

The complaint

Mr Y complains that Barclays Bank UK Plc (Barclays) lent to him irresponsibly.

What happened

Mr Y has an overdraft with Barclays, it's unclear when the initial lending decision was made but it appears Mr Y had an overdraft limit (including some sort of reserve) of around £200 - £250 in November 2007. The credit limit was increased in January 2009 to £500 with a £500 personal reserve. In June 2014 Barclays has said the personal reserve and overdraft were combined which meant the available overdraft limit was now £1,000.

In November 2023, with the help of a representative, Mr Y complained to Barclays saying it had lent to him irresponsibly and failed to appropriately monitor his account. He said this led to him paying more than he could afford in interest, fees and charges and as a result the relationship between him and Barclays was unfair.

Barclays looked into Mr Y's complaint and said Mr Y was too late to complain about the initial lending decision and limit increases. It also said it had applied the interest and charges to the account in line with its terms and conditions. Barclays concluded that it hadn't been made aware of any financial difficulties being suffered by Mr Y and was under no obligation to search these out. It said that if it had been made aware Mr Y was in financial difficulties it would have acted. In summary Barclays didn't uphold the complaint.

Mr Y didn't accept what Barclays said and, again with the help of a representative, referred his complaint to our service and one of our investigators looked into it. When our investigator requested information from Barclays, it provided what it had, but said it didn't consent to us looking into the complaint because it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with Barclays that it had been brought too late under the rules, so considered the merits of the complaint. She said that it became apparent Mr Y was struggling to manage his overdraft and Barclays should have noticed this through account monitoring. She said Barclays should have stepped in in June 2023 and so upheld the complaint from this point.

Mr Y didn't respond to accept or reject the view and Barclays didn't accept what our investigator said. 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 why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140), and why this complaint about an allegedly unfair lending relationship 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 complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr Y says the overdraft lending given to him was unaffordable for him and wasn't properly monitored. This may have made the relationship unfair as he's said had to pay more in interest than he could afford and was unable to reduce the debt. I acknowledge Barclays still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, 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 Y's complaint can be reasonably interpreted as being about the fairness of his relationship with Barclays, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Barclays) and the debtor (Mr Y), 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, requiring a refund, or to do or not do any particular thing.

Given what Mr Y has complained about, I need to consider whether Barclays' decision to lend to him, or its later action or inaction, 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 Y'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, or if it failed to appropriately monitor the account and doing so would have revealed the lending was unfair, 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 Y was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Barclays make a fair lending decision?
- Did Barclays act unfairly or unreasonably towards Mr Y in some other way?

Did Barclays carry out reasonable and proportionate checks to satisfy itself that Mr Y was able to sustainably repay the credit? If not, what would reasonable and proportionate checks have shown at the time?

We've set out our general approach to complaints about unaffordable and irresponsible lending, including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Mr Y's complaint.

Barclays had to carry out reasonable and proportionate checks to satisfy itself that Mr Y would be able to repay the credit sustainably. There is no set list of checks that it had to do, but it could take into account several different things such as the type, amount, and length of the credit, the amount of the repayments and the overall circumstances of the borrower.

Mr Y's overdraft was an open-ended agreement where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time.

Generally, we think it's reasonable for a lender's checks to be less detailed – in terms of how much information it gathers and what it does to verify it where the amount of credit being agreed is relatively low. But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Given the passage of time, Barclays has said it no longer has any evidence of the checks it completed when making the lending decisions on this account.

This isn't unreasonable given it's been more than a decade since the lending decisions were made. But it means I can't be sure what Barclays checks would have shown.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks, or there is no longer any evidence of what those checks showed, I'd usually go on to try to recreate reasonable and proportionate checks. This is to get an indication of what the checks would more likely than not have shown.

I've seen statement information from April 2007 but as we don't know when the overdraft was first agreed, the statements don't clearly show me that the initial lending was unaffordable. So, I've not been provided with sufficient evidence to reasonably conclude that the initial limit was unaffordable for Mr Y.

However, although I can't be sure what checks Barclays completed for its lending decision in January 2009 I can see Mr Y's statements for this period. Having reviewed these I can see that the account was maintained well, and any use of the existing overdraft was short term. It appears Mr Y had between £600 and £850 disposable income in the months before the increase and there was no sign of financial strain on the account or significant payments being made to other creditors.

Given this, I don't think it was unreasonable for Barclays to conclude that Mr Y could sustainably repay lending of a £500 overdraft and £500 personal reserve over a reasonable period of time.

The overdraft and personal reserve were combined in July 2014 to create an overdraft limit of £1,000. Although the level of available credit remained the same, I think it would have been reasonable for Barclays to have checked the lending remained affordable at this time.

Looking at how the account was conducted in the years between 2009 and 2014, I can see the overdraft was largely used as intended. There was a period of unemployment benefits being paid to the account in late 2009 and early 2010 but there were also other cash deposits being made into the account. Although the overdraft was relied on more at this point, there weren't any signs of financial difficulties, and it wasn't for an extended period. In 2010 Mr Y appeared to be back in employment and the account was being managed well, maintaining a credit balance for the majority of the time with occasional and short-lived use of the overdraft.

By the time the personal reserve and overdraft were combined, Mr Y's income had increased, and he had a disposable income of between £500 and £800. Given all of this I don't think Barclays made an unfair decision to continue lending at this point.

Did Barclays act unfairly or unreasonably towards Mr Y in some other way?

I can't conclude that Barclays acted unfairly or unreasonably when providing Mr Y with his overdraft, or when increasing his limit. But Barclays still had an ongoing duty to review Mr Y's overdraft facility on a regular basis to ensure the lending remained affordable and could sustainably be repaid over a reasonable period.

Having considered everything provided, I think Barclays acted unfairly when it continued adding interest and associated fees and charges to Mr Y's overdraft from June 2023. By this point, it was evident that Mr Y's overdraft had become unsustainable for him. Barclays needed to consider whether it was fair and reasonable for it to continue allowing Mr Y to use the facility bearing in mind the way he was managing his account.

As I mentioned earlier, I saw nothing concerning in the account usage between 2007 (the earliest statement information that Barclays has been able to provide us with) and 2014. Similarly, the account usage between 2014 and 2021 gives no cause for concern. During this period the account often has a healthy credit balance, and any use of the overdraft appears to be short term.

In November 2021 Mr Y receives a final payment of around £7,500 from his employer. He then receives some sporadic payments from what seems to be temporary employment, with payments for Universal Credit starting to be paid into the account in April 2022. By this point the account is overdrawn and doesn't return to credit.

Good industry practice as well as various relevant regulation in place over the years all suggest that overdrafts are supposed to be for unforeseen emergency borrowing not prolonged day-to-day expenditure. From December 2019 the rules lenders must follow are set out by the FCA, in its Consumer Credit Sourcebook (CONC).

So, with this in mind I've considered whether Barclays has acted fairly once it was aware Mr Y was struggling to sustainably manage the account.

I can see Barclays first recognised Mr Y was over reliant on the account in April 2022 when it wrote to him about the account usage and the cost of this. Barclays wrote to him again in May 2022, July 2022, October 2022, and November 2022. It also says it wrote to him in 2023 and attempted to call him about the account. Barclays says it wrote further in 2024 but hasn't received any engagement from Mr Y.

Whilst I acknowledge that Barclays did take some of the steps I would expect, I don't think its actions went far enough.

The last lending decision to combine the reserve and overdraft was taken in June 2014. So, I think it would have been reasonable for regular reviews to have taken place around June each year.

So, from the review that would have taken place in June 2022, I think it was evident Mr Y's circumstances had changed. He was no longer in employment and had been consistently using his overdraft for a number of months, and in a way that suggested he would struggle to return to a credit position without a further change to his circumstances. Whilst I think it was helpful for Barclays to contact Mr Y about his overdraft usage at this point, I don't think it would have been reasonable for them to take any other action. It needed to give Mr Y an opportunity to correct the account usage and potentially find further employment.

However, by the review that would have taken place in June 2023, Mr Y had now been using the overdraft without returning to credit for more than a year. I think it was clear Mr Y's position hadn't improved and that he would struggle to sustainably repay the overdraft in a reasonable amount of time. The main credits Mr Y received into his account appear to be from benefits which now included a PIP payment suggesting Mr Y's circumstances had changed again. From my review of the account, I can't see there was anything to indicate that this fixed income of under £650 was sufficient to clear Mr Y's outstanding balance within a reasonable period. This was a significant drop in income, and it appears Barclays recognised there was an issue given its attempts to contact Mr Y. Since then, it has said it would no longer provide Mr Y with the same level of lending.

All of this means that Barclays should have realised that Mr Y's circumstances had changed. He was no longer using his overdraft as intended and the account conduct suggested it had become unsustainable. I've no evidence to suggest Mr Y's circumstances have materially changed since June 2023. So, I think it's fair to say as Barclays wouldn't agree the same level of lending now, it shouldn't have continued offering the overdraft on the same terms from June 2023.

I appreciate Barclays sent Mr Y a number of letters telling him that an overdraft was an expensive way to borrow money and that he should get in contact if he was experiencing difficulty. I accept Mr Y didn't get in touch with Barclays but, there comes a point where a lender can't continue to rely on a borrower not wanting to discuss their situation.

So, while Mr Y didn't get in contact with Barclays, in response to its letters and calls, I don't think it was reasonable for Barclays to take no further action in relation to the account. It's clear Barclays had recognised there was a problem with the account, and I think it would have been reasonable for it to have taken action when the review in June 2023 demonstrated the account conduct hadn't improved.

Barclays didn't react to Mr Y's problematic overdraft usage and instead continued charging him in the same way, while allowing him to continue using the facility in an unsustainable way. So, I think Barclays failed to act fairly and reasonably towards Mr Y.

I'm upholding this complaint because of Barclays' failings that took place within six years of Mr Y complaining. I haven't seen anything to persuade me that any unfairness – or an unfair relationship between the parties under s.140A CCA – existed before that date. So, I'm satisfied s.140A CCA doesn't materially impact the outcome of this case.

Putting things right

Having thought about everything, I consider that it would be fair and reasonable in all the circumstances of Mr Y's complaint for Barclays to put things right by:

- Reworking Mr Y's current overdraft balance so that all interest, fees, and charges applied to it from June 2023 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Barclays should contact Mr Y to arrange a suitable repayment plan, Mr Y is encouraged cooperate with Barclays to reach a suitable agreement for this. If Barclays considers it appropriate to record negative information on Mr Y's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in June 2023. Barclays can also reduce Mr Y's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr Y along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Barclays should remove any adverse information from Mr Y's credit file. Barclays can also reduce Mr Y's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Barclays to take off tax from this interest. Barclays must give Mr Y a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm partially upholding Mr Y's complaint and direct Barclays Bank UK Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 17 April 2025.

Charlotte Roberts
Ombudsman