

complaint

Mr G complains that Barclays Bank Plc went ahead with a transaction after he had withdrawn his authority for it.

background

The circumstances leading to this complaint were set out in my provisional decision dated 22 May 2014, a copy of which is attached and forms part of my final decision. I agreed that Barclays made a mistake when it did not cancel the continuous payment authority (CPA) and I proposed that the bank should refund any resulting charges and interest. I also proposed that Barclays should pay £100 to Mr G in compensation for his distress and inconvenience. But I said that the payment was used to settle a debt that already existed, so I did not propose that the bank should refund the disputed payment itself or amend Mr G's credit file.

I invited the parties to provide me with any further submissions they wished to make in response to my findings.

Barclays has said it accepts the provisional decision.

Mr G did not accept the provisional decision. He made the following points:

- He never had an overdraft from Barclays before these events. He had no borrowing facilities with the bank at any stage, so it is incorrect to say that his overdraft increased as a result of the disputed payment.
- For the purposes of the complaint he considers the debt owed to the payday lender to be in dispute and therefore not owed. The actions of the lender are of no concern to Barclays or the ombudsman. It is therefore not valid to assert that if Barclays had stopped the CPA then the debt owed to the lender may have increased.
- He did have the resources to pay off the lender, but it was in dispute.
- The provisional decision correctly states that the unresolved dispute with the lender and Mr G would be best dealt with between them, and this is exactly what he proposes to do. That unresolved dispute has no bearing or influence on Barclays' legal requirement to cancel the CPA.

my findings

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

Mr G says that he had no borrowing facilities with Barclays. It may be true that he had no authorised overdraft facility, but his account statement shows that it was overdrawn by about £150 just before the disputed transaction. The disputed payment increased the overdraft.

I understand Mr G's argument that the debt to the payday lender should be seen as entirely separate from his complaint about the payment made by Barclays, but I do not agree with him. He says that he still disputes the debt to the lender and intends to deal with it. But this was a loan which fell due in 2011 and I cannot ignore its existence. As things stand, the evidence indicates that Mr G had a debt to the payday lender before the disputed payment,

then an equivalent debt to Barclays after the payment. So I remain of the view that he suffered no direct financial loss as a result of the payment itself.

Mr G says that he could afford to pay off the loan but did not do so because it was in dispute. But I still think that if he had the resources to repay the loan, then he could have repaid his overdraft – and this did not happen. I remain of the view that Mr G was unlikely to have repaid the loan, so I believe his credit file would have suffered anyway, irrespective of the bank's action.

For these reasons, I do not depart from my provisional decision.

my final decision

My final decision is that I uphold this complaint and require Barclays Bank Plc to do the following:

- Refund all the charges and interest that were debited from Mr G's account between 29 November 2011 and the closure of the account. The bank may use this refund to reduce any remaining debt owed to it by Mr G.
- Pay £100 to Mr G for distress and inconvenience. This should be paid by cheque.

Colin Brown
ombudsman

COPY**PROVISIONAL DECISION****date of decision:**

22 May 2014

I have carefully considered the relevant information about this complaint.

Subject to any further comments and evidence that I receive by 23 June 2014, I intend to issue a final decision along the following lines.

complaint

Mr G complains that Barclays Bank Plc went ahead with a transaction after he had withdrawn his authority for it.

background

In May 2011 Mr G took out a loan from a payday lender and agreed a continuous payment authority (CPA) so that the lender could take repayments from his Barclays current account.

In October 2011 Mr G contacted Barclays and instructed it to cancel the CPA. The bank said it was unable to stop the payments and in November 2011 it paid £1,377 from Mr G's account to the lender. This increased the overdraft on Mr G's Barclays account from about £150 to about £1,400. This meant that a number of direct debits were returned unpaid and fees were incurred. The account was closed in November 2012 with an overdrawn balance of about £1,570 and a default marker was registered on Mr G's credit file.

In August 2013 Mr G complained to the bank. Barclays said that Mr G had set up a CPA and the bank could not prevent the payments. It said the payments had been guaranteed.

Mr G was unhappy with the bank's response and referred the complaint to this service. He asked for the disputed payment to be refunded and for his credit file to be adjusted accordingly.

Our adjudicator did not recommend that the complaint should be upheld. Briefly, he said:

- Barclays was wrong when it asserted that it was unable to cancel the CPA. Under the Payment Services Regulations 2009, consumers are able to cancel a CPA by instructing the bank.
- However, it would not be appropriate to ask Barclays to refund the payment to Mr G. The adjudicator said this was because cancelling the CPA would not have reduced Mr G's liability to the payday lender, and might have worsened his position as a result of further charges it would trigger on the loan.
- If there was an unresolved dispute between Mr G and the payday lender, then it would be better dealt with between them.

Mr G disagreed with the adjudicator's conclusions. He made these points:

- The adjudicator has said that Barclays was wrong not to act on his request to stop the payment.
- As a result, his account went overdrawn, affected his credit file and his ability to open a bank account, not to mention the stress.
- It is entirely irrelevant what may or may not have occurred between him and the lender if Barclays had acted on his instruction. It has no bearing on his fundamental right for his request to be honoured.

my provisional findings

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

I agree with the adjudicator that Barclays was wrong to say it could not cancel the payment. The Payment Services Regulations clearly state that payers may withdraw their consent to the execution of a series of payments, at any time. Both the Financial Conduct Authority and the Office of Fair Trading have issued statements to confirm this position.

The Financial Conduct Authority gave this advice to consumers: *“In most cases, regular payments can be cancelled by telling the company taking the payments. However, you have the right to cancel them directly with your bank or card issuer by telling it that you have stopped permission for the payments. Your bank or card issuer must then stop them - it has no right to insist that you agree this first with the company taking the payments.”*

Barclays therefore should have cancelled the payment. It follows that it acted unreasonably when it refused to do so. For this reason I am minded to uphold the complaint.

If Barclays had stopped the payment as he requested, Mr G would still have owed the debt to the payday lender and it might have increased. But that was his business, not the bank's. I do not know what other arrangements he intended to make to deal with his situation. What actually happened as a result of the bank making the payment was that his overdraft increased considerably and a number of charges were incurred. I am minded to order the bank to refund those charges and any interest.

Should the bank refund the disputed payment to Mr G? Normally our approach to redress is to return the consumer to the position they would have been in if the failure had not occurred. Before the bank made the payment, Mr G had a debt to the payday lender. That loan was settled by the payment, so if Barclays now refund the payment to Mr G, he would not be returned to the position he was in at the time – rather, he would gain from the events because his debt would have been settled by the bank. I do not think that would be a fair resolution of the complaint. The payment was used to pay off a debt that Mr G owed at the time, so I do not think he suffered a direct financial loss as a result of the payment itself. I am therefore not minded to order Barclays to refund the payment.

I realise that Mr G says he was disputing the sum he owed to the payday lender. But I think the adjudicator was right in concluding this would be best dealt with between Mr G and the lender.

Should Mr G's credit file be amended? I believe that the erroneous payment led to the substantial increase in Mr G's overdraft and resulted in the charges, but I cannot say that the

debt itself and the eventual default were the bank's fault. Mr G's debt already existed and the disputed payment merely switched it from one provider to another. If Mr G had the resources to pay off the debt to the payday lender and thereby to avoid adverse credit information, then I can see no reason why he would not have paid off the same debt when it was in the form of a current account overdraft. As this did not happen, I believe that Mr G would not have been able to pay off the payday loan. So I think it is likely that his credit file would have been suffered anyway, irrespective of the bank's action. I am therefore not minded to order Barclays to amend Mr G's credit file.

Mr G has been put to some trouble as a result of the bank's error, so I am minded to require Barclays to pay him £100 for distress and inconvenience.

my provisional decision

My provisional decision is that I am minded to uphold this complaint and propose to order Barclays Bank Plc to do the following:

- Refund all the charges and interest that were debited from Mr G's account between 29 November 2011 and the closure of the account. The bank may use this refund to reduce any remaining debt owed to it by Mr G.
- Pay £100 to Mr G for distress and inconvenience. This should be paid by cheque.

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