

## **complaint**

Mrs H complains that Barclays Bank Plc is holding her sister, Mrs G, responsible for debts from a loan, a credit card account and overdrawn funds on a current account. She says that Barclays mis-sold the loan as Mrs G lacked mental capacity to know what she was doing. She also says that Mrs G did not authorise all the transactions on her credit card and current accounts. Mrs H wants Barclays to write-off all the debts.

## **background**

Mrs G had a current account with Barclays and a credit card account with Barclaycard. Her son, Mr G, was her informal carer and used both Mrs G's debit and credit cards with her authority. When this arrangement came to light in 2011, Barclays said it was against the terms and conditions of the current account and Mrs G made it a joint one with her son. The credit card account remained in Mrs G's sole name.

In 2009, Mrs G took out a loan from Barclays to pay off her Barclaycard. Mrs G repaid the loan in 2011 using some of the money from another loan from Barclays. The loan was also to be used for home improvements. It was around this time the issues about Mr G using Mrs G's accounts came to light.

Other members of Mrs G's family became concerned about both her health and financial affairs. Mrs G has been diagnosed with a condition which, in summary, means that she cannot independently perform (at least some) daily activities or remember previous financial transactions. The other family members were concerned that Mr G had taken advantage of his mother's condition and gained by using the money from her accounts and loan(s).

Mrs H visited Barclays on 9 February 2012 with Mrs G and her social worker. Mrs H and Mrs G's social worker explained Mrs G's condition and that they believed Mrs G had been coerced into financial transactions. They said Barclays should not have given Mrs G either loan and asked for the current loan to be frozen while the issue of mis-selling was investigated. They also asked for the credit card to be discontinued and the joint bank account to be closed or put into Mrs G's sole name.

Barclays said it could not change the joint account without Mr G's agreement. So Mrs G opened another account in her sole name and transferred her income to it. The joint account remained open and the loan repayments still debited from it. Most were returned unpaid as the account was overdrawn. Mrs G's debit card for the joint account was to be cancelled.

The bank rejected the complaint. Barclays said its records of the discussions when the loans were taken out did not indicate Mrs G had any difficulty in understanding what she was doing. It said Mr G was equally entitled to the funds in the joint current account. The bank noted the other members of Mrs G's family had proposed to get her to give a power of attorney, but this could only be given if Mrs G was able to show she had sufficient mental capacity. Mrs H was not happy with this and referred the matter to this service.

Our adjudicator was satisfied that Barclays had not acted inappropriately in giving Mrs G either loan. There was no evidence to suggest that Mrs G did not know what she was doing. But the adjudicator said Barclays should not hold Mrs G liable for the transactions made on either the credit or debit cards after the visit to the Barclays branch on 9 February 2012. She considered Mrs G withdrew her authority at this time.

Barclays noted the credit card balance had been cleared at the end of February 2012 by debiting the joint bank account. It said it would refund three new transactions from April 2012 that Mrs G had clearly not authorised. This would clear the balance on the credit card (again) and leave £0.13 to be credited to the joint current account.

The bank did not agree with the adjudicator's view on the debit card transactions, pointing out that the account received credits for both Mrs G and her son. But it offered to refund all charges and interest on the account since the visit to the branch. Barclays said this would reduce the balance outstanding to £716.54.

Mrs H's main concern is the alleged mis-selling of the loans. She neither agreed with the adjudicator's view on this, nor accepted Barclays' offer. So the matter has been referred to an ombudsman for a final decision.

Barclays has subsequently offered to pay Mrs G £200 compensation for the distress and inconvenience she has suffered.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator.

I understand that Mrs H and other members of Mrs G's family are very concerned about her financial position and I can see they are trying to help her as much as possible. The debts have been referred to recovery agents and this impacts on the wider family as much as it does Mrs G.

#### *joint current account*

The debit card was in Mrs G's name. Mr G did not have a card in his name. I am satisfied that Mrs G withdrew her authority for her son to use that card when she visited the Barclays branch on 9 February 2012.

Barclays did not cancel the card as it should have done. The bank has suggested that Mr G would have been able to request, and use, a card in his own name. That may be the case, but it does not alter the fact that all the transactions made after 9 February 2012 using the card in Mrs G's name were not authorised by her. Barclays should remove all these transactions and reconstruct the account.

I recognise it is possible that doing so may not improve the position much beyond Barclays' offer to refund all charges and interest on the account – or not at all. This would not be fair on Mrs G. Barclays should ensure that the maximum balance outstanding does not exceed £716.54 – if necessary by making adjustments to the account to achieve this result.

I also recognise that reconstructing the account may show some of the direct debits for Mrs G's loan should have been paid, rather than being returned as unpaid. Barclays should also reconstruct the loan account as necessary.

Barclays has offered Mrs G £200 compensation for the distress and inconvenience she has suffered. I think this is an appropriate amount to reflect the additional problems caused by

not cancelling the debit card at the right time. Mrs G may wish to use this award to reduce any remaining debt with Barclays.

*loan account*

I have reviewed the documentation provided for both loans. The 2009 loan was repaid with some of the money from the 2011 loan. The 2011 loan may not have been so large if the 2009 loan had not been taken out. So I consider it important to look at both loans.

The papers from both the 2009 and 2011 loans certainly appear to be signed by Mrs G. The 2009 loan was to be used to repay Mrs G's debt on her Barclaycard and to make some home improvements. I understand the 2011 was also to be used to make home improvements. Mrs H has said that Mrs G's property is in a poor state of repair – suggesting the improvements were not carried out. That may be the case but it was not Barclays' responsibility to check how the loan monies were used.

Mrs H says that Barclays should have realised that Mrs G would not need to borrow such large sums. I do not consider the amounts borrowed to be excessive. The balance on Mrs G's Barclaycard was nearly £4,000 when it was paid off in May 2009. This leaves just over £6,000 for home improvements. The interest rate on the 2009 loan was less than that being charged on Mrs G's Barclaycard, making her financial position on this part of the loan better. So I do not believe there were any indications to suggest to Barclays that it was inappropriate to approve the loan.

Barclays initially declined Mrs G's application for the 2011 loan. This indicates to me it did not want Mrs G to over-extend herself. The monthly payments on the 2011 loan were nearly £50 higher than for the 2009 loan. It was then pointed out the mortgage Mrs G had on her property (with another bank) had been repaid, which reduced her monthly outgoings by nearly £170. This indicates Mrs G's overall financial position should have improved so, again, I can see no obvious reason why the 2011 loan was inappropriate.

Should Barclays have been aware that Mrs G may have lacked mental capacity to take out the loans? The Barclays' staff member dealing with the 2011 loan recalls that Mrs G appeared to be in good spirits and there was nothing in her behaviour to suggest she did not understand what she was doing when taking out the loan. I have no reason to disbelieve the staff member's recollections.

I have been provided with reports about Mrs G's health from November 2008 to March 2010. These include some commentary on the condition affecting her memory. Mr G appears to have actively supported his mother through this period, including attending the medical appointments that led to the various reports.

There is no doubt that Mrs G suffered from memory problems. But I note the report from March 2010 refers to there being no evidence of progression of those problems and the consultant concluding there was no further need for their specialist input. That is not to downplay Mrs G's condition – simply to put it into context as far as whether there were any specific warning signs that Barclays should have been aware of. I am not persuaded there were any such signs.

When I combine the above, I do not believe Barclays acted inappropriately in approving the loans for Mrs G. I know that Mrs H and the other members of Mrs G's family will be disappointed with this but Barclays does not need to write-off the debt on the (2011) loan.

This may mean Mrs G faces financial difficulty in making the monthly payments on the loan. So it is particularly important that I remind Barclays of its obligations to ensure it responds positively and sympathetically to any such difficulties.

The (2011) loan account should be reconstructed (in light of the joint current account also being reconstructed) and the outstanding debt reduced if necessary.

**my final decision**

For the reasons I have given, my final decision is that I order Barclays Bank Plc to:

- refund the three transactions from April 2012 on Mrs G's credit card and subsequent interest and charges, which clears the outstanding debt and credit £0.13 to the joint current account;
- remove all the debit card transactions from Mrs G's joint current account made after 9 February 2012 and reconstruct the joint account and loan accounts accordingly;
- ensure that, following the reconstruction, the debt outstanding from the joint current account does not exceed £716.54 by making adjustments to the account/debt as necessary; and
- pay Mrs G £200 compensation for the distress and inconvenience she has suffered. Mrs G may ask for this to be paid to Mrs H or used to reduce any debt with Barclays.

Andrew Davies  
**ombudsman**