

The complaint

Mr D is a sole trader. He complains about the way Barclays Bank UK PLC (Barclays) communicated with him during the conduct of their Know Your Customer review, (KYC). Mr D believes that during the process, when attempting to obtain information concerning his business, Barclays discriminated against him on the grounds of his disability and therefore, were in breach of the Equality Act 2010.

What happened

The background to the complaint is set out in my provisional decision dated 18 November 2024 which forms part of this decision.

I provisionally concluded that Mr D's complaint should be upheld:

In summary I said:

I start by clarifying that for the purpose of this provisional decision, I am only looking at Barclays' acts or omissions in relation to Mr D. So, whilst Mr D has helpfully set out the timeline of events from December 2021 onwards, I note that some of the events that are mentioned have already been the subject of a separate complaint to this service. That complaint has been determined finally. So, I make no further reference to it.

I'll come in a moment to the substance of my provisional conclusions. But before I do so, I'll first deal with Mr D's concerns about how Barclays responded when in January 2022 he first raised his concerns about their continued insistence on him ringing them.

Barclays have said they did look into the matter at the time. But as noted above, it was over a year later that they let Mr D know the conclusion they came to. Mr D's purpose in contacting the bank was to ensure the bank acknowledged it had made an error writing to him again with the same request as it did on 11 December 2021. And more importantly was taking steps to ensure it didn't happen again.

I can understand why Mr D would have felt let down by the bank's failure to respond despite chasing it. Although a response was subsequently received when in March 2023 the bank explained its conclusions, it was late in coming, and points to poor service by Barclays.

I come now to the much broader issue regarding the way Barclays conducted the KYC review itself.

To begin with, it's worth pointing out that since they are strictly regulated, banks in the United Kingdom are required to carry out certain actions in order to meet their legal and regulatory obligation. That involves conducting ongoing checks and monitoring of new as well as existing relationships with customers. Barclays chose to do this by way of the KYC review and to that extent, I do not think they did anything wrong when they decided to conduct this review in connection with S.

But as I've noted above, at the heart of this case is the way in which Barclays did so. More particularly, having regard to Mr D's testimony concerning the bank's treatment of him as a deaf person.

It's not disputed by either party that Mr D has a disability. The issue here is whether in light of that disability, Barclays treated Mr D fairly and reasonably when interacting with him. Mr D has complained that Barclays have failed to make reasonable adjustments for him. In particular, that in this regard, they have failed in their duty under the Equality Act 2010.

I've taken the Equality Act 2010 into account when determining this complaint – given that it's relevant law. But I've ultimately decided this complaint based on what's fair and reasonable. If Mr D wants a decision that Barclays has breached the Equality Act 2010, then he'd need to go to Court.

I've considered Barclays' representation that as soon as they knew of Mr D's disability, they desisted from requiring him to call the bank. But having regard to the chronology of events Mr D has shared with us, which Barclays haven't challenged, I don't agree with their representation.

Barclays were told about Mr D's communication needs on 21 December 2021. The exchange of messages that took place at the time confirm Barclays noted this. More to the point, they assured Mr D that going forward if the bank had any further questions, e-mail or post would be used.

Yet Barclays' letter of 11 January 2022 shows they hadn't complied with the promise made to Mr D in the 21 December 2021 exchange of messages. In light of this, by their action I'm satisfied that Barclays treated Mr D unfairly. Furthermore, I agree with the investigator that the bank's action caused Mr D distress and inconvenience.

This now brings me to what would be fair and appropriate compensation to award Mr D in the circumstances of this case.

As noted above, our investigator recommended £200 which Barclays have agreed to pay. However, Mr D doesn't think this goes far enough.

I've thought very carefully about the reason Mr D has given for that conclusion. Mr D recognizes our role is not to fine or punish Barclays. That's a matter for the regulator, the Financial Conduct Authority (FCA). However, I acknowledge that he has a wider objective in pursuing this complaint and his view of what the right amount of compensation should be is linked to that.

Mr D has told us that his wish is to secure a change in Barclays' procedures so that in future, he and other deaf customers would be spared the same experience. He's explained that he doesn't think this has been achieved by the investigator's recommendation for putting things right in respect of his complaint.

But our role is to consider the individual dispute. And where necessary, make appropriate recommendation to put things right for the individual complainant rather than for the benefit of complainants that may fall within the same category. Here too that would be a matter for the FCA.

And on the question of compensation itself, I also appreciate Mr D's representations that rather than have regard to our own parameters for determining what would be fair compensation for cases brought to us, we should have regard to the Vento bands which are used when assessing disability discrimination cases.

I am of course aware that Vento bands are used in claims that are successfully brought in Employment Tribunals under the Equality Act 2010. But as I've already made clear my role isn't to decide whether there has been a breach of the Act as this is something for the courts to decide.

So, whilst I mean no discourtesy towards Mr D, given that I'm assessing his complaint from the perspective of whether the bank has treated him unfairly and I'm satisfied it has, my role is then to decide the extent of the distress and inconvenience the bank's actions caused him. And then determine what would be fair compensation for him - in the circumstances.

So, now I turn to the distress and inconvenience caused to Mr D.

I have no doubt Mr D would have been upset to receive the bank's 11 January 2022 letter when in light of the exchange of messages on 21 December he wouldn't have anticipated receiving it. I am also persuaded Mr D was inconvenienced because on 15 January he then had to contact the bank again, this time to register his complaint about its actions to which Barclays took a year to respond. However, although the bank had erred in its earlier correspondence, after 15 January 2022, Mr D didn't receive further KYC letters asking him to ring the bank with information to enable them to complete the KYC review. So, there was no subsequent correspondence in relation to the matters affecting S that required Mr D to call the bank with further information.

Putting things right

I've already mentioned that our investigator recommended that Barclays pay £200 compensation to Mr D to take account of the distress and inconvenience caused to him. I would add that determining an appropriate award for distress and inconvenience can be difficult. But we base such awards on what we think has been the impact on the complainant. In the circumstances of this case, for the reasons I've given in the preceding paragraph, as well as having regard to our framework for considering compensation for distress and inconvenience - which can be seen on our website, I don't think £200 fairly reflects the impact on Mr D of the issues raised in this case. Rather I'm minded to recommend increasing the amount by a further £300 to £500 in total. Based on that increase I believe this would be a fair way to resolve this complaint

What happened since my provisional decision

Barclays accepted my provisional decision. But Mr D didn't and wrote with further detailed submissions. Those submissions largely expanded on the arguments that Mr D originally made. I summarise those I regard as the most salient as follows. According to Mr D, the ombudsman:

- hasn't explained his provisional decision by reference to statute and should do so;
- although acknowledging Barclays' error, nonetheless, has failed to direct them to make reasonable adjustments for him. This might for example include setting up an email channel of communication for him to use in place of the phone, not only for KYC purposes but also for any contact he or the bank may require going forward. In particular because Barclays are unlikely to improve their behaviour, unless forced by a specific direction from the ombudsman to make the reasonable adjustments he mentioned;
- has reached the confusing conclusion that he cannot give such directions to Barclays because they might be misinterpreted as having a wider application;

- is wrong to maintain that awarding compensation based on this services' view of what is "fair and reasonable" is preferable to that based on the Vento bands. Especially bearing in mind that being subjected to discrimination on the grounds of disability, causes a particular level and nature of distress;
- has given no statutory or other justification for placing this case within this services framework for assessing compensation as set out on our website. Reliance on the framework risks excluding from proper compensation, novel cases, such as this;
- ought to explain much more fully why he has taken the provisional view that an appropriate amount of compensation is a token £500, rather than an amount on the Vento band scale;

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.

I start by acknowledging how strongly Mr D feels about his complaint as demonstrated by the extensive submissions he's sent to us. And I want to assure him that I have considered all the points he has made. I mean no discourtesy in saying this, but in my decision, I won't on a point-by-point basis address or comment on those submissions. That is because in keeping with our role as an informal resolution service, and as our rules allow me to do, I will focus on the issues I find to be material to the fair outcome of the complaint. So, where I've omitted to comment on any specific point Mr D has made, it's not because I haven't considered it – I assure Mr D that I have. The reason I haven't commented is because I don't think I need to in order to reach what I think is the fair and reasonable outcome in this case.

I come now to the substance of my final decision.

I am satisfied Barclays treated Mr D unfairly in January 2022. Specifically, when on 11 January, they wrote to him asking him to call the bank when shortly before on 21 December 2021 Barclays noted that phone communication was difficult in light of Mr D's disability. More to the point, Barclays had assured him that they would communicate with him in writing and Mr D had every right to expect Barclays to adhere to that promise. As my provisional decision made clear, it was in light of that finding and the distress and inconvenience caused to Mr D that I recommended Barclays pay him the enhanced compensation that I did.

Having now considered Mr D's further representations, the specific issue that I have now to decide is a straightforward one – which is should Barclays be required to take any further steps to put things right.

Mr D doesn't think he's been appropriately compensated by the uplift in the amount of compensation I recommended, and I've thought carefully about the further steps he believes are needed to put things right for him.

To begin with, it's worth making a couple of general points, starting with my statutory obligations as ombudsman.

I am bound by a set of rules known as the Dispute Resolution Rules (DISP) which are derived from statute - the Financial Services and Markets Act 2000. Under those rules, my role is to consider the circumstances of the individual complaint that has been referred to this service and to determine that complaint on its individual merits. Where, I find for example that a financial business has made an error, then I'm required to give directions for putting

things right for the individual complainant, based on the overarching principle of what's fair and reasonable in the circumstances of the complaint. As I explained in my provisional decision, my role is not to give directions aimed at benefitting a category of complainants who might be affected by the issues raised in the complaint. My role is therefore clear and unambiguous.

Furthermore, a requirement that the financial business pays compensation may in my opinion be the appropriate remedy to put things right in the particular circumstances of the complaint. Unless of course the error complained about persists - in which event giving additional directions to prevent repeated occurrence might, additionally, be appropriate. But in the context of this complaint, I did not consider additional directions were necessary and I'll explain why.

I note it is Mr D's belief that after the bank's error on 11 January 2022, they also failed to take certain steps to put things right for him. He's explained the measures he believes would have been appropriate and I've noted them above. But more to the point, I note he doesn't think that without accompanying directions to Barclays to put his suggested measures in place, my recommended compensation alone, enhanced or otherwise, has the effect of actually putting things right for him.

It's worth bearing in mind that this complaint was brought to us against the background of the conduct by Barclays of their KYC review. After the bank's 11 January error, it didn't then write to Mr D with the same request or at all. Ultimately Barclays concluded their KYC review without requiring Mr D to speak to them which was the cause of his frustration and the reason he'd complained to Barclays.

Moreover, I can see that in their final response letter to Mr D dated 22 September 2023, Barclays assured him that they'd put appropriate markers on his profile so that going forward the conduct of the KYC review could be completed without a repeat of the bank's 11 January 2022 error. Subsequent events proved that to be the case. And Mr D doesn't dispute the bank's testimony that it did not send any further letters of the type sent on 11 January.

So, in connection with the bank's initial error when carrying out the KYC review, which led to Mr D's complaint being referred to this service in the first place, after 11 January 2022 there was no ongoing issue regarding the way Barclays communicated with Mr D that needed putting right by way of corrective direction. What that meant was the only issue for me to determine was the level of compensation that was appropriate to reflect the impact of the bank's 11 January 2022 error on Mr D.

I appreciate Mr D sees this case as having wider significance for him as well as other deaf customers of the bank. In other words, that his issues bring into play the Equality Act 2010 which he argues Barclays have breached. And in light of this, the remedies available to him under the Act - including compensation by reference to the Vento bands are those I ought to direct the bank to grant to him.

But as I've also explained to Mr D, if he wants a decision that Barclays have breached the Equality Act 2010, then he'd need to go to Court to obtain that ruling. In all likelihood the court will be better placed to consider the unique nature of disability discrimination that Mr D has described. And in addition, whether beyond the bank's KYC review process which I considered, Barclays need to take further steps by way of reasonable adjustments to accommodate his disability.

I am satisfied that I have considered Mr D's KYC complaint against the bank in accordance with our rules and found Barclays to have treated him unfairly. More to the point, I came to

that conclusion, by having regard to our fair and reasonable remit which is the framework within which as ombudsman I must operate.

Putting things right

Having determined this case based on the powers given to me under the Financial Services and Markets Act 2000, I've awarded compensation to Mr D based not only on what I think is fair and reasonable but by having regard also to the framework for considering distress and inconvenience as set out on our website.

And although, as I've explained I've taken account of the Equality Act 2010 as relevant law in this case, I have also made clear that my role isn't to decide whether there has been a breach of the Act. Since I have not done so, but instead determined Mr D's case on the basis of what I consider to be fair and reasonable, it follows that the redress I recommend need only have regard to those principles rather than take account of the Vento bands which Mr D would like me to do.

So, my final decision is the same as my provisional decision in the sense that I am satisfied £500 compensation is fair and reasonable in the circumstances of this case.

My final decision

My final decision is I uphold this complaint. In full and final settlement of it, I require Barclays Bank UK PLC to pay Mr D £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 21 February 2025.

Asher Gordon
Ombudsman