

## **The complaint**

Mr J complains that Barclays Bank Plc trading as Barclaycard (Barclays) haven't provided him with data he's requested. And they've prevented him acquiring information in support of his complaint.

## **What happened**

In November 2021 Mr J said he received a letter promoting the activation of Barclaycard CashBack rewards. Mr J said as he had signed up to Mail Preference Service (MPS) he hadn't expected to receive any marketing. Mr J complained to Barclays to understand why this had happened as he'd opted out of receiving this type of communication from them. And he questioned the lawful basis for such communication and how any consent would have been captured. Barclays said they couldn't respond as the channel used by Mr J wasn't secure.

As Mr J wasn't satisfied with their response, he complained to the Information Commissioner's Office (ICO). After investigation they said Barclays hadn't responded to Mr J's right to be informed request. They asked Barclays to investigate Mr J's complaint and gave them a deadline of May 2022. Mr J said Barclays didn't comply with the ICO and complained further. The ICO said that it appeared in this case that Barclays had relied on legitimate interests and therefore did not require consent. But it was still their view that the letter was marketing and Barclays did not comply with their obligations. ICO said no further action was to be taken.

In April 2022 Mr J asked Barclays to provide digital copies of all correspondence sent to him in response to all his data protection concerns. In May 2022 Mr J said Barclays had failed to provide the information he'd requested and by so doing this was preventing him from bringing his complaint to us. In June 2022 Barclays sent Mr J emails with a link to the information he requested. But despite several attempts Mr J couldn't access the data through the link as it kept giving him an error message. So, Mr J said as Barclays had still failed to provide the requested information and had continued to track his data without his consent. He returned his complaint to the ICO.

In August 2022 Barclays said they'd tried to resolve the issue through their technical team but asked Mr J if they could provide the data in an alternative format which he agreed to. In the same month Mr J said he contacted Barclays to update his address details as he'd moved. And in agreeing to the new format, he asked Barclays to make sure they didn't send the data to his old address, and again gave them his new address details.

In December 2022 Mr J complained to Barclays through their webchat service as he still hadn't received the requested information. Barclays responded in January 2023 saying that that data hadn't been sent and offered him £100 compensation as his address details hadn't been updated after he told them about it in August 2022. Mr J again raised this with the ICO. Later the same month Barclays said they'd sent the data requested by Mr J to his present address in a USB format.

But Mr J found that Barclays had sent correspondence to his old address. In February 2023 Barclays accepted that this had happened, they said the information had been sent postally as they'd had issues sending the information digitally. Barclays said the data would be sent digitally and offered Mr J a further £200 for the distress and inconvenience this had caused. They confirmed Mr J's address details had been correctly updated. In March 2023 the ICO found that Barclays hadn't complied with the accuracy principle and also the security principle set out in UK GDPR as they'd sent the data to the wrong address. But said the data had been password protected. They said Barclays had confirmed to them that they'd re-sent the information to Mr J's current address. And also confirmed Mr J's contact details including his address was accurate and up to date.

Mr J said whilst he'd received some data he hadn't received what he'd asked for, as he'd wanted Barclays to provide details about the amount of correspondence and the categories of data sent to his old address. He said Barclays had included voice recordings that he hadn't requested. He also said that mail was being delivered from Barclays to a similar address to his. And that his neighbour had been asked to sign for receipt of mail addressed to him. Mr J was also unhappy with Barclays responses as the dates on the correspondence and the date of delivery seemed to be manipulated in response to the ICO complaint.

Our investigator said that the ICO had investigated Mr J's complaint. But that there were still some outstanding information requests that Barclays needed to address. He said Mr J had experienced further distress and inconvenience in trying to resolve these issues and said Barclays should compensate Mr J a further £150.

Mr J didn't agree he said our investigator had been selective in the issues he addressed. And he asked for an ombudsman to decide.

### **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 Mr J has been made aware, it's not our service, but the ICO that administers the regulations concerning data protection and access requests. He's confirmed that the issues about marketing and data capture had been raised along with Barclays failure to comply with his information request. I can see that the ICO has investigated and addressed these issues.

The ICO is the body who deal with data protection matters in the UK. And because they deal with complaints raised by consumers about businesses, they are a comparable Alternative Dispute Resolution (ADR) entity to the Financial Ombudsman Service. Given the scope of this part of Mr J's complaint, and the remit of the ICO, I'm satisfied that they are the appropriate organisation to deal with the issues he's raised. And as Mr J has already raised his concerns with them I won't be commenting further about them. So, this part of the complaint hasn't influenced the outcome I've reached.

In reaching my decision I won't be making a finding about Barclay's compliance with GDPR as outlined above as that has been the subject of an ICO investigation. Our role is to determine whether a business has treated a customer fairly and reasonably with the circumstances of a complaint. In this case this turns on whether Barclays has responded reasonably to Mr J's requests for information. I want to re-assure Mr J that I've read all his comments and, although I won't comment on everything he's said, I've taken the relevant comments into account.

I want to recognise the impact this complaint has had on Mr J. I can see he's concerned that Barclays hasn't provided the information he's asked for. And they've sent correspondence to an address he no longer lives at. He's also concerned correspondence has been delivered to a similar address or to a neighbour which he considers has put his personal data at risk. But for me to say Barclays had done something wrong, I'd need to see that Barclays had failed to respond to his requests for information and whether they've placed Mr J's account at risk.

Barclays said they've responded to Mr J's ICO complaint(s) and his subject access requests. And that while Mr J says there is still some information missing, their DSAR team has said all the data has been sent to him. Barclays as part of their response to the complaint Mr J raised with the ICO have acknowledged their failings and apologised for it. And have to date offered Mr J £325 in compensation for the distress and inconvenience caused to him, which Mr J has told us he didn't accept. And in October 2023 Barclays responded to Mr J's "right to rectification" request and referred Mr J to the ICO if he disputed what they'd said.

But Mr J has raised further issues with the way Barclays has administered his information request. And he is concerned that his request for information hasn't been fulfilled. Mr J has referred to various legislation that he says Barclays has breached, and I've taken this into account. Mr J said as Barclays has breached the contract he'd with them they should refund all the interest that he'd been charged. But a breach, in itself, doesn't give an automatic right to compensation. In deciding what's fair and reasonable in all the circumstances and what represents fair compensation, I have to decide what impact any failings by Barclays has had on Mr J.

I've considered all the various aspects of Mr J's complaint to determine those that have been considered by the ICO. While there is a considerable overlap of concerns surrounding Mr J's complaint points, I can see that while he complained both to us and the ICO about further handling issues around August 2023, the ICO haven't considered these specific points as Barclays said they were being dealt with by this service. I understand Mr J's frustration as he wants all his complaint points considered. But I hope from my explanation he understands why I've only considered certain points.

In August 2023 I can see that Barclays sent their response to the ICO complaint about the data requested by Mr J in the format of a USB to his present address. The accompanying letter was headed "*Response to ICO complaint IC \*\*\*\*\*-\*\*X2*" this said that Barclays had sent data to a previous address and that this might have included data Mr J hadn't yet received, so to make sure he'd all the related data they'd sent it again to his present address on an encrypted USB that was password protected. They also said the password would be sent to him separately. But despite both letters being dated the same 17 August 2023 the password letter was sent by Barclays to Mr J's previous address. Because of this Mr J has asked Barclays to send him details of all correspondence they'd sent to his old address, but I can't see that Barclays has responded to Mr J's request. As Mr J told Barclays of his new address details in August 2022, I'd expect Barclays to send Mr J details of any correspondence sent to his former address from the date he notified Barclays in August 2022. Or provide reassurance to Mr J that other than the data they'd already sent to him there wasn't any other correspondence that had been incorrectly sent.

I can understand Mr J's concerns about the security of his data given the password was sent to an address he was no longer living at. While the incorrect address was a failing by Barclays I don't think this caused a security risk to Mr J as the USB was sent to his correct address so the two items we're apart.

Mr J has said the way Barclays has communicated with him and how they've administered his data is in breach of their contract and he thinks this justifies a refund of all the interest

charged on his account. While I accept that Barclays' communication with Mr J has been below the standard I would expect, and he has been caused inconvenience and upset by the way they've handled his requests. Along with his concerns about the security of his data as the password was sent to his old address. But I can't say there has been any financial detriment to Mr J. So, to put things right Barclays should compensate Mr J for the distress and inconvenience that's been caused.

As outlined above Barclays have to date offered Mr J £325 in compensation for the distress and inconvenience caused to him. But he has experienced further distress and inconvenience caused by Barclays sending correspondence to a previous address so I agree with our investigator Barclays should pay on top of this a further £150 in compensation for the additional distress and inconvenience caused to him.

Our service isn't able to punish a business or dictate to it how it should operate. If our service was to see a pattern in complaints we received, then this may be something we discuss with the business involved – and possibly the Financial Conduct Authority (FCA), the regulator if we determined it needed to be escalated. It wouldn't be awarded as the outcome of an individual complaint, and I haven't seen the need to instigate this process, based on this individual case.

I also note Mr J has raised concerns about Barclays amending dates on their letters to satisfy complaint outcomes. He says this as the letter in response to his ICO complaint was dated 17 August 2023 but he didn't receive the letter until 24 August 2023, and the post was noted as being sent through Royal Mail's guaranteed next day delivery. While I can understand his concerns its not unusual for business letters to be dated some days before their delivery as they have to actively move through a business' postal system which can take several days from production to issue. I've no reason to doubt the validity of the dates on the letters sent to Mr J from Barclays so I won't comment further about this. Neither will I comment about the delivery of or signing for post which has been correctly addressed as this would fall under the responsibility of the postal service.

I understand the frustration Mr J has experienced, and his concerns about how Barclays handle his data. I hope my decision will give him some reassurance that where we've been able to we've considered these to reach a fair and reasonable outcome.

### **My final decision**

I'm upholding this complaint. And ask Barclays Bank Plc to:

- Provide Mr J with details of any correspondence sent to his previous address after August 2022, or reassurance that he's already been provided with any such correspondence.
- Barclays to liase with Mr J as to his preferred method of delivery in respect to the above.
- Pay Mr J a further £150 – in total £475 in compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 January 2025.

Anne Scarr  
**Ombudsman**