

complaint

Mr H has complained about how Barclays Bank UK PLC has treated him in respect of three debts he has with it. In particular, he feels it is discriminating against him, isn't following a previous decision issued by an ombudsman at this service, and that the debts are "timebarred".

background

facts

On 9 May 2011, an ombudsman at this service issued a decision, under reference 8767601. It was in respect of three accounts Mr H held with Barclays: a current account, a Barclayloan and an Advance loan. As part of the decision, the ombudsman noted that Barclays had agreed to accept pro rata repayment proposals that would be put forward by PayPlan (which is an organisation offering free help and advice regarding debt). It would then pass the accounts to its recoveries department, where charges and interest would be suspended. The ombudsman agreed this was fair. (There were also three other elements to his decision, regarding a refund of interest and charges, payment for a medical report, and £75 compensation. But as these aren't relevant to the complaint I'm looking at, I won't refer to them further.)

As I understand it, a payment plan was put in place and there were no issues until the end of 2017/early 2018. Then, in a letter dated 20 January 2018, Barclays wrote to Mr H to say it hadn't received a payment in the last 60 days. It then sent him a further letter dated 8 February 2018. It explained that regarding the arrangement for the account ending -6086, it hadn't received the agreed total of £19.14. Because of this, it was cancelling the arrangement, and moving the account to debt recovery. In the letter, Barclays said it had contacted PayPlan and confirmed Mr H had been treated as a vulnerable consumer, because of his health conditions. But it wouldn't write off the debt, as it said Mr H has a monthly disposable income.

In the letter of 8 February 2018, Barclays said it had contacted PayPlan on 25 January 2018 to ask if a reduced plan had been set up, and it says PayPlan said it would discuss this with Mr H. Barclays put a hold on the account for a month, to wait for a response. As at the date of the letter, it hadn't heard back, so asked Mr H to contact PayPlan to discuss a new plan.

Following this, our service was told on 28 February 2018 that Barclays had liaised with PayPlan, and agreed to accept £1 a month until April 2018, then a review would take place. Mr H has explained that he considers Barclays' actions to be in breach of the ombudsman's decision from May 2011. He says the decision required Barclays to accept pro-rated payments based on his disposable income, which has recently fallen. He said he'd never missed a payment, but if his disposable income drops, Barclays must accept a lower payment. He refers to Barclays' use of the word 'concession' in its letters to him, but accepting lower payments isn't a concession, it's what the ombudsman said it has to do. He also said that he hasn't made full payments to his accounts since 1997, and Barclays has never been to court to obtain a judgment against him.

Mr H has said that he would like Barclays to write off his accounts, as he has serious health conditions. He feels he's being harassed and discriminated against.

An investigator at our service looked into what had happened. But he thought it was

reasonable of Barclays to seek to recover the debts.

Mr H disagreed and asked that his complaint be passed to an ombudsman. While his complaint has been with me, Mr H has contacted us to explain that the coronavirus pandemic has affected his ability to work, given his serious underlying health conditions.

my provisional decision

I issued a provisional decision, to explain my thoughts, and give Mr H and Barclays the opportunity to respond. I also addressed the new development of the impact of coronavirus.

My provisional decision said as follows:

I note that this decision relates only to Mr H's three accounts with Barclays that I referred to above. This is because Mr H's complaint relates to these three accounts – including whether Barclays has followed our service's previous decision in respect of them. Mr H has sent us a considerable amount of information, and I'd like to thank him for this. I have reviewed and considered everything he's submitted. I will not refer to every submission he's made. This isn't intended as a discourtesy. Rather, it reflects the informal nature of our service. I have focussed on what I consider to be the key issues Mr H has raised.

First, I am sorry to hear that Mr H has ongoing health conditions that are impacting his day-to-day life. I understand this must be very stressful, particularly given concerns about coronavirus. I'd like to assure him that I've taken this into account and very carefully considered his complaint.

I will address the three elements of Mr H's complaint in turn: (i) discrimination; (ii) not adhering to a previous ombudsman's decision; and (iii) the 'time-bar'.

Turning first to the issue of whether Mr H is being discriminated against. As I understand it, he feels that given his health conditions and the severe impact these have upon him, Barclays should write off his three debts.

It is not for me to decide whether or not Mr H has been discriminated against. This is the role of a court. However, I am required to take into account the law, and what I consider to be fair and reasonable in all the circumstances. Here, the law is the Equality Act 2010. The Act sets out protected characteristics, including disability. It says:

A person (P) has a disability if -

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

I accept, for the purposes of this complaint, that Mr H is likely to be considered a disabled person. So I need to think about whether what Barclays has done discriminates against Mr H because of something connected to his disability.

Under section 15 of the Act, "discrimination arising from disability" occurs where both:

- A treats B unfavourably because of something arising in consequence of B's disability, and
- A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

In this case, I'm satisfied that Barclays is owed money by Mr H. And I consider it reasonable for it to attempt to recover these sums. I do not consider that it doing so is connected to Mr H's disability. That said, it must ensure its treatment is a proportionate means of achieving a legitimate aim.

I consider that the aim of recovering the outstanding sums is legitimate – ultimately, Barclays is owed the money, and Mr H had the benefit of it. I consider it proportionate for Barclays to have written to him and addressed the matter with PayPlan. I would expect it to have requested details of Mr H's disposable income, by asking for his income and expenditure details. This is to be able to reach a realistic and fair repayment plan. Barclays has done this, and I think this is fair and reasonable. As I understand it, Mr H hasn't provided this information (or, not recently). I would urge him to do so (through PayPlan if that is better for him), so Barclays is able to reach an arrangement going forward.

I turn now to whether Barclays has adhered to the previous ombudsman's decision. I'm satisfied it has. That required it to enter into a repayment plan, which it did. And this ran successfully for a number of years. I know that Mr H is going through a very difficult time, and stopped making the agreed repayments. Accordingly, Barclays has written to him to try to reach a new agreement. This is what I would expect it to do. This reflects the changed circumstances, rather than being a breach of the previous decision.

Finally, I've considered whether the debts are time-barred by statute, given that it has been a considerable time since Mr H made a full repayment. Again, my role is not to determine this – that's the role of a court. However, I do need to take into account the law. Here, that is the Limitation Act 1980.

This provides, amongst other things, that “an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued” (section 5). In the case of debt-recovery proceedings, I believe that the cause of action normally accrues on the day after the debtor first defaults, as that's the earliest date on which the creditor could start legal action. But section 29 of the 1980 Act also states (my emphasis) that:

*...where any right of action has accrued to recover...any debt or other liquidated pecuniary claim...and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it **the right shall be treated as having accrued on and not before the date of the acknowledgement or payment.***

Mr H has made payments towards the debts in the last six years, and acknowledges he owes the money. I accept he doesn't feel it fair he continues to pay it back. But this isn't what the Act says. In this case, as it's accepted the sums are outstanding – and Mr H has made payments - I think it reasonable, taking into account the Act, that Barclays may continue to seek recovery. It doesn't matter that the payments were lower than the contractual sums. It's enough that any payments have been made.

For these reasons, I don't think Barclays has behaved unfairly. It has been trying to work to find a way forward, taking into account Mr H's circumstances by asking for his income and expenditure. I think this is reasonable. I know this will be very disappointing for Mr H, but I think it's fair taking into account everything that's happened.

responses to my provisional decision

Barclays didn't add anything further.

Mr H disagreed with my provisional decision. In summary, he felt that I haven't properly taken into account his health conditions, and the impact of coronavirus on his ability to work.

my findings

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

I'm very sorry that Mr H has underlying health conditions. I understand that this must make things difficult for him, and very stressful. And that this is made worse by the current situation with coronavirus.

That said, a person having health conditions isn't, of itself, a reason for me to say that any debts that person has should be written off. Rather, I'd expect a business to look carefully at the person's circumstances, to find a way forward. I'm satisfied that this is what Barclays has been trying to do. It has asked for Mr H's income and expenditure details, so it is better able to consider his situation. As I understand it, he can provide these through PayPlan. I think this is fair and reasonable.

As Mr H hasn't provided anything to persuade me to depart from my provisional decision, my decision remains that I don't consider Barclays to have acted unreasonably. My provisional decision therefore stands as my final decision.

my final decision

For the reasons given above, it's my final decision not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 December 2020.

Elspeth Wood
ombudsman