

## **complaint**

Mr G and Miss N have complained that Barclays Bank plc ("Barclays") mis-sold them an Additions Plus packaged bank account in 2007.

## **background**

One of our adjudicators has looked into Mr G and Miss N's complaint and she thought that Barclays had mis-sold the Additions Plus account to Mr G and Miss N. Our adjudicator told Barclays that it needed to put Mr G and Miss N in the position they would've been in had they not been mis-sold the Additions Plus account by refunding all the fees they paid for the account plus interest.

Barclays agreed that it had mis-sold the Additions Plus account. But it disagreed with what our adjudicator told it to do to put things right. Barclays said that it should only pay back the fees Mr G and Miss N paid, plus interest, up until July 2013. As Barclays disagreed with our adjudicator, the case has been passed to me to look at and issue a final 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. We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me decide Mr G and Miss N's complaint.

As Barclays has already accepted that it mis-sold the Additions Plus account, as it made an inappropriate and unfair recommendation to Mr G and Miss N, I don't need to look into the initial sale of the packaged account. All I need to do is think about whether what Barclays has already agreed to do is fair. Having carefully thought about everything I've seen, I don't think that this is the case. I'd like to explain why in a little more detail.

Barclays has suggested that it should only refund all the account fees Mr G and Miss N paid (plus interest) up until July 2013. This is because while it accepts that the account was unfairly recommended to Mr G and Miss N in August 2007, presumably because they didn't have a want or a need for the benefits at the time, their circumstances had changed by July 2013 and as a result the Additions Plus account was right for them from this point onwards.

It may help for me to start by saying that when a business has done something wrong, or it admits it did something wrong, we look to put things right for the consumer by trying, as best as possible, to put them in the position they would've been in if that wrong hadn't happened in the first place. So, in this case, we'd expect Barclays to place Mr G and Miss N in the position they would've been in if the sale of the Additions Plus account had never taken place – in other words, the position the position Mr G and Miss N would've been in if they'd remained on their free account from August 2007 onwards. Barclays would usually be expected to do this by refunding all the fees Mr G and Miss N paid for the Additions Plus account plus interest.

Of course while placing the consumer in the position they would've been but for the mis-sale is what we'd usually expect a business to do to put things right, there sometimes may be occasions where the circumstances of the case mean that it is more appropriate to take a different course of action. Barclays believes the particular circumstances of this case mean that it should take a different approach to putting things right for Mr G and Miss N. In

Barclays' view Mr G and Miss N started relying on some of the benefits of the account in July 2013. As this is the case, Barclays says Mr G and Miss N should be placed in the position they would be in if they'd upgraded to the Additions Plus account in July 2013, rather than August 2007. And so Mr G and Miss N should only be refunded the fees they'd paid up to July 2013.

I've carefully read everything that Barclays has provided and thought about what it has said. It seems to me that Barclays is arguing that Mr G and Miss N's behaviour from July 2013 onwards (in terms of their use of the account benefits) is indicative of what they would've done if they hadn't taken the Additions Plus account. In Barclays' view, Mr G and Miss N's registration of a mobile phone handset and a gadget as well as the fact that they were now travelling (and relying on the travel insurance policy) indicates that they had a want and a need for some of the core benefits of the Additions Plus account. And as result Barclays appears to be arguing that it's fair to only refund the fees Mr G and Miss N paid up until July 2013 because they would've, in any event, upgraded the Additions Plus account at this stage.

But to accept Barclays' argument here I'd have to be persuaded that rather than simply relying on the benefits because they were available to them as a result of the inappropriate recommendation Barclays made in August 2007, Mr G and Miss N's need for mobile phone insurance, gadget cover and travel insurance meant that they would've taken the Additions Plus account in July 2013. I don't agree with this for a few reasons. Firstly, Barclays' didn't carry out any sort of demands and needs assessment in July 2013. So it's difficult for me to say that Mr G and Miss N would've proceeded with a hypothetical recommendation that had never been made.

In any event, while Mr G and Miss N may have started travelling in July 2013. I've not seen anything to suggest that they were travelling to the extent that they would've wanted an annual worldwide travel insurance policy, or a packaged account where this was the core benefit. And it looks like they'd been relying on mobile phone and gadget insurance that they'd had elsewhere prior to registering devices for these policies in July 2013. So it's just as likely that they would've simply retained their existing cover, or sourced a cheaper alternative elsewhere, rather than taking the Additions Plus account (or any product from Barclays) for that matter to meet any protection needs that they may have had.

Finally and perhaps most crucially, even if I were to accept Barclays' argument that Mr G and Miss N would've taken one of its packaged accounts in July 2013 (for the sake of completeness, I'd reiterate that I don't agree with this), I still don't see how they could've taken the Additions Plus account at this stage. As far as I'm aware, Barclays stopped offering the Additions Plus account to new customers in 2008 and it's my understanding that it didn't sell any 'packaged accounts' at all in July 2013. If Barclays customers wished to purchase insurance benefits, they needed to purchase one of Barclays' feature store packs.

As a result, Mr G and Miss N wouldn't have been able to upgrade the Additions Plus account in July 2013, even if this was something they wished to do at the time. So leaving aside the lack of persuasiveness of Barclays' argument that Mr G and Miss N would've taken a packaged account in July 2013, I don't, in any event, think that it would be fair to put Mr G and Miss N that they could never have been in. And it follows that I don't think what Barclays has offered to do to put things right, is fair and reasonable in the circumstances of this case.

I want to reassure Barclays that I've carefully thought about everything that it has said. But having done so, I've not been persuaded by its arguments that the circumstances of this

case mean that it would be fair to and reasonable to depart from the usual way of putting things right where a consumer has been mis-sold a packaged account. So I think that Barclays needs to do more to put things right for Mr G and Miss N.

### **what Barclays should do to put things right**

To put matters right, Barclays should put Mr G and Miss N back into the position they would've been in, if it hadn't mis-sold the Additions Plus account to them. So Barclays should:

- refund and pay to Mr G and Miss N all the fees they paid for the Additions Plus account; and
- add interest at 8% per year simple on each of the above fees from the date they were paid to the date of settlement†;

If Barclays is able to work out any *additional* savings Mr G and Miss N have made from holding the account **and** it can show these calculations to them, it may, if it wants, deduct this additional saving from any compensation that is paid.

†HM Revenue & Customs requires Barclays to take off tax from this interest. Barclays must give Mr G and Miss N a certificate showing how much tax it's taken off if he asks for one.

### **my decision**

For the reasons given above, I uphold Mr G and Miss N's complaint. Barclays Bank plc should pay Mr G and Miss N redress as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G and Miss N to accept or reject my decision before 5 September 2016.

Jeshen Narayanan  
**ombudsman**