

Complaint

Mrs H has complained about the overdraft charges Barclays Bank UK PLC (“Barclays”) applied to her current account. She’s effectively said her overdraft was irresponsibly provided and this led to excessive and unfair charges as well as ongoing difficulty going forward.

Background

Mrs H successfully applied for an overdraft with Barclays at some point prior to August 2006. I say that the application took place at some point prior to August 2006 because an outstanding balance on her current account was passed to its recoveries team at this stage. Mrs H says that she applied for this overdraft in 2000. But Barclays no longer has any records relating to this.

In October 2023, Mrs H complained to Barclays saying that her overdraft was irresponsibly provided and this led to excessive and unfair charges as well as ongoing difficulty going forward.

Barclays didn’t uphold Mrs H’s complaint. As far as it was concerned, Mrs H had complained too late. Mrs H remained dissatisfied at Barclays’ response and referred his complaint to our service.

When Mrs H’s complaint was referred to our service, Barclays reiterated its view that we couldn’t consider it as it was made too late. One of our investigators reviewed what Mrs H and Barclays had told us. She reached the conclusion that we could look at the entire period Mrs H had his overdrafts for but thought that as Barclays hadn’t charged any interest on the overdrafts in the six years prior to Mrs H making his complaint, it wouldn’t be fair and reasonable to require it to compensate him.

Mrs H 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 of my consideration of this complaint

Our investigator also explained why it was reasonable to interpret Mrs H’s complaint as being one alleging that the lending relationship between Mrs H and Barclays was unfair to Mrs H as described in s140A of the Consumer Credit Act 1974 (“CCA”). She 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 Mrs H’s complaint should be considered more broadly than just the individual charges or any lending decision. I consider this to be the case as Mrs H 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 she alleges it was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Mrs H's case, I am required to take relevant law into account. As I'm satisfied that Mrs H'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 (Mrs H), 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 Mrs H's complaint

Barclays has provided the final ledgers for Mrs H's current account. This shows that Mrs H wasn't charged any interest after August 2006. Furthermore, I understand that Barclays is no longer reporting any information regarding this overdraft to credit reference agencies. This effectively means that there is no unfairness to remedy on this account from August 2006.

In *Smith v Royal Bank of Scotland Plc*¹, 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 Mrs H'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.

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

I think that there is a strong argument that Mrs H had enough to know whether she considered the overdraft charges excessive and unfair and that she knew she was suffering a loss when she ran into difficulties on this account. I say this as this complaint is about an overdraft which didn't require monthly repayments. I'm therefore satisfied that as Mrs H was only asked to repay the overdraft and passed to collections when she was experiencing difficulty, this is sufficient for her to have had knowledge of the relevant facts in August 2006.

In reaching my conclusions, I've noted what Mrs H has said about having other complaints and receiving different answers on those. However, this complaint is about an overdraft which didn't require monthly payments in the same way as the loans and other types of revolving credit facilities has complained about in other cases. So I'm satisfied that the facts of this case aren't the same as Mrs H's other ones.

Mrs H didn't do anything about this complaint until she complained in October 2023. So I think it's right that any refund of interest and charges should be limited to the six-year period prior to Mrs H making her complaint. As I've explained, Barclays didn't charge Mrs H any interest in the six years prior to her making her complaint. Furthermore, I understand that it is no longer reporting any information regarding this overdraft to credit reference agencies.

As this is the case, I don't think that it would be fair and reasonable to require Barclays to do anything in this instance.

The position prior to August 2006 and Mrs H's arguments in relation to this

For the sake of completeness and in an effort to reassure Mrs H, I've also thought about whether I would have, in any event, concluded that any unfairness existed when she was provided with the overdraft in the way that she alleges.

In doing so, I've noted that Mrs H says this overdraft was provided to her in 2000. And at this time, at best, what Barclays will have agreed to do – as a result of it being a subscriber to the British Bankers' Association's Banking Code – was assess whether it felt that she would be able to repay any lending.

I understand that Barclays may well have carried out credit checks on Mrs H. Nonetheless, Barclays no longer has the output of any credit checks. And since it is no longer required to have this information some 25 years later, I've not drawn any adverse conclusions as a result.

In any event, I've not seen anything to indicate that Mrs H had any significant adverse information – such as defaults or County Court Judgments ("CCJ") – recorded against her in 2000. Mrs H has referred to adverse information of this type going on to be recorded against her. However, what she's said and provided suggests that this went on to happen from around 2005 onwards – so after this facility was provided.

Furthermore, while Mrs H has provided a list of her creditors and the amount she owed at the time she entered into a debt management plan, this doesn't show me what Mrs H's balances were in 2000 when she was provided with this overdraft. Barclays clearly felt that Mrs H would be able to repay this overdraft at the time it was provided.

Indeed, it's fair to say that any checks before lending were geared towards a lender getting its money back rather than an assessment of the impact making any payments would have on a customer. Equally, there isn't anything from the time at least which clearly shows me that it was wholly unreasonable for Barclays to have reached the conclusion that this overdraft was affordable.

I can also understand why it may be frustrating for Mrs H that the facts of her case aren't being assessed against the standards and expectations of today. However, it is only fair and reasonable to consider whether a firm acted in accordance with the obligations expected of it at the time - not obligations that went on to be introduced a number of years later.

As this is the case, I've not seen enough to be reasonably persuaded that Barclays created unfairness in providing this overdraft, or that any unfairness existed in its relationship with Mrs H prior to August 2006. So I'm satisfied that I wouldn't have reached a different outcome even if I were to go on to consider whether there was any unfairness in Mrs H's lending relationship with Barclays prior to August 2006.

Overall and having considered everything, while I can understand Mrs H's sentiments and appreciate why she is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the circumstances of this complaint for me to require Barclays to pay Mrs H compensation. Therefore, I'm not upholding this complaint. I appreciate this will be very disappointing for Mrs H. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 October 2025.

Jeshen Narayanan
Ombudsman