

Complaint

Mr W has complained about a personal loan that Barclays Bank UK Plc (“Barclays”) provided to him.

He’s said that the loan was unaffordable and this created ongoing difficulty.

Background

Mr W has also complained about a credit card and an overdraft. However, we’ve informed Mr W that we’re looking at his complaint about those products separately.

Barclays provided Mr W with two loans. However, I’ve already separately explained why I’m unable to consider Mr W’s complaint about his first loan. So this decision solely concerns Mr W’s complaint about his second loan and all reference to loan from this point forward is made in relation to the second loan that Barclays provided to Mr W in June 2015.

In April 2024, Mr W complained saying said that his loan was unaffordable and this created ongoing difficulty for him. Barclays did not uphold Mr W’s complaint. It thought that Mr W had complained too late. When Mr W’s complaint was referred to our service, Barclays reiterated its view that we couldn’t look at it as it was made too late.

One of our investigators reviewed what Mr W and Barclays had told us. She reached the conclusion that we could look at Mr W’s complaint. However, she wasn’t persuaded that proportionate checks would have shown that this loan was unaffordable for Mr W. So the investigator didn’t recommend that Mr W’s complaint be upheld.

Mr W 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Barclays has argued that part of Mr W’s complaint was made too late because he complained more than six years after it provided him with his first loan, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mr W and Barclays was unfair to Mr W 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.

Having carefully considered everything, I've decided not to uphold Mr W's complaint. Given the reasons for this, I'm satisfied that whether Mr W's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr W's complaint should be considered more broadly than just the individual lending decisions. I consider this to be the case as Mr W has not only complained about the circumstances behind Barclays' individual decision to provide him with his loan, but also the fact he alleges that the provision of this loan created and perpetuated ongoing difficulties.

I'm therefore satisfied that Mr W's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between himself and Barclays was unfair to him. I acknowledge the possibility that Barclays may still disagree that we are able to look at Mr W's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr W'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 W), 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.

Given Mr W's complaint, I therefore need to think about whether Barclays' respective decisions to lend to Mr W, or its later actions resulted in the lending relationship between Mr W and Barclays being unfair to Mr W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr W's relationship with Barclays is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr W's ability to repay this loan in circumstances where doing so would have revealed the monthly payments to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Barclays didn't then somehow remove the unfairness this created.

Our typical approach to complaints about irresponsible or unaffordable lending

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr W's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr W's complaint.

Application to Mr W's complaint – Did Barclays act fairly and reasonably when deciding to provide Mr W with his loan?

Barclays has said that Mr W applied for his loan online. It has said that its process, at the time of Mr W's application, will have seen it ask him about his income and expenditure and it will only have provided the loan should the information gathered have shown that the monthly payments were affordable. While Barclays has been able to tell us about its process, it hasn't been able to provide us with the output of what it was that it learnt about Mr W, or the actual data which it relied upon to determine that the repayments to this loan were affordable for him.

As this is the case, I don't actually know what it was that Barclays relied upon to reach the conclusion that this agreement was affordable for Mr W. That said, given it has been over a decade since Mr W applied for this loan and it is now more than six years¹ since it was settled, I don't think that is surprising. So I've not drawn any adverse conclusions as a result of Barclays no longer having information I wouldn't necessarily expect it to have at this stage.

¹ The complaint was made to Barclays within six years of the loan being settled.

Nonetheless, the lack of information here means that I'm not in a position where I can reasonably conclude that Barclays did take sufficient steps to understand whether Mr W could afford the monthly payments. So I'm not satisfied that it did complete proportionate checks before agreeing to provide this loan to Mr W.

Would reasonable and proportionate checks have prevented Barclays from providing Mr W with his loan

As I've not seen enough to be satisfied that Barclays carried out sufficient checks before providing this loan to Mr W, I've gone on to decide what I think Barclays is more likely than not to have seen had it obtained the information that I think it should have gathered. Bearing in mind the circumstances here, I would have expected Barclays to have had a reasonable understanding about Mr W's actual regular living expenses as well as his income and existing credit commitments.

I've therefore considered the information Mr W has provided us with in order to determine what I think Barclays finding out more about Mr W's actual regular living costs are likely to have shown it. Having done so, I don't think that Barclays attempting to find out about Mr W's actual income, credit commitments and living costs would have made a difference here.

I say this because the information provided shows that when Mr W's committed regular living expenses, other non-discretionary expenditure and his existing credit commitments were deducted from his income, he did have the funds to make the monthly payments to this loan. So it does appear as though Barclays was reasonably entitled to conclude that Mr W could make the monthly repayments to this loan.

Mr W already being a Barclays customer and what his current account statements may or may not show

In considering whether Barclays was reasonably entitled to lend to Mr W, I've also thought about Mr W's arguments in relation to the transactions on Mr W's Barclays current account in the lead up to his application for this loan. The suggestion here appears to be that Barclays ought to have conducted a full review of Mr W's financial circumstances – i.e. one akin to a mortgage affordability assessment – because Mr W's bank account was with Barclays.

However, such an approach – of mandating that a full financial review be carried out, irrespective of any other circumstances simply because a customer has their main account with a lender – does not to me, at least, to be in keeping with the principle of carrying out an assessment that is proportionate.

Indeed, I consider that a lender insisting on reviewing a customer's bank statements irrespective of the rest of the circumstances (such as the amount lent, the monthly payments due and what any other information the lender may hold indicates), simply because a customer has a current account with that lender, would be disproportionate. In my view, it would be an example of simply continuing to apply a process to a situation, without taking account of the situation and what else a lender might know about the customer.

So I wouldn't expect a lender to automatically carry out a forensic review of bank statements (in the way that Mr W has) before lending to a customer, simply because that customer has a bank account with it, in the way that Mr W appears to be suggesting. In my view, whether it would be proportionate to take such a course of action would depend on the rest of the circumstances of the borrowing.

I've therefore considered whether the circumstances at the time of Mr W's application warranted a full review of his bank statements. In this case, Mr W had a decent salary and his repayment record on his existing credit was reasonable. For example, he doesn't appear to have had any significant adverse information - such as defaulted accounts or County Court Judgments ("CCJ") - recorded against him.

Given what I've said about what his disposable income was at the time, I think that it is unlikely that there was anything in the information Barclays likely gathered at the time that would have suggested the repayments were unaffordable. So, in my view, the circumstances here did not suggest that a manual review of multiple months' worth of bank statements was necessary in this instance.

I'm sorry to hear about what Mr W has told us about his gambling and I accept that it is possible that Barclays might have reached a different lending decision had it actually known about what Mr W has now told us when it was considering his application. But the key thing here is not only did Mr W not make Barclays aware about his gambling as part of his application for this loan, I don't think it can be reasonably expected to have known about this either, as it didn't need to ask for copies of Mr W's bank statements.

In these circumstances, whilst I do sympathise with what Mr W has said and I'm not seeking to dismiss or trivialise what he's told us, it's simply the case that Barclays could not have factored this into its lending decision.

The relevance of the outcomes on Mr W's other complaints

In reaching my conclusions, I've noted that Mr W has queried how it is possible for us not to uphold this loan complaint in circumstances where an investigator has upheld part of his complaints about other Barclays products. I can understand why Mr W might find it strange that he's received a different outcome on this complaint which he perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, I'm not bound by the outcomes reached on different cases. This is particularly where it is an investigator, rather than an ombudsman, that reached a conclusion. Ultimately, I'm required to consider the facts of a case and reach my own conclusion on what's fair and reasonable in all the circumstances.

So the outcome Mr W has referred to receiving on his other cases cannot and do not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Mr W, it might help for me to explain that there are some key differences between this overdraft complaint and Mr W's loan complaint.

Mr W's other cases involve revolving credit facilities. And there are additional requirements placed upon lenders in relation to the ongoing monitoring of the use of such facilities, even if that facility may have been affordable at the outset. Those same requirements don't exist in relation to fixed sum loans. In this case, I've already explained why I don't think that proportionate checks would have shown that the monthly loan payments were unaffordable for Mr W.

For the sake of completeness, I think it's also worth me stating any compensation recommended on Mr W's other complaints will effectively seek to place him in the position he would be had he not been provided with that credit in the first place. It would not be fair and reasonable for me to now 'double count' this, by considering whether he could afford to make the payments to this loan, as well as make payments to any credit he may be placed in the position of not having.

To do so would seek to place Mr W in the position he would be in had Barclays not provided him with any credit, because Mr W was in a position where he couldn't afford to repay any credit at all. I don't think that this is the position that reasonable and proportionate checks will have shown that Mr W was in, I'm also not persuaded that this was the position that Mr W was actually in either.

As this is the case, while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with others Mr W may have received on other cases, notwithstanding any possible differing outcomes.

Overall, and based on the available evidence I don't find that Mr W's relationship with Barclays, in respect of this loan, was unfair. I've not been persuaded that Barclays created unfairness in its relationship with Mr W by irresponsibly lending to him when providing him with his loan. I don't find that Barclays treated Mr W unfairly in any other way, in relation to his loan, either based everything I've seen.

So overall and having considered everything, while I can understand Mr W's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr W. 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 not upholding Mr W's complaint.

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

Jeshen Narayanan
Ombudsman