

The complaint

Mr J complains that Barclays Bank UK PLC trading as Barclaycard lent to him irresponsibly. He initially complained only about Cards 3 and 4 in the table below, but has since broadened the complaint to include Cards 1 and 2. For the ease of understanding, I've written this decision as if the whole complaint had been brought at the same time.

What happened

Mr J has had the following accounts with Barclaycard:

	Account ending	Opened	Closed
Card 1	8009	30 December 2012	11 December 2013
Card 2	6003	20 May 2014	27 May 2014
Card 3	1008	January 2015	14 November 2016
Card 4	7002	29 June 2017	Still open

On 15 December 2023, Mr J complained to Barclaycard. He said the bank shouldn't have agreed to open the accounts for him or increased his credit limits. He said that if Barclaycard had carried out proper checks on his applications it would have seen that he wouldn't have been able to repay them sustainably.

Barclaycard looked into Mr J's complaint but said it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Mr J didn't accept Barclaycard's response so he referred his complaint to our service. One of our investigators looked into it and acknowledged that Mr J was also complaining about the fairness of his credit relationship with Barclaycard.

Our investigator agreed with Barclaycard that Mr J's complaints about Cards 1-3 had been brought too late as the lending decisions had taken place and the relationships ended more than six years before he raised his complaint. But as Card 4 remained open at the time the complaint was raised, she said we could consider Mr J's complaint about that card. Our investigator went on to assess that aspect of Mr J's complaint, but she didn't uphold it.

Mr J didn't accept our investigator's view of the complaint so, as there was no agreement, it 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.

Mr J has provided very detailed information to support his complaint and object to our investigator's view of it. I have carefully read and thought about everything he has said. As reflects our informal and impartial service, I will address the complaint as a whole rather than respond to each individual point he raises. This is not intended as a discourtesy, but rather to enable me to carry out my role of providing what I believe to be a fair and reasonable

outcome of the complaint based on the evidence available, rather than a point by point consideration of Mr J's comments.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Barclaycard 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 (Section 140A). She explained why Mr J's complaint about an allegedly unfair lending relationship regarding Cards 1-3 had been brought too late, but Card 4 had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I don't have the power to look at Mr J's complaint about Cards 1-3, but I can look at Card 4 on this basis. I acknowledge Barclaycard still doesn't agree we can look at this complaint at all, but as I don't think it should be upheld, I don't intend to comment on its' objections further.

Cards 1-3

Mr J has told us he thinks the irresponsible lending he complained about has caused what he considers to be an unfair relationship between the parties as described in Section 140A.

The rules that govern our service are set out in the Handbook of the FCA, specifically the Dispute Resolution section (DISP). DISP 2.8.2R(2) sets out the time limits in which we have to work. The parts of the rule relevant to this case are:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

[...]

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;...

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or

[...]

(5) the respondent has consented to the Ombudsman considering the complaint [when] the time limits in DISP 2.8.2 R [...] have expired [...]"

Section 140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Barclaycard) and the debtor (Mr J), 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.

Whether a credit relationship is unfair for the purposes of Section 140A isn't judged at its start but when the relationship ends (or when the issue comes to be decided if that happens sooner).

So Mr J's complaint point about the unfairness in the relationship under Section 140A, arises from being lent more than he could reasonably afford to repay as a result of the bank not carrying out sufficient checks on his applications. That alleged unfairness continued until the relationship between the debtor (Mr J) and the creditor (Barclaycard) ended. In view of what I've said, the time for the purpose of the time limits in DISP 2.8.2R(2) doesn't start until the relationship ended.

Each account is governed by a separate credit agreement and therefore, for the purpose of Section 140A, constitutes a separate relationship. I appreciate Mr J had several accounts with Barclaycard and some overlapped in terms of time, but that doesn't mean they form part of the same credit relationship.

In this case, Mr J raised his complaint about unfairness on 15 December 2023. Mr J's relationships with Barclaycard for Cards 1-3 all began and ended between 30 December 2012 and 14 November 2016. It's clear that this is more than six years before the complaint was raised. It follows that Mr J's complaints about Cards 1-3 were brought too late for us to consider under DISP 2.8.2R(2) 2 (a).

But I need to consider the three-year part of the rule (DISP 2.8.2R(2) 2 (b)). That is, I need to consider when Mr J became aware (or ought reasonably to have become aware) of his cause for complaint. When we say, "*cause for complaint*", we mean that the customer had, or ought reasonably to have, knowledge of the following:

- A problem.
- That they have suffered or may have suffered a loss.
- And that someone else is responsible for this problem (and who that someone is).

A customer doesn't have to know that something has definitely gone wrong. They just ought reasonably to have been aware of a cause for complaint for the time limits to start.

We asked Mr J some questions to establish when he became aware (or ought reasonably to have become aware) of his cause for complaint. Mr J told us he only became aware of "*these types of claims in November 2023*". So he says he raised his complaint within three years of becoming aware he could.

I can accept Mr J might not have known for sure or fully understood that he had cause for complaint about Barclaycard until then, but that is only part of the test I need to apply. The rules are clear that I need to consider when a complainant *ought reasonably to have become aware* of their cause to complain.

In this instance, our investigator felt Mr J ought reasonably to have become aware of his cause for complaint in 2017 as he had raised a complaint with us about a different business concerning irresponsible lending – the same issue he now complains to Barclaycard about. Mr J says that complaint was about a loan and he didn't realise there were similar principles that applied to credit cards.

Barclaycard says it feels the three-year part of the rule was triggered when Mr J contacted it in April 2019 to advise he was in financial difficulty and a 30-day hold was placed on his account.

I think the fact that Mr J was sufficiently aware of the principle of irresponsible lending in 2017 to enable him to raise complaints to other businesses, means he ought reasonably to have been aware he could raise a complaint about Barclaycard too. But if I accept his argument that he didn't realise the same things applied to credit cards, I think having to contact Barclaycard about his financial difficulty in April 2019 certainly ought reasonably to have led him to become aware of his cause for complaint.

So I consider that the very latest Mr J ought reasonably to have become aware of his cause for complaint was 29 April 2019. As this was more than three years before he raised his complaint to Barclaycard, I don't think the three-year part of the rule extended the time he had to complain. It follows that I think he raised his complaint about Cards 1-3 too late under the rules.

I've considered whether there are exceptional circumstances about which Mr M has made us aware, which would enable me to look into the complaint. DISP 2.8.4 gives an example of exceptional circumstances as "*where the complainant has been or is incapacitated*".

Mr J has told us about health issues he's suffered, and I have every sympathy with him for those. But within the time limits allowed under the rules, Mr J has brought other complaints to our service and has been able to discuss his situation with the bank. I can't therefore reasonably conclude that there were exceptional circumstances which prevented him from contacting us about this complaint within the time limits.

Barclaycard hasn't consented to us looking into the elements of the complaint from more than six years ago.

Overall, for the reasons explained, I think Mr J's complaint about Cards 1-3 falls outside of our jurisdiction.

Card 4

As I've said above, Barclaycard thinks Mr J's complaint about Card 4 was also referred to us too late. I don't agree with it on that point, but as I don't think it should be upheld, I won'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 J's complaint is about the fairness of his relationship with Barclaycard, relevant law in this case includes Section 140A, Section 140B and Section 140C.

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. Mr J's credit relationship with Barclaycard under Card 4 remained in place at the time he raised his complaint. It follows therefore that I think I can consider the whole of that 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 J has complained about, I need to consider whether Barclaycard's decision to lend to him, or its later actions, created unfairness in the relationship between him and Barclaycard such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr J's relationship with Barclaycard 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 Barclaycard carry out reasonable and proportionate checks to satisfy itself that Mr J was in a position to sustainably repay the credit?
 - If not, what would reasonable and proportionate checks have shown at the time?
- Did Barclaycard make a fair lending decision?
- Did Barclaycard act unfairly or unreasonably towards Mr J in some other way?

Barclaycard had to carry out reasonable and proportionate checks to satisfy itself that Mr J would be able to repay the credit sustainably. It's not about Barclaycard assessing the likelihood of it being repaid, but it had to consider the impact of the repayments 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, the amount of the monthly repayments and the overall circumstances of the borrower.

As part of his application process, Barclaycard obtained information from Mr J including his employment status, income and residential status. Mr J declared he was employed and had an income of £35,800 per year. Barclaycard checked his income using a widely used verification tool provided by a credit reference agency.

Barclaycard also checked Mr J's credit file. This showed he had credit elsewhere and it was all up to date. The credit file included details of contracted repayments which Barclaycard took into account in assessing the application and working out Mr J's expenditure. Barclaycard estimated that Mr J had a monthly disposable income of just under £400 per month. Taking everything into account, Barclaycard was happy to agree the card for Mr J with a credit limit of £3,500 which remained unchanged at the time he raised his complaint.

Looking at the information Barclaycard obtained from Mr J and found itself, I think the checks it carried out were reasonable and proportionate in line with the lending decision it made. As I've mentioned, Mr J was earning a reasonable salary and was up to date with his credit commitments elsewhere. He had sufficient disposable income to sustainably repay a credit limit at the level set.

Mr J says he had a gambling problem at the time which ought to have been evident to Barclaycard. I've looked at the bank statements he's provided from February to June 2017 – a few months before his application was agreed. I can't see any evidence of gambling transactions on the statements he's provided. And I don't think the other information Barclaycard obtained will have given it cause to think that Mr J had such an issue. All things considered, I think Barclaycard reached a fair decision to lend to Mr J.

Did Barclaycard act unfairly or unreasonably towards Mr J in some other way?

I can see that Mr J reached his limit on the account almost immediately and remained there until June 2023 when the balance was reduced to nil. I've looked at contact notes between Barclaycard and Mr J and can see there were occasions – such as April 2019 – when he asked it for help and it placed a temporary hold on the account. But generally, the account has run reasonably well, albeit he largely made the minimum payment.

Barclaycard wrote to Mr J in line with regulations in 2020 about his account being in persistent debt. It set out how increased repayments would help him to reduce the balance more quickly than simply paying the minimum payment each month.

So where Mr J has requested help – or Barclaycard has been obliged to step in – I can see that it has provided the support and taken the actions I'd expect. I don't think it has treated him unfairly or unreasonably in some other way.

I realise my decision will come as a disappointment to Mr J especially as he has highlighted other complaints that he's referred to our service which have been upheld in his favour. I'm pleased we've been able to help him with those complaints. But we assess each on their own merit taking into account the evidence available from each party. For the reasons I've explained, I don't think I can reasonably uphold this complaint.

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 J to accept or reject my decision before 5 May 2025.

Richard Hale
Ombudsman