

## **Complaint**

Mr C has complained about the overdraft charges Barclays Bank UK PLC (“Barclays”) applied to his current account. Mr C is being represented, by the (“representative”), in his complaint.

The representative has said the charges applied to Mr C’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on him.

## **Background**

Mr C applied for an overdraft of £400 when opening his account with Barclays in October 2009. The limit on it was increased to £1,000 at some point after this.

In June 2024, Mr C complained saying that he was allowed to continue using the overdraft in a way that was unsustainable and caused him continued financial difficulty.

Barclays partially upheld Mr C’s complaint. It did not think that it had done anything wrong or treated Mr C unfairly in the period up until October 2019. However, it offered to refund all of the charges added to Mr C’s overdraft from October 2019. Mr C remained dissatisfied after Barclays’ response and referred his complaint to our service.

When Mr C’s complaint was referred to our service, Barclays told us that we couldn’t consider parts of it as it was made too late. At this point it also said that it was prepared to refund all of the charges added to Mr C’s account from June 2018, which was the six-year period prior to it receiving Mr C’s complaint.

One of our investigators reviewed what Mr C and Barclays had told us. He reached the conclusion that we could look at the entire period Mr C had his overdraft for but thought that what Barclays had already done to put things right for Mr C was fair and reasonable in all the circumstances of his case.

The representative, on behalf of Mr C disagreed, with the investigator and asked for an ombudsman’s decision.

## **My findings**

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

### *The time limits for making a complaint to our service*

There are time limits for referring a complaint to the Financial Ombudsman Service. Barclays has argued that Mr C’s complaint was made too late because he complained more than six years after the charges on the overdrafts were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's been complained about, or if later, more than three years after the complainant (in this case, Mr C) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

Mr C has complained about the charges that were applied to his overdraft and says that there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. This means Mr C had, at least, six years from when the charges in question were applied October 2009 to May 2018 in order to complain.

Mr C didn't complain until June 2024. I'm therefore satisfied that Mr C clearly complained more than six years after all of the charges in question were added to his account.

However, DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've considered whether DISP 2.8.2R (2)(b) provides Mr C with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Mr C was aware, or he ought reasonably to have been aware of his cause for complaint, it would have to be the case that he was aware or ought reasonably to have been aware that:

- there was a problem – in this case his overdraft charges were excessive and therefore unfair;
- the overdraft charges caused him loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was Barclays.

Mr C's account statements would have made him aware of the charges he is now complaining about when they were being applied. I think that in knowing about the charges themselves Mr C had enough information to decide whether he considered these charges to be excessive and whether he thought Barclays applying them in the circumstances that it did was unfair. This is particularly as he will have known how often he was overdrawn and whether these charges were causing him to remain in this position.

I also think that Mr C would have known that these charges were causing him a loss given what he has said about struggling to repay them and borrowing further in order to do so. Equally, as it was Barclays that was charging Mr C, I think that he ought reasonably to have realised that Barclays might have been responsible for his problem too. I'm therefore satisfied that Mr C ought to have been aware of his cause to complain at the time that these charges were applied.

In reaching my conclusion, I've noted the representative's argument that it has seen decisions where ombudsmen have said that they wouldn't necessarily expect a reasonable person to blame the lender for any difficulty they may have had repaying credit. I accept that it won't always be the case that a customer will hold the lender responsible for the position that the representative has described.

However, in this case, Mr C hasn't simply complained that he shouldn't have been lent to. He's also complained that it was unfair for Barclays to charge him in circumstances where he was experiencing financial difficulty, was reliant on debt and was hardcore borrowing. I'm satisfied that Mr C would have known about these matters, regardless of what he thought about the initial decision to lend to him. And as it was Barclays that was charging him in these circumstances, I'm satisfied that he ought reasonably to have realised that Barclays

may have had some responsibility for his problem, whether or not he actually realised this was the case.

Three years from when each of the respective charges were applied does not provide Mr C with longer (than six years from when the charges were applied) to complain. So I don't think that DISP 2.8.2R (2)(b) does apply in this case and as he complained more than six years after the respective events he is complaining about took place, Mr C complained too late.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. However, Mr C hasn't told us about anything that would have stopped him from complaining in time. As this is the case, I don't think that exceptional circumstances do apply in this case.

#### *Section 140A of the Consumer Credit Act 1974 and its relevance to this complaint*

Our investigator also explained why Mr C's complaint was one alleging that the lending relationship between Mr C and Barclays was unfair to Mr C as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Mr C's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr C has not only complained about the circumstances behind the application of the individual charges, but also the fact Barclays' failure to act during the periods he alleges it was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Mr C's case, I am required to take relevant law into account. As I'm satisfied that Mr C's complaint can be reasonably interpreted as being about that his lending relationship with Barclays was unfair to him, relevant law in this case includes s140A, s140B and s140C of the CCA.

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 C), 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. S140B 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.

#### *Application to Mr C's complaint*

Barclays has agreed to refund all of the charges added to Mr C's account from June 2018. This will result in Mr C having a credit balance and Barclays no longer reporting any adverse information regarding the overdraft to credit reference agencies. This effectively means that there is no unfairness to remedy on the account from June 2018 onwards.

It is possible that any such unfairness may have existed earlier. For example, it is possible that Barclays applied charges in circumstances where it shouldn't have done so prior to June 2018. However, just because there may have been unfairness in a debtor's relationship with a creditor doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In *Smith v Royal Bank of Scotland Plc*<sup>1</sup>, the Supreme Court pointed out that remedies for unfair relationships are at the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making that claim.

There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Mr C's complaint and what is fair compensation, it's important for me to take this into account as relevant law. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

Where a consumer had knowledge of the relevant facts, our typical approach to cases of this nature is for the respondent firm to refund to them, the interest and charges they paid for the six years before they made their complaint. 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 the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

In the section of this decision relating to time limits, I've already explained why I think that Mr C had enough to know whether he considered the overdraft charges excessive and unfair and that he knew he was suffering a loss as Barclays continued to charge him and he had to borrow elsewhere in order to pay these charges. I'm satisfied that this is sufficient for Mr C to have had knowledge of the relevant facts. However, Mr C didn't do anything about this until he complained in June 2024. So I think it's right that any refund of interest and charges should be limited to the six-year period prior to Mr C making his complaint.

As I've explained, Barclays has already agreed to refund the charges applied to Mr C's overdraft in the six years prior to his complaint. As this will place Mr C in a credit balance, this will ensure that it won't report any adverse information regarding this overdraft to credit reference agencies for this period.

So this means that even if I were to have found that any unfairness began earlier than June 2018 (which is six years prior to Mr C making his complaint), which may or may not be the case, I still wouldn't have required Barclays to do anything more or anything further. This is because I think that he had knowledge of the facts relevant to his claim, but substantially delayed making that claim. As this is the case, I don't think that it would be fair and reasonable for me to require Barclays to do anything more or anything further in this instance. As this is the case, I leave it to the representative and Mr C to decide whether to accept Barclays' offer.

Overall and having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the

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<sup>1</sup> *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

circumstances of this complaint for me to require Barclays to do anything more or anything further. Therefore, I leave it to Mr C to decide whether he wishes to accept Barclays' offer. I appreciate this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Barclays Bank UK PLC has already done to put things right is fair and reasonable in all the circumstances of Mr C's complaint. I'm therefore not requiring it to do anything more or do anything further and leave it up to Mr C to decide whether he wishes to accept the offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 July 2025.

Jeshen Narayanan  
**Ombudsman**