

The complaint

With the help of a professional representative (PR), Mr T complains that Barclays Bank UK PLC lent to him irresponsibly. For ease, I'll mainly refer to the PR's actions as being those of Mr T.

What happened

In July 2007, Mr T applied for – and was given – a £250 overdraft limit on his current account. The limit was increased and decreased a few times to maximum of £510 before being reduced to £350 on December 2008 where it remained. In 2019, Mr T made a number of applications for increases in his limit in quick succession as shown below:

Date	Limit increase (LI)	New overdraft limit	Emergency Borrowing limit
7 February 2019	LI1	£500	£0
16 February 2019	LI2	£850	£0
23 February 2019	LI3	£900	£100
24 February 2019	LI4	£1,000	£100
20 March 2019	LI5	£1,500	£0

On 16 January 2024, Mr T says he became reliant on the overdraft limits for a prolonged period. He said Barclays failed to carry out proper credit assessments on his applications and had it done so it would have identified he was unable to afford the overdraft. Further, he says Barclays failed to monitor his account and intervene following his prolonged use of the facility. As a result, he says his credit relationship with Barclays has become unfair as described by Section 140A of the consumer Credit Act 1974 (s140).

Barclays looked into Mr T's complaint. It said Mr T's applications had all been authorised using its computer system which takes into account a range of factors such as a customer's account history with the bank, income and financial commitments, existing borrowing with Barclays and their credit rating. Barclays said while Mr T used the overdraft, he regularly returns to credit. It didn't uphold the complaint.

Mr T didn't accept Barclays' response, so he referred his complaint to our service. Barclays told us it felt he had complained too late for the lending decisions which took place more than six years ago, so the complaint handling rules set by the Financial Conduct Authority (FCA) meant we couldn't look at those. There is no dispute however that we could look into the increases agreed in 2019 and Mr T's complaint about the monitoring of the account over the last six years.

One of our investigator's looked into the complaint and didn't agree with Barclays that we couldn't look into the early part of it. But she did agree that Barclays had acted fairly when it lent to Mr T and she explained she couldn't see that the credit relationship had been unfair. Our investigator didn't uphold the complaint.

Mr T didn't accept what our investigator said. He emphasised that his complaint was about the prolonged use of the overdraft facility and Barclays responsibility to monitor it, rather

than any specific lending decision. As there was no agreement, the complaint has been passed to me for a decision.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Barclays thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But she also explained that, as the complaint is also about an unfair relationship as described in s140, it had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the whole complaint. Part of Mr T's complaint is that the relationship is unfair as he had to pay more in overdraft interest and charges than he could afford and was unable to reduce the debt. I acknowledge Barclays still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr T's complaint is about the fairness of his relationship with Barclays, relevant law in this case includes s140A, s140B and s140C.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Barclays) and the debtor (Mr T), 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.

S.140B 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 what Mr T has complained about, I need to consider whether Barclays' decision to lend to him and increase his overdraft limit, or its later actions in monitoring the account, created unfairness in the relationship between him and Barclays such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr T's relationship with Barclays is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Barclays carry out reasonable and proportionate checks to satisfy itself that Mr T was in a position to sustainably repay the overdraft?
 - If not, what would reasonable and proportionate checks have shown at the time?
 - Did Barclays make fair lending decisions?
- Did Barclays act unfairly or unreasonably towards Mr T in some other way?

Barclays had to carry out reasonable and proportionate checks to satisfy itself that Mr T would be able to repay the credit sustainably. It's not about Barclays assessing the likelihood of it being repaid, but it had to consider the impact of the borrowing on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, any monthly repayments and the overall circumstances of the borrower.

Due to the time that's passed, there is very little information about Mr T's application for the overdraft limits in 2007 and 2008. This is not unusual or concerning as businesses are not obliged to keep such information indefinitely.

But we do have Mr T's bank statements from July 2007 onwards, so I can see how his account was running during that period. He was earning around £1,400 a month and his account was well run. I don't see any reason why Barclays might have thought an overdraft of £500 or so might be unaffordable for him at that point.

Mr T's account continued to be reasonably well run from then on. There was the occasional unpaid item when he exceeded his limit while it was £350, but there was no pattern of sustained financial difficulties and his account returned to credit regularly. I don't intend to comment further on the period from more than six years ago. Based on what I can see in his account statements, I'm satisfied the lending decisions from that time were reasonable and Mr T's relationship with the bank doesn't appear to have been unfair.

In 2019, Mr T made a number of applications to increase his overdraft in a very short space of time. Barclays has said that while that was unusual, had he applied for £1,500 at the outset (the maximum overdraft Mr T requested), it would have agreed it. It said it was Mr T's choice to do so in stages.

Barclays says its automated system considers many factors when agreeing overdraft limits for customers as I've described above. This type of automated lending isn't unusual in my experience and is designed by lenders to ensure the right things are considered to meet the regulatory requirements of reasonable and proportionate checks. But that doesn't always mean that an individual lending decision is fair.

Barclays has confirmed Mr T's applications passed its automated system, so I think it's reasonable to believe he had a good credit history externally as well as with Barclays. I've looked carefully at the performance of his current account. I can see that in the lead up to the applications, Mr T's account was well run. He was receiving over £3,000 into the account and had sufficient disposable income to enable him to repay an overdraft limit of £1,500 sustainably over a reasonable period of time if he was called upon to do so. I think bearing in mind what it knew about Mr T, Barclays made a fair decision to agree these overdraft increases for him.

I've also considered Mr T's account performance since the overdraft was in place to see if there were signs that the overdraft might have been too much for him to manage, such that Barclays ought to have identified that and stepped in to help him. As Mr T has said, the bank

has a duty to monitor customer's overdraft usage for signs of financial difficulty.

Mr T's account continued to receive a good level of income and moved between a credit and overdrawn position each month. While Mr T has used his overdraft most - but not every – month, I don't see any particular signs of financial difficulty that ought to have led Barclays to take any action.

I've thought carefully about Mr T's circumstances including his relationship with Barclays and haven't seen anything which leads me to believe his credit relationship with the bank was or is unfair. And I've seen nothing which makes me think Barclays has treated Mr T unfairly in some other way.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 April 2025.

Richard Hale
Ombudsman