

complaint

The estate of the late Mr P has complained that Barclays Bank UK Plc (trading as Barclaycard) didn't act responsibly when they increased his limit on his Barclaycard accounts.

background

The background to this complaint is set out in my provisional decision. I've attached a copy and it forms part of my final decision.

I explained I was intending to uphold this complaint. In summary I said I didn't think Barclays did enough to make sure the final increase in the credit limit was affordable for Mr P and that there were signs he was increasingly relying on credit to get by. I pointed to a number of factors that I thought should have indicated this including Mr P's income, a high level of spread betting activity and Mr P's reliance on other credit, such as personal loans taken out by both him and his wife, Mrs P.

I didn't think it was fair for Barclays to write off the debt but I thought they should refund interest and charges from the 4 April 2013 and add 8% simple interest from the point the credit was taken out to the point of settlement.

Barclays responded to ask for clarification about the application of interest as they referred to our general approach - which is to award 8% simple interest when there's a credit balance once the refund has been calculated. Once the refund for the interest and charges was calculated the account was left with a negative balance of just under £900. So there wasn't a credit balance. Having considered the wider circumstances, Barclays agreed to write off the outstanding debt altogether.

Our adjudicator explained to the executors the 8% wouldn't be added because there wasn't a credit balance but that Barclays had agreed to write off the outstanding amount. The executors responded with their comments. In summary they said:

- The banks offer was completely unfair
- Our service needs to take a holistic approach to all the complaints we're considering
- There is no mention of spread betting as an addiction or sophisticated investment strategy
- My summary of the complaint is watered down and the executors verbatim response should be published
- The executors should have the opportunity to meet with me face to face to make their case
- Loans taken out before 2011 should be taken into account as there is a pattern of behaviour demonstrated by Barclays which shows a disregard for the rules
- They haven't had access to all of the information provided to our service by Barclays

- My assessment of spread betting is misinformed and incomplete for a number of reasons
- The principal amounts should be refunded – if this doesn't happen it's unjust, unfair and contradicts the approach taken by the courts and our service in other cases
- The decision should state the executors aren't bound by it and no real monetary award has been made in recognition of the late Mr P and Mrs P's losses.
- They want a fair settlement which reflects Barclays unfair and unjust behaviour. The open and transparent position is that there is no real loss for Barclays for their irresponsible behaviour
- They want a sincere apology from Barclays.

The executors also made a counter offer in which they proposed Barclays should pay all amounts outstanding, the amounts awarded by me (not offset against anything) and half the principal amounts of all loans open since the death of Mr P. Barclays didn't agree to the executors proposed resolution and so I need to make 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.

As I explained in my provisional decision and in a letter to the executors I don't think it's necessary to meet with them. Our service is informal and I think there's enough evidence for me to be able to make a decision without a hearing.

I'm sorry to hear that the executors feel I've watered down their comments and responses. Whilst I haven't specifically referred to each and every point in their detailed comments and responses I have taken all of the information into account. I appreciate the executors want me to detail their verbatim response but I've summarised the key points they've raised that I think are relevant to the outcome of this complaint.

The complaints do need to be dealt with separately because they involve different legal entities. But, as I explained in my provisional decision, I have taken into account the wider circumstances of the late Mr P and Mrs P. I referred to this in my provisional decision and it formed part of my findings.

Barclays have agreed to refund the interest and charges and applied this to the outstanding account balance. The total credit card debt was over £10 000 and, once the interest and charges were refunded, the outstanding debt is around £900. Barclays has agreed to write this off given the wider circumstances of this case. This goes beyond the settlement I was intending to direct Barclays to make.

The further comments from the executors haven't changed my thoughts about the outcome of this complaint and I think the offer from Barclays is fair because:

- I don't think that it's fair to direct Barclays to refund the charges and interest to the executors directly or to refund them for the principal amounts. Mr P spent the money he borrowed in the manner he chose, which included the legitimate activity of spread betting. The evidence I've seen suggests that this formed part of Mr P's way of managing his overall finances. So I'm not persuaded by the representations that Mr P didn't have the benefit of the money;
- The amount owed was in excess of £10 000 which is a significant amount of money. I think it is fair the refund is applied to the account to cover the outstanding balance. As Barclays has agreed to write off the remaining balance the executors won't need to make any further payments from the estate which I think is fair in the circumstances. If the executors don't want to accept this offer they can reject my decision;
- It's not for me to make a specific finding about whether Mr P was a gambling addict. My role is to consider what is fair and reasonable in all the circumstances of a case – taking into account any relevant law and guidance - and to decide whether a business acted fairly and reasonably. I've explained why I think there should have been warnings signs to Barclays that Mr P was experiencing financial difficulties. That included Mr P's spread betting history and the wider financial circumstances I set out in my provisional decision;
- I explained why I didn't think I could consider the lending which took place before 2011. Whilst I appreciate that the executors would like me to take that into account I remain persuaded that it's outside the relevant time limits to bring a complaint for the reasons I set out in my provisional decision;
- I don't think it's appropriate for me to direct that Barclays issue a sincere apology in this case. What amounts to a sincere apology is often subjective and I think it's in everyone's interests to draw a line under these events and allow all parties to move forward.

putting things right

I think the settlement Barclays has suggested in response to my provisional decision is fair. This means that the refund of interest and charges should be calculated from the 4 April 2013 and deducted from the current outstanding balance.

Barclays should then write off the outstanding balance on the account as that's what they've said they'll do – that goes beyond what I set out in my provisional decision.

my final decision

I'm upholding the estate of the late Mr P's complaint against Barclays Bank UK Plc and direct it to put things right in the way I've outlined above. Under the rules of the Financial Ombudsman Service, I'm required to ask the estate to accept or reject my decision before 20 July 2019.

Anna Wilshaw
ombudsman

COPY PROVISIONAL DECISION

complaint

The estate of the late Mr P has complained that Barclays Bank Plc didn't act responsibly when they increased his limit on his Barclaycard accounts.

background

Our service has been asked to consider a number of complaints relating to the late Mr P and his wife. This complaint is about Mr P's Barclaycards. However, I've taken into account all of the relevant information I've been provided with in relation to each of the complaints before making my decision.

Mr P took out a number of personal loans with Barclays and so did his wife. But he also had a Barclaycard which had a balance of over £11 500 when he died. His estate has bought a complaint that Barclaycard were irresponsible when lending Mr P money because they say that he had a spread betting problem and overall debts of around £25 000 when he died. Barclaycard didn't agree and said that the account was well maintained and they didn't know that Mr P was having issues with a gambling addiction. They said that increases to Mr P's credit limit were commercial decisions that were made in line with the account terms and conditions.

Our adjudicator looked into what happened. She found that Mr P had two credit cards with Barclays and that one had been closed in 2010 with a nil balance. There was also a card Mr P had taken out in 1994 which had an outstanding balance of over £11 500. She thought that the account had been well managed and that there were significant reductions in the balance when Mr P made credits towards it. So she didn't uphold the complaint.

The executors responded to say that they didn't agree and provided a detailed response. In summary they said that:

- They'd not had sight of all of the evidence that our service had relied on
- There was a steady increase in the credit limit which was mainly used for spread betting
- Although the balance did decrease at certain points it did increase again, for example in March 2013
- The figures our adjudicator had relied on as representative of Mr P's income are wrong
- Barclaycard didn't do enough to check Mr P could afford the borrowing
- Mr P didn't make a profit on spread betting
- Mr P was unwell and this would have been evident to Barclaycard
- Barclaycard didn't undertake a proper risk assessment

So I now need to make a decision.

my provisional findings

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

As I've outlined in my other decisions the executors have asked to speak to me about the complaints they've raised. But I don't think that's necessary in the circumstances of this case. I've received very detailed submissions in relation to all three complaints and I'm satisfied there's enough information for

me to make a decision based on the available evidence. I'm also aware that the executors feel that they've not had access to all of the information that our service has considered. The adjudicator has shared with the executors the information she's relied on when reaching her decision.

There weren't set checks that Barclaycard had to complete before deciding whether to lend money to Mr P or when increasing his credit limit. But they did have a responsibility to carry out proportionate checks taking into account a range of factors including the amount of money that they were lending, the lending history and what they already knew about Mr P's circumstances. The relevant industry rules and guidance point to a number of factors which might indicate that a customer is experiencing financial difficulties for example, not being able to meet repayments or entering into a debt management plan.

limit increases before 2011

I haven't considered the lending which took place before 2011. Our rules say that we can't look at a complaint if it was made more than six years after the event complained of; or if later, three years from when the customer was aware, or ought reasonably to have been aware of cause for complaint. The rules do allow me to look at complaints made out of time if the failure to comply with the time limit was as a result of exceptional circumstances

In this case, the events complained about are the increased to Mr P's limit which took place more than six years ago. And I think Mr P would have known that he had cause to complain at that point if he was unhappy with the increases. I've not seen evidence of exceptional circumstances so I'm not intending to consider the limit increases made before 2011 although I will refer to them as part of the background to the complaint.

increases in the credit limit after 2011

Mr P's credit limit increased from £2540 in 2008 to £11 500 in 2013. It remained at that level until Mr P died in late 2016. Between 2011 and 2016 Mr P took out a series of personal loans with Barclays and his wife also took out loans with them too. The final increase in the credit limit was in April 2013 when it increased from £9820 to £11 500.

I'm not persuaded that Barclays did enough to ensure that the lending was affordable for Mr P and I think that there were signs that Mr P was increasingly relying on credit to get by in April 2013 when the final increase took place. I say that because:

- Mr P's limit approximately doubled between 2011 and 2013. And Mr P's credit file would have indicated that since August 2011 he'd taken out a total of three personal loans with significant levels of borrowing. Each of the loans was for more than £10 000 and the final loan was for over £18 000. And Mr P's wife also took a £13 000 personal loan in March 2013 which was just before the final increase to the credit limit. I think it's likely that information would have been captured on Mr P's credit file because she was financially linked to Mr P;
- I can't see that any further information was obtained about Mr P's income and expenditure at that time. The information on the original application form from 1994 said that he earned £11 500. But I can't see that more in depth checks were carried out to ensure that Mr P could afford such a significant increase in his borrowing on the Barclaycard;
- Mr and Mrs P's income was around £50 000 which was made up of rental income, benefits and pensions. But I think that by March 2013 their borrowing pattern and increasing level of indebtedness ought to have raised some concerns as their personal loans at that time amounted to over £30 000 between them. Whilst Mrs P wasn't on the account she was financially linked to Mr P and their income was joint. When the limit was increased their total debt was going to be in excess of £40 000 which was a significant amount of their total income;

- Barclaycard say that Mr P was regarded as an affluent customer. But even a brief look at Mr P's credit card statement history would've indicated that he was participating heavily in spread betting and spending tens of thousands of pounds on that activity. He used his Barclaycard largely to carry out transactions of this nature and I think that would have been very evidence from even a brief review of his statements. The level of spread betting transactions on the Barclaycard increased from the summer of 2012 which was before the final increase to his limit;
- Spread betting is a legitimate activity, which Mr P was entitled to use his money to fund. But, when considered alongside all of the other information that would've been available to Barclays, I think the level of usage here ought to have reasonably prompted a wider discussion with Mr P about his wider circumstances such as the reasons for the increasing level and frequency of his borrowing. Mr P was retired and his wife wasn't working but they continued to borrow more money from Barclaycard and continued to take out personal loans. So I think there were a number of indications that things weren't quite as they seemed on the surface;
- If Barclaycard had asked for more information about Mr P's circumstances I think that they are very likely to have realised Mr P's finances were becoming more strained. They'd have seen that Mr P had borrowed money from other lenders to pay off his Barclaycard balance but that he quickly ran up his credit card balance again, largely on spread betting. And if they'd asked for more information about his income and expenditure I think it's likely to have indicated that he could comfortably afford his daily expenses, except for the money that he was spending on spread betting. But I also think that, given the individual circumstances here, Barclays should have gone into more detail about why Mr P wanted the borrowing and how he might use this. I think if a proportionate approach like this was taken, then Barclays would and should have had serious concerns about whether further lending was the appropriate thing to do after March 2013. It strikes me that what Mr P really needed was an honest and frank discussion about his financial situation, or to be referred to a suitable organisation to help him with this.
- During 2015 Mr P defaulted several times. He made a number of payments on the account in June 2015. But the source of this money seems most likely to have been a personal loan that Mr P took out with Barclays at around that time. He largely cleared the balance but by August had spent over £8500. Most of the transactions were related to spread betting. And by September 2015 he was in default again and was at his credit limit. There continued to be late payments and over limit fees applied over the following year until Mr P's death in 2016;
- I don't think that it's fair for Barclays to write off the debt. Mr P had the benefit of that money and I think it's fair that it's paid back. But I think that all interest and charges 4 April 2013 should be refunded. They should also pay 8% simple interest from the date that the loans were taken out to the date of settlement.

putting things right

I think that Barclaycard ought to have realised by March 2013 that Mr P's financial circumstances were becoming more strained and should've done more to ensure that they weren't lending to him irresponsibly. So I'm upholding the complaint from that point onwards.

Barclaycard needs to put things right by refunding all interest and charges applied to the account from the 4 April 2013 and adding 8% simple interest from that point to the date of settlement.

my provisional decision

I'm intending to uphold the estate of Mr P's complaint about Barclays Bank Plc for the reasons that I've outlined above. The estate of Mr P and Barclays should let me know by 18 October 2018 if they have any other information that they think may make a difference to the outcome of this complaint.

Anna Wilshaw
ombudsman