

complaint

Mr D says Barclays Bank Plc is acting unfairly by refusing to remove a default from his credit file.

background

In 2000 Mr D opened an Egg credit card but Barclays took over the account in late-2011. For ease, I'll call the business "Barclays" throughout the rest of this decision even though some of what happened took place before the account migrated to Barclays.

In early-2009 Mr D got in touch with Barclays because he was having money problems. Barclays says Mr D was sent a default notice in August 2010 and the account was defaulted the following month. Several repayment arrangements were set up in the years that followed and the debt was repaid in full early in 2014.

In late-2014 Mr D was looking at applying for a mortgage and found out at least one credit reference agency (CRA) was showing his account had been defaulted. Mr D asked Barclays about this and it said the account hadn't been defaulted but a "formal demand for payment" had been reported to the CRAs. Barclays offered to investigate further if Mr D could provide evidence of the default. And it offered Mr D £100 because it hadn't looked into his complaint quickly enough.

Mr D showed Barclays the defaulted account on his credit file, but the bank didn't arrange for the default to be removed. So Mr D referred a complaint to us and Barclays told us it had made a mistake - the account *had* been defaulted in September 2010, after giving Mr D fair warning this would happen. But Barclays offered to pay Mr D a further £100 for any confusion it had caused by giving him the wrong information.

Our adjudicator thought the account had been fairly defaulted and the bank's offer of £200 compensation for the poor service Mr D had received was reasonable. Mr D disagreed.

I sent Mr D and Barclays a provisional decision in August which explained that I thought the adjudicator had reached the right decision but I wanted to give a fuller explanation. I said, in summary, that:

- Mr D said he met the terms of the reduced repayment arrangement between March 2009 and September 2010. But I didn't think that was quite right. No payments were made between September 2009 and January 2010. And, although an extra payment was made in March 2010, that only made up for three of the five missed payments. So Mr D didn't have an unblemished record of paying between the date he first told the bank he was having money problems and the date the account was defaulted. I had no reason to think Mr D wasn't receiving his statements over that five-month period and it was his responsibility to make sure he was making payments.
- I thought, having seen Barclays' records, that it had probably sent a default notice to Mr D on 2 August 2010.
- It took Mr D almost five years to repay the debt and I wouldn't normally expect a lender to hold off defaulting an account for that length of time. Defaulting the account prevented any further interest or standard account charges being applied to the debt. So, after the account was defaulted, every penny Mr D paid went towards clearing the debt – in effect

he had an interest-free loan for that period of time – and made sure it was repaid as soon as possible.

- I thought it unlikely Mr D could afford to pay more than £75 a month towards the debt when he first told Barclays about his money troubles. I didn't think his problems were likely to have been a 'temporary' situation given it took him almost five years to repay the debt. With that in mind, and given arrangements to pay are generally only short term agreements, if the account hadn't been defaulted in September 2010 I thought it may well have been defaulted at some point along the way. It takes six years for a defaulted, settled account to fall off an individual's credit file. So I thought it likely Mr D was better off – as far as the information reported to the CRAs was concerned – with the default being recorded in September 2010 than at some later point.
- It seemed possible, given what I'd seen of Mr D's financial situation back in 2010, that there may be adverse information on his credit file related to other debts. And a prospective mortgage lender would take all that sort of thing – and many other factors – into account when deciding whether to lend. So I thought the default relating to this credit card was unlikely to be the only thing stopping Mr D getting a mortgage.
- Given the notes on Barclays' records I thought Mr D probably received the default notice but wasn't overly concerned about it, and the impact it had on his ability to get credit, at that time. I thought Mr D probably forgot the account had defaulted. And some of the letters Barclays sent later on might have contributed to that.
- It wasn't clear to me why Barclays said in its final response letter that the account hadn't been defaulted. And I thought that must have been frustrating for Mr D. But the bank had admitted it made a mistake and offered compensation for any confusion Mr D suffered. Given what I thought about the default I didn't think it fair to say the bank must stand by what it had said in that letter, and remove the default.

Barclays didn't have anything more to say after it read my provisional decision. But Mr D didn't agree with what I'd said about the default. He told me, in summary, that:

- It was wrong of me to say no payments were made between September 2009 and January 2010. A new £75 per month repayment plan was agreed in October 2014 and payments were made by a new standing order in November and December 2009 and January 2010. In March 2010 he used his debit card to pay £225 to bring the account up to date.
- He sent up-to-date income and expenditure forms to the bank several times in April and May 2010 offering to carry on paying £75 per month but got no reply until the very end of June. His offer was accepted and interest and charges were again suspended once the July payment went through.
- The Information Commissioner's Office's (ICO) guidance says that a business is entitled to default an account if an arrangement to pay is in place and three payments have been missed. In September 2010 he'd only missed two payments, so his account shouldn't have been defaulted.
- I've made a number of unfair assumptions when making my decision, for example:

- It isn't reasonable to say Barclays would have defaulted the account somewhere along the line if it hadn't been defaulted in September 2010. Barclays clearly didn't realise the account had been defaulted and yet it allowed the arrangement to pay to continue for a number of years.
- He was in constant contact with all his creditors over the period in question and made sure he repaid all his debts in full. So my comment that he might not have been overly concerned about the default was wrong.
- He hasn't got any other defaults on his credit file or other matters that might affect his ability to get a mortgage.

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, while I realise this will disappoint Mr D, I haven't changed my view. I say this for the reasons given in my provisional decision, and summarised above, and because:

- Mr D has sent me some current account statements and I can see £75 being paid by standing order to Egg in November and December 2009 and January 2010. But the credit card statements don't show any payments having arrived in those months. And the notes made after phone calls with Mr D around that time suggest the money never made it to his credit card but got stuck somehow at his bank. I think that rings true and he made the £225 debit card payment in mid-March 2010 after his bank returned the three payments to him. The credit card account notes also say that the missing payments and arrears were discussed with Mr D but he had no spare money and so wasn't able to bring the account up-to-date.
- Mr D says he sent his income and expenditure and offer of payments a number of times but these weren't acknowledged. The bank's records suggest it tried to call and left messages for Mr D a number of times in April and May and told him it hadn't received his income and expenditure forms. It wasn't until mid-June that the bank received details of Mr D's current income and expenditure. The bank's records show it then needed, and asked for, more information to check Mr D's financial situation before agreeing an appropriate repayment plan in July.
- The ICO's *guidance* isn't an absolute instruction about what a lender can and can't do when one of its customers is having money troubles. I appreciate only two payments in one of Mr D's arrangement to pay were missed and the guidance mentions three payments being missed before an account is defaulted. But, as I said in my provisional decision, the guidance also talks about arrangements to pay being temporary and short term (up to six months). And it also makes talks about accounts being defaulted straightaway when just one payment is missed. I've looked specifically at Mr D's case and what happened to him over the period in question. But I've thought about the steps I've seen lenders take in this sort of situation in other cases. And, as I've said before, I wouldn't expect Barclays to have accepted arrangements to pay and waived all interest and charges without defaulting the account at some point. I accept Barclays was somewhat confused when it sent its final response letter saying the account wasn't defaulted. But I've seen its records showing the account was defaulted in September 2010 and I think this is why it didn't try to default the account further down the line.

- I'm sorry if Mr D was offended by the assumptions I made about the likely state of his finances and credit file. He hasn't given me a copy of his entire credit file so I can't be sure what his overall situation is now or what it was back in 2010. But what does seem clear is that he was having quite serious financial difficulties and was struggling to pay more than just this debt over the period in question. It may well be that he's repaid all his debts now but, as it took him almost five years to repay this credit card debt, it may well be he took a similar length of time to clear the other debts. And, in those circumstances, I think he was probably focussed more on clearing the debt and less concerned with his ability to borrow more money and how his credit file might impact on that ability. I say this really only to illustrate how he might easily have forgotten that he received a default notice for this account and/or why he didn't complain sooner about the default. But, also, I've seen nothing which shows the default on this account would be the only thing that might stop him from taking out a mortgage. As I've already said, lenders take a great many things into account when deciding to lend.

Overall, I think it was fair of Barclays to default Mr D's account when it did so it shouldn't have to remove the default now.

Mr D hasn't said anything more about my decision that the £200 compensation was fair so I haven't revisited that matter other than to say it still doesn't look like this money has been paid.

my final decision

My final decision is that Barclays Bank Plc should pay £200 to Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 November 2015.

Ruth Lewis
ombudsman