

## **complaint**

Mrs K complains that Barclays Bank PLC, trading as Barclaycard, allowed her to borrow money she could not afford to repay and failed to deal appropriately with her request for assistance during a period of financial difficulty.

She wants Barclaycard to retain the debt, cancel rolled up interest, apply simple interest and accept a lump sum payment without recording adverse credit information. She also questions whether the credit agreement is enforceable.

Mrs K is assisted in bringing her complaint by a financial advisor.

## **background**

Mrs K had a Barclaycard credit card for many years. In March 2013, she wrote to Barclaycard and informed it that, due to unforeseen changes to her income, she was unable to make further payments. She returned the credit cards and asked to close the account. Mrs K asked Barclaycard to freeze the account, provide details of the principal, interest and rolled up interest and negotiate a settlement with her financial advisor.

The financial advisor made an offer to settle the debt which Barclaycard did not accept. In May 2013, an agreement was reached that Mrs K would pay a reduced monthly payment for 12 months, during which time interest and charges are suspended.

The adjudicator did not recommend that the complaint should be upheld. She said, in summary, that Barclaycard;

- did not mis-sell the credit card or lend irresponsibly,
- cannot provide the breakdown of principal, interest and rolled up interest that Mrs K has requested,
- was not at fault in refusing the offer to settle the account,
- did not act unreasonably and had been fair to Mrs K in relation to her financial difficulties,
- is entitled to make a commercial decision about the interest rate it charges and calculated the monthly repayment correctly,
- is obliged to report accurate information to credit reference agencies,
- is still managing the debt.

The financial advisor responded on Mrs K's behalf and did not agree with the adjudicator's view. He said, in summary, that;

- he did not allege that the credit card was mis-sold but objected to the fact that the agreement has been varied many times without Mrs K's agreement,
- Mrs K had long-term affordability problems,
- Mrs K wants Barclaycard to provide copies of all statements and demands over the last six years and nominate a person within the bank to negotiate a settlement,
- he wants this service's response to his proposal to settle the debt and to assist in reaching a settlement figure,
- the debt has been passed to a third party debt collector,
- Barclaycard did not explain the significant increase in the interest rate,

- Barclaycard seeks to maximise profit and should reduce the interest rate retrospectively for a guaranteed settlement,
- it is unfair to use risk based pricing without reference to the actual consumer.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

It is clear that Mrs K and her financial advisor have very strong feelings about this matter. They have provided detailed submissions to support the complaint, which I have read and considered in their entirety. However, I trust that they will not take as a discourtesy the fact that my findings focus on what I consider to be the central issues and that they are expressed in considerably less detail.

Under our rules, I am required to determine cases by reference to what I consider to be fair and reasonable in the individual circumstances of each complaint I determine. We can consider whether Barclaycard did anything wrong and whether it treated Mrs K fairly. We have no regulatory role in relation to Barclaycard, so I am unable to require it to change the way that it conducts its business, interfere with how it sets interest rates or direct it to negotiate in a particular way. Neither do we facilitate settlement deals with lenders – that is a matter for Mrs K's financial advisor to take forward with Barclaycard. I note that Barclaycard has previously offered to send Mrs K copies of statements from 2006 onwards which may help her financial advisor to propose a settlement figure.

Issues of enforceability of contracts are best dealt with by the courts. It is not entirely surprising that Barclaycard cannot now produce the original agreement Mrs K entered into approaching thirty years ago. However, it is safe to proceed on the basis that the agreement incorporated Barclaycard's terms and conditions, which provide that it is entitled to charge interest in the way that it did and vary the interest rate and credit limit.

Where there are financial difficulties, a lender must treat the customer sympathetically and positively in relation to any debt that the customer has to it. I would expect Barclaycard to consider how it can assist Mrs K in managing the debt, which in practical terms could include undertaking an analysis of income and outgoings, introducing payment plans for repaying debts or considering ways to reduce or avoid further charges. However, it does not automatically follow that Barclaycard must necessarily accept an offer in settlement of the debt or rewrite the debt in the way that Mrs K's financial advisor suggests.

I have considered this matter carefully and I find that the Barclaycard treated Mrs K fairly. It considered details of her income and outgoings, temporarily suspended interest and fees and agreed a repayment plan over twelve months. It is open to Mrs K's financial advisor to suggest another settlement figure.

I note that Mrs K wishes to avoid adverse credit information but the adjudicator was right to say that Barclaycard is obliged to record accurate information with credit reference agencies. An agreed repayment plan or a settlement short of the total amount due is amongst the sort of information that Barclaycard is entitled to refer to credit reference agencies.

Mrs K's financial advisor is right to say that the debt has been passed to a third party debt collector. Barclaycard was entitled to take that step but there is a continuing duty for Barclaycard and its agents to treat Mrs K and sympathetically and positively.

If Barclaycard has not yet sent Mrs K the statements from 2006 which it said it would send, I invite it to do so now.

**my final decision**

I am sorry to disappoint Mrs K, but for the reasons set out above, my final decision is that I do not uphold this complaint.

Louise Povey  
**ombudsman**