

complaint

Mr O, represented by Mrs O, complains that Barclays Bank Plc irresponsibly lent money to him, about the charges it has applied to his business and current accounts and about its poor handling of his complaint.

background

Mr O operated business and personal accounts with Barclays. He took out three loans over a number of years and the last loan was used to consolidate his debts by allowing him to repay a previous loan and reduce his business account overdraft.

In summary he and his representative complained that Barclays acted irresponsibly in arranging the loans as they were unaffordable not least given Mr O's health issues and financial difficulties. They also complained about the charges applied to his accounts and the way the bank has handled his complaint. They wanted the bank to refund interest and charges, write off the debt and pay compensation.

Our adjudicator recommended that the complaint should be partly upheld. In summary he considered that:

- There was no evidence that Barclays was aware of Mr O's health issues before it closed his accounts.
- Barclays' closing of Mr O's accounts and passing of the debt to its recoveries department was in line with measures he would expect the bank to apply if a customer was experiencing financial difficulties. But the bank is not obliged to suspend or refund interest or charges applied to the account or to write off the debt even if the customer experiences financial difficulties or health issues.
- The accounts had been run in credit but also with occasional breaches of the agreed overdraft limit. The bank granted the most recent loan to help Mr O consolidate his debts and loans. Even if it had been aware of Mr O's health issues they would not automatically bar a consumer from having access to credit unless the bank was alerted to them and they would impact on the account's management. Barclays appeared to have carried out necessary internal checks and it is ultimately a matter of the bank's commercial judgement whether or not to lend to a customer. So he could not say Barclays had acted incorrectly.
- Once Barclays received notification of his financial difficulties and situation and was aware he had consulted a debt counselling charity, it had acted correctly in closing the accounts and passing the debt to its recoveries department.
- The recent Supreme Court decision meant that charges on a personal current account cannot be challenged as unfair or too high. And they will not be refunded if applied in line with the account's terms and conditions. He also did not consider that the charges on the business account were penalties and as such they were also not refundable.
- Mr O had received and had the use of the money from the loans and current account and so Barclays was entitled to hold him liable for the debt.

- There was a delay in Barclays dealing with the complaint and its response had not covered all the issues. There had been a serious failure in its complaints handling. It was appropriate for the bank to write a letter of apology for its handling of the complaint and it should pay £150 compensation for any distress and inconvenience caused.

Barclays had agreed to do so.

Mr and Mrs O do not agree with the adjudicator's recommendations and have asked for an ombudsman review. In summary they say that they want a comprehensive response from Barclays and it has not sent a letter of apology. The loans were unaffordable. The bank should have closed the accounts much earlier than it did and not lent any further money. Barclays did not carry out reasonable assessments and they want to see evidence of its enquiries. Barclays' procedures and practice on granting loans also fail to meet OFT guidance. They also consider that compensation offered is not enough.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Two further complaints brought by Mr O relating to PPI and a credit card account have been dealt with by us in two separate complaints and my decision on this complaint does not, therefore, deal with those issues.

Mr and Mrs O have provided detailed submissions to support this complaint, which I have read and considered individually in their entirety. But my findings are expressed in considerably less detail and focus on what I consider to be the central issues.

Mr and Mrs O have complained about the application and level of charges on Mr O's accounts. But, as the adjudicator has explained, the Supreme Court has now ruled on the charges applicable to personal current accounts, so there is nothing more I can add. My decision on this complaint does not, therefore, deal with the fairness or legality of those charges. I am also not persuaded that the charges applied to the business account amount to penalties and should be refunded.

A bank is entitled to decide for itself whether it wishes to deal with a customer and, if it does so, the terms and conditions applied. In this case Barclays explains it made risk based decisions to lend to Mr O, as it was entitled to do. I am satisfied, on balance, that in doing so it most likely considered his financial circumstances and made an assessment of the loans' affordability. I am also not persuaded that Barclays was aware at those times of Mr O's health issues. In any event, even if it had been, I do not consider they would have automatically meant it should have refused his loan applications. While Mr and Mrs O may now disagree with the bank's reasoning and decisions, these are matters of the bank exercising its commercial judgement, in which we would not normally interfere.

Banks are required to deal with customers in financial difficulty positively and sympathetically, but this does not necessarily mean that a bank must refund charges and interest applied.

In this case, I am not persuaded that the bank was or should have been aware of Mr O's financial difficulty or health issues before it granted the most recent loan. I find it only became aware of his problems around the time it was contacted by a debt counselling charity on his behalf. Once it was told of them I am satisfied that Barclays acted promptly and appropriately in closing the accounts and passing the debt to its recoveries department which could deal with matters rather more flexibly. I am not persuaded Barclays should have acted earlier than it did to refuse the loans or close the accounts as Mrs O suggests should have happened. Overall, I consider that the bank has acted appropriately, positively and sympathetically to Mr O's health issues and financial difficulties.

But Barclays' handling of the complaint was clearly poor – the bank has accepted that there was an oversight and its service was “*lacklustre*”. I agree with our adjudicator that there was a serious failure in the bank's complaint's handling. Not only was there delay but Barclays' response did not cover all the issues raised. I am satisfied that Mr O has, as a result, suffered distress and inconvenience which warrants an award of compensation.

Any award of compensation I make in this case must reflect only the distress and inconvenience caused to Mr O by Barclays' poor customer service – particularly its failure to deal with his complaint promptly and adequately, and any consequences flowing from that. I cannot award compensation to his representative. Our adjudicator suggested an award of £150 and the bank has agreed to this. It has also offered to write to Mr and Mrs O apologising for its handling of the complaint. Taking account of all the circumstances, and the modest levels of award we make, I consider this to be a fair and reasonable offer. We are also not a regulator and have no powers to fine or punish a bank or require it to change its procedures.

Mrs O complains that the bank has not sent the letter of apology but I note that its offer of settlement has not actually been accepted by Mr O. I also do not consider that I can require the bank now to submit any further information on its procedures or to provide a “*comprehensive*” response to all the items of complaint as Mrs O desires.

The fact that other banks may have acted differently in similar circumstances is a matter of those banks exercising their commercial judgement. I do not consider that any other bank's decisions or actions in any way require or oblige Barclays to do likewise or prove that Barclays has acted wrongly in this case and its circumstances.

Overall, although I sympathise with Mr O's situation, and recognise his and Mrs O's strength of feeling and frustration, I see no compelling reason to change the proposed outcome in this case. I also do not consider it would be fair or reasonable now to require Barclays to write off the outstanding debt, or refund any interest and/or charges as Mrs O suggests.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr O not accept my final decision then any rights he may have to take action in the courts against Barclays are unaffected and he will be free to pursue his arguments, and those of Mrs O his representative, in any court action that may arise, if he so wishes.

my final decision

My final decision is that I uphold this complaint in part and, in full and final settlement of it, I order Barclays Bank Plc to:

1. Pay Mr O the sum of £150; and
2. Send a letter of apology to Mr O for its poor handling of his complaint.

Stephen Cooper
ombudsman