

complaint

Mr H, on behalf of himself and Mrs H, complains that Barclays Bank Plc has not treated them fairly, in that it allowed Mr H to repeatedly breach his overdraft limit and access his emergency borrowing facility; that it charged him for doing so and thereby exacerbated the effects of his problem gambling; and that it did not do more to help prevent his losses from gambling. He would like Barclays to refund the charges applied to the account.

background

Mr H says that between 2007 and 2015, Barclays unreasonably applied charges to his joint account. He says the bank allowed him to breach his overdraft limit several times a month for several years, and charged him each time this happened. Mr H says that by allowing him to breach the overdraft limit, Barclays was facilitating his problem gambling, and making money out of it. He would like the bank to refund the charges which were applied in this way as he says the bank breached its duty of care to him.

Our investigator did not recommend that this complaint should be upheld. She considered that Barclays had shown the charges had been applied in line with the account terms and conditions. She also considered that as Mr H hadn't told Barclays of his gambling problem, or asked it for help, there was no onus on the bank to place limits on the account, which was operating within its limits.

Mr H does not agree, saying the bank should not have allowed him to access emergency borrowing so frequently.

my findings

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

Mr H has raised several issues in his complaint, and I've dealt with these in turn, below.

charges applied in line with terms and conditions

Mr H has said that Barclays applied unreasonable charges to his account. I appreciate he was upset to be charged because of his use of the account for problem gambling. In 2009, the Supreme Court held that charges would be reasonable, if they were applied in line with the account terms and conditions. Because Barclays has been able to show that this was the case, I can't say the charges were unreasonable, or ask Barclays to refund them.

frequency of emergency borrowing

Mr H has also said that Barclays did not treat him fairly, in that it allowed him to make excessive use of his emergency borrowing facility. I have reviewed Mr H's use of that facility against the terms and conditions. It does appear that Mr H made reasonably regular use of that facility. But this use was well within the capped rate of seven times per month. So I can't say that Barclays had promised to restrict Mr H's use beyond that level, or that it should refund the charges applied when Mr H did use the facility.

whether Barclays owed a wider duty of care to Mr and Mrs H.

It's important to note that regular credits were being made to the account, and that Mr H was otherwise operating it within its limits. Banks won't generally monitor an account which is being managed in this way, unless they are expressly asked to by the customer or someone else. There is no evidence that Mr H asked Barclays to restrict his use of the account, or to help him manage his problem gambling. So I can't see that the bank was aware of Mr H's problem in any way which would have raised a duty of care towards him. This means I can't say the bank is in breach of any wider duty of care.

poor complaints handling

Mr H also complained to Barclays that it provided poor customer service in relation to his complaint, in that promised return calls were not made. Barclays has paid Mr H £30 to cover call costs associated with making his complaint. I consider this to be fair and reasonable in the circumstances.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 July 2017.

Catherine Wolthuizen
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