

complaint

Mr A complains that Barclays Bank UK PLC, trading as Barclaycard, has refunded charges to his debt after he had been discharged from his insolvency trust deed. He thinks the refund should be paid to him.

background

In 2009 Mr A owed Barclaycard around £17,000 and he had exceeded his credit card limit. He incurred charges and interest on his credit card account in accordance with the terms and conditions of that account. In 2012 Mr A was in default of those terms and conditions. He couldn't meet the repayments and Barclaycard closed the account in its records and in 2013 it sold it to a debt collection agency.

Barclaycard has since identified that it failed to send the statutory pre-notification of the charges. It has decided to refund them and has calculated that Mr A is entitled to a refund of almost £10,000. As it had sold the debt, it made the refund to the debt owner.

Mr A entered an insolvency arrangement (trust deed) in 2013. He was discharged on 15 December 2017 and the trustee was discharged (as a trustee) on 14 September 2018.

Barclaycard wrote to tell Mr A about the refund in December 2018. Mr A says that because he has now been discharged Barclaycard was wrong to pay the refund to the debt owner. He thinks the repayment should have been made directly to him.

Our investigator didn't think Barclaycard had made a mistake. He said that the only reason Barclaycard had decided to make a refund was not because the charges were wrong in themselves or that they shouldn't have been applied to Mr A's account, but because it failed to give the correct notices. The charges formed part of Mr A's debt so any refund should be offset against the amount still outstanding.

Mr A didn't agree. He said that as he had been discharged from the debt it no longer existed and so the refund should be made direct to him.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I know Mr A will be disappointed, but I agree with the conclusions reached by our investigator for broadly the reasons given.

When Barclaycard debited the charges to Mr A's credit card account it was in arrears and he had failed to meet his contractual repayments. Barclaycard's mistake was that it failed to send a Notice of Arrears each time he didn't make a repayment when it was due. I find Mr A still received monthly credit card statements, which showed the balance of the account, the amount of the arrears and what his repayment requirements were. So I'm satisfied that Mr A knew that he was failing to meet the contractual terms of his account and Barclaycard was entitled to apply interest and charges in accordance with those terms. And because of the Supreme Court's decision in 2009 the charges can't be challenged on the grounds that they are unfair.

The bank's mistake was in failing to send the pre-notifications. It's on this basis that it's offered to refund the relevant charges to Mr A's account. The charges themselves were taken while the debt was legitimately accruing. So just because it made this mistake, it doesn't mean that it had to refund the charges any sooner than it already did. And, as I've explained, it is only something Barclaycard could do at some point *after* the event.

Mr A suggests that if Barclaycard had refunded these charges sooner then his debt would have been smaller and he might not have had to enter an insolvency arrangement. But I find Mr A knew that he was in breach of the terms of his account and the amount and extent of his debt. I've also considered the position Mr A would have been in if Barclaycard hadn't made the mistake and had provided the notices. On balance, I'm not persuaded that Mr A would have done anything differently.

Mr A says that he has been discharged from his debts, before the refund was made. He suggests that because of this the debt no longer exists and a refund can't be applied to it. As such, the refund should be paid directly to him.

Mr A is correct in saying that he has been discharged from his trust deed. But I find that this means he has been discharged from his liabilities towards his debts covered by that deed. The debts themselves still exist. They aren't erased by the discharge, it's just Mr A's liability towards them has ended. Having checked the amount of the Barclaycard debt that was outstanding, after the date of discharge, I find that it was in excess of £11,000. On this basis, I'm satisfied that Barclaycard hasn't made a mistake in applying the refund to the outstanding debt.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 September 2019.

Karen Wharton
ombudsman