

The complaint

Mr H complains that Barclays Bank UK PLC irresponsibly provided him with a personal loan.

What happened

Barclays provided Mr H with a number of credit products in the early 2000's. Ultimately, it appears Mr H was provided with a loan in 2006 which, although defaulted in 2011, has an outstanding balance which is still being collected.

Mr H has made many complaints to Barclays, and referred a number of these to our service, about the lending products it provided and the debt it has collected. This complaint here centres around Mr H's argument that he had an active County Court Judgement (CCJ) in 2006 which related to a mortgage account; and that Barclays should have identified this and not provided him with this loan, given the regulatory rules and obligations it needed to follow. Mr H has said that by providing him with this loan that Barclays acted fraudulently, and as such he shouldn't have to repay the loan.

Barclays has issued a number of responses to Mr H's concerns over the years. And in relation to the details of this complaint, it considered that it had already been dealt with by previous final response letters it had issued, and by a final decision issued by one of my ombudsman colleagues on a separate complaint in 2020.

One of our investigators reviewed the details of this complaint and considered it was reasonable to interpret Mr H's complaint to be about the fairness of his relationship with Barclays. As such he went on to review the details of the complaint on this basis. Having done so he concluded that were he to uphold the complaint, fair redress would be to refund any interest and charges capped to six years before Mr H made this complaint. He noted that Barclays had stopped applying interest and charges to the account when it was defaulted in 2011; and as such there would be no redress for it to apply in any event.

Barclays didn't respond to our investigator's view; Mr H disagreed. In summary, he maintained his arguments that this lending shouldn't have been provided, and that the Financial Conduct Authority (FCA) has confirmed it is investigating Barclays' lending practices given the individual details of his complaint. Mr H has also said that as Barclays has confirmed the account is closed, it shouldn't continue to collect the outstanding debt.

As an agreement couldn't be reached the complaint has been passed to me to decide.

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.

The information in this case is well known to Mr H and Barclays, so I don't intend to repeat it in detail here. I acknowledge the level of detail and submissions Mr H has provided in support of his arguments. I'd like to assure both parties I've carefully reviewed everything available to me even though I may not have commented on it, because I've focused my

decision on what I consider to be the key points of this complaint. I don't mean to be discourteous to Mr H or Barclays by taking this approach, but this simply reflects the informal nature of our service.

Initially I think it's helpful for me to set out that there are time limits for bringing a complaint to our service, and Barclays has said this complaint was referred to us late. Our investigator set out within their view why they didn't think we could look at a complaint about the lending event that Barclays made more than six years before the complaint was made.

But they also went on to explain why it was reasonable to interpret Mr H's complaint as being about an unfair relationship as described in section 140A of the Consumer Credit Act 1974 (s.140); and why he therefore considered Mr H's complaint about an allegedly unfair lending relationship had been made to us in time.

I don't intend to go into the detail our investigator set out within their view; but for the avoidance of doubt, I agree with our investigator that I have the power to look at Mr H's complaint on this basis.

I say this because I consider Mr H's complaint can reasonably be considered as being about an unfair relationship; as he says Barclays didn't follow the regulatory rules and obligations on it at the time of this lending, and that had it done so it shouldn't have provided him with this loan. As such Mr H says he shouldn't have to repay the outstanding balance.

The provision of this loan may have made the relationship unfair as Mr H may have paid more in interest and charges than he could afford. I accept Barclays doesn't agree we can look at any events more than six years before Mr H's complaint was made, but as I don't intend to uphold this complaint, I won't be commenting on this further.

In deciding what's fair and reasonable I'm required to take into account, amongst other matters, relevant law. As I consider Mr H's complaint is about the fairness of his relationship with Barclays, relevant law in this case includes s.140A-C.

S.140A says a court may make an order under s.140B if it determines that the relationship between the creditor (in this case Barclays) and the debtor (Mr 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. Barclays has confirmed the relationship is ongoing as it is still collecting the debt.

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 the details of Mr H's complaint, I need to consider whether Barclays' decision to lend to him, or other actions it may have taken, created an unfairness in the relationship between

him and Barclays; and if it did whether Barclays took reasonable steps to remove that unfairness.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website.

At the time Barclays arranged this loan it was required to carry out reasonable checks to assess Mr H's ability to repay the agreement. I've followed this approach when considering Mr H's complaint.

Barclays has told us that apart from the credit agreement, it holds no other information from the point of sale, such as credit checks or affordability data. I don't consider that to be unreasonable given the time that's passed since the lending decision, and the data retention obligations on it.

I see our investigator therefore asked Mr H to provide us with any information he had from the time of this lending, such as bank statements covering the months before this loan was agreed, a credit report from around the time, or records of the CCJ he's referred to.

Mr H said it would be difficult for him to obtain any of this information given the time that's passed, which I do acknowledge. Mr H hasn't provided us with any supporting information from around the time the loan was provided, and he's now had over five months to do so.

As such, neither party has presented any documentary evidence from around the time this lending was provided which supports the argument that it was irresponsibly provided. So, I can't reasonably conclude Barclays made an unfair lending decision when approving Mr H with this loan.

I think it's helpful me to set out, as our investigator has also set out within their view, that if there may have been unfairness in a consumer's relationship with a business, such as an unfair lending decision, this doesn't automatically mean it would be fair for a business to refund all of the interest and charges on the account from when that unfairness began.

I say this because in *Smith v Royal Bank of Scotland Plc* [2023], the Supreme Court pointed out that remedies for unfair relationships are in 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 the claim. So, when deciding a fair and reasonable outcome to Mr H's complaint and fair redress, it would be important for me to take this into account as relevant law. 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.

We consider that a complainant would have knowledge of the facts that caused the unfairness they complain of when they became aware of a problem and that they were suffering a loss. In this case, I consider Mr H was aware of a problem from 2011 when he was unable to maintain payments to this loan. I consider my thoughts are further supported when Barclays went on to default Mr H's loan account later in 2011.

So, in these circumstances even if I thought the complaint should be upheld, I don't think it would be fair to require Barclays to refund interest and charges dating back more than six years before Mr H made his complaint, given the Supreme Court's findings which I've referenced above.

In Mr H's case, I can see that Barclays stopped charging interest and fees from 2011, when the account was defaulted. So, this means that even if I were to uphold the complaint there would be no refund due; as no interest and charges have been applied to the account in the six years before Mr H made this complaint.

Mr H has made reference to having reported Barclays to the FCA about its lending practices and decisions. Mr H has told our service on multiple occasions that the FCA has confirmed it is investigating Barclays' lending practices; and specifically in relation to his complaint that Barclays hadn't acted in line with the rules and regulations in place at the time. Mr H has said as such Barclays acted fraudulently by providing him with this loan.

Given my findings above, I've seen no evidence to reasonably conclude Barclays didn't follow the rules and regulations in place at the time it provided Mr H with this loan in 2006.

And, while Mr H has made multiple references to the FCA investigating Barclays' lending practices, I note from the documentary evidence he's provided us, from the FCA, that it states (my emphasis in bold):

*'We understand that not revealing what action we **may** have taken can be frustrating.'*

As such, from the evidence Mr H has provided us from the FCA there is no categorical acceptance that an investigation has or is being conducted based on Mr H's concerns. Nor that the FCA has said it considers Barclays were in breach of any regulatory obligations by providing him with this loan.

The FCA goes on to state:

'The reason we have guided you to the Financial Ombudsman Service is because they have the authority to look into individual cases.'

...

'We are unable to do this due to our role as a regulator and having to remain impartial.'

So, the evidence appears to me that the FCA wouldn't look to pass comment on individual cases, and would, as it has, direct consumers to our service to determine whether we can look into the individual details of a complaint.

I've considered whether Barclays has acted unfairly or unreasonably in any other way. I'm mindful that, as I've set out above, an ombudsman colleague issued a final decision in 2020 on another of Mr H's complaints about Barclays. That decision in part covered Barclays' recovery of the outstanding debt relating to this loan that was provided in 2006. So, I don't intend to address that again here.

However, from the information and evidence I have available to me, it does appear Barclays has acted reasonably when agreeing to repayment arrangements, including more recently since my colleague issued their decision in 2020.

Mr H has made reference to Barclays not being able to collect on the outstanding debt given the account was closed in 2011. Barclays has confirmed the account was closed on its systems following the default. However, the debt is still outstanding and still payable by Mr H as my ombudsman colleague previously decided. So, I consider it's reasonable for it to continue to collect the outstanding balance.

Taking all the above into account, I've not been presented with anything which leads me to conclude Barclays has created an unfairness in the relationship between it and Mr H.

I acknowledge my decision will likely be disappointing for Mr H. It's clear how invested he is with the circumstances surrounding Barclays' lending decisions, and in particular the provision of this loan in 2006 and the ongoing repayment of it. I am sorry to hear of the recent circumstances Mr H has made us aware of, which will have understandably meant he's had other priorities to deal with. But for the reasons I've set out above, I'm not directing Barclays to take any further action in resolution of this complaint.

My final decision

My final decision is that I don't uphold Mr H's complaint about Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 November 2025.

Richard Turner
Ombudsman