfairness in its relationship with Mrs P by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or the credit limit increases. Based on what I've seen, I don't find Barclaycard treated Mrs P unfairly in any other way either.

So overall and having considered everything, while I can understand Mrs P's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs P. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 19 February 2025.

Jeshen Narayanan
Ombudsman