

## **Complaint**

Mrs O has complained about a credit card and subsequent credit limit increases that Barclays Bank UK PLC (trading as “Barclaycard”) provided to her. She says the credit card and limit increases were not affordable for her and so shouldn’t have been provided.

## **Background**

Barclaycard provided Mrs O with a credit card with an initial credit limit of £4,780.00 in May 2008.

The information I’ve been provided with indicates that Mrs O’s credit limit was then increased on the following occasions:

October 2010 – increase to £7,180.00  
June 2011 – increase to £9,580.00  
January 2013 – increase to £10,580.00  
August 2013 – increase to £11,580.00  
April 2014 – increase to £12,580.00  
December 2014 – increase to £13,580.00  
July 2015 – increase to £14,580.00  
March 2016 – increase to £15,580.00.

From what I’ve seen Mrs O’s balance on her credit card never exceeded £12,580.00. So she never used the extra credit she was permitted to use from December 2014. As this is the case, she won’t have lost out as a result of these credit limit increases and I’ve therefore limited my consideration to whether Barclaycard acted fairly and reasonably towards Mrs O when initially providing the card and the first five limit increases.

One of our investigators reviewed what Mrs O and Barclaycard had told us. He thought that Barclaycard shouldn’t have provided the credit card or any of the subsequent credit limits. So he recommended that Mrs O’s complaint should be upheld in full.

Barclaycard disagreed with the investigator’s conclusions and asked for an ombudsman’s review.

## **My provisional decision of 9 December 2024**

I issued a provisional decision – on 9 December 2024 - setting out why I was intending to only uphold Mrs O’s complaint in part.

In summary, I was intending to uphold Mrs O’s complaint in part because while I was satisfied that reasonable checks (in line with the obligations and expectations in place at the respective times) are unlikely to have shown Barclaycard that it would be unfair to provide the credit card and the first three credit limit increases.

However, I was also satisfied that proportionate checks would more likely that not have shown Barclaycard that it shouldn’t have increased Mrs O’s credit limit in April 2014.

## **Barclaycard's response to my provisional decision**

Barclaycard responded to my provisional decision saying that it agreed with my conclusions on its decisions to initially provide Mrs O with the credit card and the first three limit increases.

However, it disagreed with my conclusions in relation to the April 2014 limit increase to £12,580.00. It said this was because:

- its assessment was based on affordability, nothing in any of the information it has seen indicates that Mrs O was caused financial harm by the credit granted.
- its view is supported by a manual review of Mrs O's statements.
- the payments of exceeding £45,000.00 which Mrs O made to the credit card also support this. While the majority of the payments in the period referred to were minimum payments, the terms and conditions permitted this and minimum payments are a benefit of the flexibility of a credit card.
- Mrs O's savings may have reduced in the period leading up to the increase but she still had the funds to repay the extra advanced.
- Mrs O not using the extra credit until more than five years after it was granted is evidence that she wasn't reliant on this credit card and didn't experience any financial distress as a result of it being provided.

## **Mrs O's response to my provisional decision**

Mrs O also responded to my provisional decision. She disagreed with my findings on the decision to provide the credit card as well as the first three limit increases. In summary she:

- was unhappy that I'd gone against the investigator's conclusions. She felt that the investigator had considered the facts and circumstances of the complaint against the varying rules, guidance and obligations in place at the respective times. The investigator should be commended for setting better standards.
- reiterated that she hadn't been employed since the 1990s and hasn't had a regular and sustainable income other than the benefits that were being paid into her Barclays current account.
- said that the credit card was pre-approved and it didn't matter what income she inputted as part of the application.
- said Barclaycard failed to take into account of her missing mortgage payments which had occurred as a result of a six-month mortgage payment holiday.
- said in the period leading up to the limit increase she was receiving very little from her husband. She was using her credit card to pay for food and privately borrowed sums to meet her expenses.
- said that her husband entered into an Individual Voluntary Arrangement ("IVA") and this was a further reason not to lend.
- said Barclaycard initially said that it had no records and claimed that it only had to retain information for six years. It hasn't supplied copies of the credit agreement or statements. A regulated firm would be wise to keep records forever to counter complaints such as this.

While I've summarised the parties' responses, I can confirm that I've read and considered all the comments made.

## My findings

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

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 O's complaint.

Having carefully considered everything, including the responses to my provisional decision, I'm still only upholding Mrs O's complaint in part, rather than upholding it in full in the way that the investigator originally recommended in his assessment. I'll explain why in more detail.

As I explained in my provisional decision, Barclaycard has always needed to ensure it didn't lend irresponsibly. However, given the length of time that the account has been active, there have been a number of changes to the regulatory environment in the period Mrs O has been a Barclaycard customer.

This has meant that the requirements and standards that applied to Barclaycard haven't been the same for the entirety of the period Mrs O has been borrowing. Correspondingly, this has also meant that the steps Barclaycard was expected to take at the respective times, in order to ensure that it didn't lend irresponsibly, has verified.

I explained in my provisional decision that the investigator's assessment failed to pick this up. I also do sympathise with the position that Mrs O has described she's facing. However, while Mrs O may feel it was commendable to hold Barclaycard to better standards, I cannot apply provisions and obligations retrospectively, or say a failure to comply with standards that were not in place at the time of Barclaycard's actions meant that it failed to act fairly and reasonably. So notwithstanding Mrs O's further comments, I remain satisfied that the investigator's assessment did not account for the changing regulatory landscape.

I also think that it is worth me emphasising that given just how long ago these events took place, more than a decade in terms of the most recent events, there is quite understandably a limited amount of information that remains from the respective times. I appreciate that Mrs O has said that Barclaycard should have retained records forever. However, it wasn't required to retain this information.

While Barclaycard retaining this information might have made the investigation of this complaint easier, I don't think that a firm can be expected to retain information indefinitely, just in case it may receive a complaint at some undefined point in the future. So it wouldn't be fair and reasonable for me to draw any adverse conclusions simply because Barclaycard doesn't have information that it isn't required to have at this stage.

Furthermore, I have to reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory, such as it is here, I have to consider what is most likely to have happened in light of the evidence that does remain available and the overall circumstances.

I've kept this in mind in determining Mrs O's complaint.

### *Barclaycard's decision to provide Mrs O with a credit card with a limit of £4,780.00*

When Mrs O applied for a Barclaycard in May 2008, this not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in 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 expectations or standards in relation to lending at the time Mrs O applied for a Barclaycard. Barclaycard was a subscriber to then British Bankers' Association's Banking Code ("banking code"), which was in place at the time, but it would be fair to say that its 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 at the time.

While Mrs O has provided a copy of a newspaper article where the journalist has set out their interpretation of what the banking code requires, this merely sets out that journalist's interpretation. And what I need to consider is what the banking code said. Having considered the banking code, I'm satisfied that what Barclaycard agreed to do – as a result of it being a subscriber to the banking code – at the time of Mrs O's application, was assess whether it felt that she would be able to repay any lending.

I understand that Barclaycard carried out credit checks on Mrs O. These checks do not have the same level of detail that some of the later checks do. But that's to be expected, particularly as credit checks, the information gathered and the type of information recorded has changed over the years. So I've not drawn any adverse inferences from the fact that the information Barclaycard has provided doesn't show if Mrs O had any defaulted accounts recorded against her.

In any event, I've not seen anything to indicate that Mrs O had any significant adverse information – such as defaults or County Court Judgments ("CCJ") – recorded against her at this time. I note that Mrs O response to my provisional decision hasn't said that she did have any such payment information recorded against her.

Mrs O has said that she had had a six-month mortgage payment holiday from February 2008. But if this was prearranged, it wouldn't have been viewed adversely. In any event, I've not seen anything to indicate that Barclaycard was aware of this payment holiday, whether or not it had been arranged in advance.

Mrs O's response to my provisional decision has reiterated that she has not been in employment since the 1990s. This is not in dispute as the information Barclaycard provided shows that Mrs O declared that she received £24,000.00 a year as a result of being a homemaker. In my provisional decision, I also said that I appreciated that while the investigator's view was that this should have been concerning, I did not agree with this.

Indeed, there is no such restriction against lending to a prospective borrower that isn't in employment. And applying such a blanket policy, without taking account of what the prospective borrower received would be arbitrary, arguably discriminatory and unlikely to be in accordance with what's fair and reasonable in all the circumstances.

Furthermore, while Mrs O says that this played no part in the application process as her application had been pre-approved, the fact is Mrs O declared that she was in receipt of £24,000.00 a year. This was a response to a direct question which Mrs O was asked on an application for credit.

Therefore, it's difficult for me to accept that she would not have realised that she was being asked this question with a view to confirming what funds she had available to repay what she was borrowing, or that this played absolutely no part in the application.

It's also important to note that Mrs O was provided with a revolving credit facility rather than funds which needed to be repaid in a lump sum. And this means that to start with Barclaycard was required to understand whether a credit limit of £4,800.00 could be repaid within a reasonable period of time. A credit limit of £4,800.00 is likely to have required repayments over a term akin to loan taken out for this much, in order to have been repaid within a reasonable period of time.

Bearing all this in mind, Barclaycard felt that Mrs O would be able to make repayments. And, while I appreciate that Mrs O does not agree with Barclaycard's decision, there isn't anything in the information that was gathered at the time which shows me that conclusion Barclaycard reached was wholly unreasonable.

Therefore, I've not been persuaded to uphold the complaint about Barclaycard's decision to provide Mrs O with a credit card.

*Did Barclaycard carry out reasonable and proportionate checks before deciding to offer the first four credit limit increases to Mrs O?*

The first four increases to Mrs O's credit limit, which took place between October 2010 and August 2013, were not only provided while the OFT was the regulator for consumer credit, but after its Irresponsible Lending Guidance ("ILG") had been published 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. Once again given the length of time that has passed, Barclaycard has been unable to provide much on the results of the checks it carried out. Indeed, it's fair to say that it hasn't been able to provide much at all on the first two limit increases.

Therefore, I've not been provided with sufficient evidence to be persuaded that the checks Barclaycard carried out before providing the credit limit increases to Mrs O. To be clear this finding is the same as I made in my provisional decision. Nonetheless, I do accept that I could have made this clearer by expressly stating this earlier on in the provisional decision, rather than when concluding what reasonable and proportionate checks are more likely than not to have shown.

*Why I'm satisfied that Barclaycard carrying out reasonable and proportionate checks before deciding to offer the first four credit limit increases to Mrs O, would not have prevented it from offering them*

Even though I don't think that the checks which Barclaycard carried out before offering to increase Mrs O's credit limit on the first four occasions, this doesn't on its own mean that Mrs O's complaint should be upheld.

This is because it is only fair and reasonable for me to do so in circumstances where I'm able to recreate what reasonable and proportionate checks are likely to have shown – typically using whatever information may remain – and this clearly shows that the repayments in question were unaffordable.

In this case, Barclaycard has been able to provide Mrs O's current account statements from the time. And having looked at this information, it seems to me that if Barclaycard had consulted this information, it would have seen Mrs O receiving a reasonable amount of credits into her account. Furthermore, it will also have seen that Mrs O had a reasonable amount of funds left over at the end of the month.

I appreciate that Mrs O has said that her husband ended up in financial difficulty during this period which resulted in him entering into an individual voluntary arrangement in 2013 ("IVA"), she was receiving money from relatives and also selling jewellery. But I can't see how Barclaycard would have known this. This isn't obvious from the information on the current account statements and any sums borrowed from friends or relatives would not have been reported to credit reference agencies either.

Furthermore, even it is possible that a credit check carried out against Mrs O might have shown that her husband was in an IVA, for the sake of completeness, I would add that it is not clear to me that it did, this does not mean that it should have refused to provide Mrs O with credit in her sole name.

Barclaycard has also been able to provide Mrs O's Barclaycard monthly payment history from January 2012 onwards. This shows that Mrs O's payments were sufficient enough to see her balance reduce. Indeed, while Mrs O owed close to £7,700.00 in January 2012 by August 2013 this balance had reduced by around £2,000.00 to around £5,750.00.

I would also add that I've only seen the starting balance and the end balance for Mrs O's account each month. So I've not seen Mrs O's full statements. But it's not unusual for a consumer to use their credit card in supermarkets or other similar retailers. As a result, I don't think that Mrs O using a card for food, or even other essentials items for the household, which it would not be unreasonable for some of the credits Mrs O has referred to being used to repay, is in itself a reason for a lender not to lend, or terminate an existing facility being used in accordance with the terms and conditions.

Overall, the information in Mrs O's current account statements plus what I've been able to see regarding Mrs O's Barclaycard account history, leave me satisfied that reasonable and proportionate checks won't have prevented Barclaycard from offering the first four credit limit increases.

As this is the case, I've not been persuaded to uphold Mrs O's complaint about these limit increases.

*Did Barclaycard act fairly and reasonably in offering Mrs O the fifth credit limit increase in April 2014?*

The fifth credit limit increase was offered to Mrs O in April 2014. By this stage, regulation of consumer credit had passed to the current regulator the FCA. It sets out its rules and guidance in the Consumer Credit Sourcebook ("CONC").

For this credit limit increase, it appears as though Barclaycard relied on a combination of the activity on Mrs O's account together with information from credit reference agencies on the amount she owed elsewhere. From what I can see Mrs O was well below the maximum she had available on the card. I understand that this is one of the factors which Barclaycard is relying upon to argue that the limit increase was affordable for Mrs O.

Nonetheless, I've also seen that in the lead up to this credit limit increase, Mrs O had only made the minimum payment due on the card in nine of the previous ten months. And even in the month where Mrs O did pay more than the amount of the minimum payment, her monthly payment didn't exceed the minimum by much at all.

In its response to my provisional decision, Barclaycard has said that this was Mrs O simply using her credit card in accordance with its terms and conditions and is a benefit of the flexibility of a credit card. However, I don't see how it necessarily follows that a customer can

afford a higher credit limit, simply because they had been making the minimum payments on a lower limit.

Therefore, in my view, whether or not Mrs O was using the credit card in line with the terms and conditions, is a matter concerned with whether Barclaycard had reason to terminate the account. I don't think that this, in itself, means that it was fair and reasonable for Barclaycard to increase Mrs O's credit limit.

I say this particularly as Mrs O's repayment record at this point was not as strong as it had been previously. And arguably Mrs O having gone from making repayments that were sufficient to repay the amount she owed within a reasonable period of time to only making minimum payments, could, in itself, support the argument that Mrs O had reached the limit of what she should have been lent. In any event, and more importantly, I'm satisfied that there was certainly nothing in Mrs O's repayment record itself that would suggest she would be able to pay any extra credit granted within a reasonable period of time.

Furthermore, Mrs O's current account statements show that the funds she was in receipt of were not increasing in line with what she would have to pay on an increased credit limit either. Indeed, it's worth noting that Mrs O's savings had pretty much been depleted by this stage. The earliest savings statements which Barclaycard has provided showed that Mrs O had a balance of around £10,000.00 in 2012. By the time the limit increase was offered the balance on the account had reduced to around the £1,000.00 mark.

Even then, it is clear that this was a notional balance as Mrs O was transferring funds to and from her current account in order to try and budget. Barclaycard has said that this was sufficient for Mrs O to repay the extra £1,000.00 she could owe. But I don't need to consider whether Mrs O was able to repay £1,000.00 within a reasonable period of time. What I need to consider is whether Mrs O had sufficient funds to repay £12,580.00 at the time that Barclaycard made its lending decision.

Taking all of this into account, I'm satisfied that it is more likely than not that Mrs O was unable to sustainably make the required repayments to clear a balance of £12,580.00 within a reasonable period of time. So overall and having considered all of the information provided, I'm satisfied that Barclaycard shouldn't have provided the fifth credit limit increase to Mrs O in April 2014.

I've noted that, in response to my provisional decision, Barclaycard referred to Mrs O not utilising the additional credit she was permitted to use, in April 2014, until sometime later. It is unclear whether Barclaycard is making the argument that instead of reviewing Mrs O's circumstances, in April 2014, as I did, I should instead have reviewed Mrs O's circumstances (when she started utilising the extra credit) in 2019.

I'm not persuaded that this is the correct approach, as if proportionate checks had been carried out in April 2014 (as was required before the limit was increased), Mrs O's credit limit wouldn't have been increased at this stage and she wouldn't have had the extra available to use in 2019.

Furthermore, Barclaycard would not have known when Mrs O would have gone on to use the extra credit. In any event, and for the sake of completeness, I wish to point out that I've not been provided with anything that would persuade me that Mrs O was in a position to repay £12,580.00 within a reasonable period of time in 2019 either.

Mrs O ended up paying interest, fees and charges as a result of Barclaycard providing her with a credit limit increase that it shouldn't have provided her with. I'm therefore satisfied that Mrs O lost out because of what Barclaycard did wrong and that it should put things right.

In reaching these my conclusions, I've also considered whether the lending relationship between Barclaycard and Mrs O might have been unfair to Mrs O under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Barclaycard to do below will result in fair compensation for Mrs O given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

### **Fair compensation – what Barclaycard needs to do to put things right for Mrs O**

Having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mrs O's complaint, for Barclaycard to put things right in the following way:

- rework Mrs O's account to ensure that interest is only ever charged on the first £11,580.00 outstanding - to reflect the fact that the fifth credit limit increase to £12,580.00, in April 2014, should not have been provided. All late payment and over limit fees should also be removed;
- if an outstanding balance remains on Mrs O's account once all adjustments have been made Barclaycard should contact Mrs O to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs O's credit file, it should backdate this to when it shouldn't have provided the additional credit limit increase in the first place;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra Mrs O paid should be treated as overpayments and returned to her along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Mrs O's account after all adjustments have been made, then Barclaycard should remove any adverse information it (not any third party) may have recorded from Mrs O's credit file.

† HM Revenue & Customs requires Barclaycard to take off tax from this interest. Barclaycard must give Mrs O a certificate showing how much tax it has taken off if she asks for one.

I note that Mrs O's submissions in response to my provisional decision have made reference to her not being able to repay the outstanding balance on the card. I would remind Barclaycard of its continuing obligation to exercise forbearance and due consideration, given what Mrs O has said.

I would also encourage Mrs O to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Mrs O may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Barclaycard's actions in relation to exercising forbearance.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 9 December 2024, I'm upholding Mrs O's complaint in part. Barclays Bank UK PLC (trading as Barclaycard) should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or



reject my decision before 21 February 2025.

If Mrs O does not accept my decision before 21 February 2025 it will not be binding on Barclaycard. Should Mrs O seek to accept the decision at a later date, it will be a matter for Barclaycard to decide whether it is willing to settle the complaint in line with my direction.

Jeshen Narayanan  
**Ombudsman**