

## **complaint**

Mr M complains that Barclays Bank Plc applied late payment charges incorrectly and issued an invalid default notice. He is also unhappy with the information recorded on his credit file.

## **background**

Mr M took out a Barclaycard in 1999 and maintained payments for many years. The account was defaulted in 2011 after he suffered financial difficulties and was unable to make his monthly payments. Barclays began its collection process including issuing a default notice. The notice contains minor errors. However, the bank didn't record the default notice on Mr M's credit file. He entered into a repayment plan, but he didn't make the agreed repayments after June 2012 and the bank sold the debt to another business I'll call M in June 2013. I gather M was part of the Barclays Group.

Mr M complained to Barclays and asked for the documents from when he took out the card. The application form was held on microfiche and the printed version wasn't legible and a sticker had been placed over part of it. I gather it has also provided a reconstituted copy of the terms and conditions of the card. Mr M took the view that the debt was unenforceable due to the illegibility of the application form and the errors in the default notice. He also expressed concern that M hadn't disclosed it was part of Barclays.

The bank rejected his complaint and said that the default notice met its statutory requirements regardless of the minor errors. It noted that Mr M had applied for and used the Barclaycard and it was entitled to pursue him for repayment of the debt. It is its usual practice to sell debts to a third party and it did so in this case.

The matter was referred to this service and investigated by one of our adjudicators who didn't recommend that it be upheld. She considered the default notice was sufficiently clear on the key issues and in any event Barclays didn't record a default on his credit file. She was also satisfied that charges would've been outlined in the terms and conditions of the original agreement and that Barclaycard would've notified Mr M of any subsequent changes.

She didn't consider the sticker or the illegibility of the printed application form were such that she should ask Barclays to refund the late payment charges. She added that it wasn't for this service to decide whether a debt was enforceable. She didn't consider Barclays had made an error in recording Mr M's arrears.

Mr M didn't agree and said that the bank had breached its legal requirements and the debt was unenforceable. He also expressed his surprise that this service didn't uphold his complaint given the bank's failings.

## **my findings**

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

Firstly I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them. Nor is it my role to make findings on legality. This service takes into account relevant law and regulator's rules, guidance and standards; codes of practice; and (where

appropriate) what it considers to have been good industry practice at the relevant time when considering what is fair and reasonable.

I have seen nothing to indicate that Mr M disputes he spent the money on his credit card or that he failed to maintain his payments and so incurred charges. In short, he has had the benefit of the spending and now considers he shouldn't pay his debt, due to what he regards to be failings by the bank.

It is unfortunate that he fell into financial difficulties and he has my sympathy for that. However, I am satisfied that Barclays offered him a repayment plan to assist at that time, but he failed to maintain the agreed payments. The bank issued a default notice which contained some minor errors, but in substance its contents were clear and understandable. If Mr M considers that those errors make the debt unenforceable that is matter he will have to take to court.

Similarly with the legibility of his application form. I don't consider it appropriate to uphold his complaint because the bank placed a sticker obscuring part of the text, for what appears to be filing purposes. I gather the bank has provided a reconstituted copy of the terms and conditions from when he took out the card and as such I believe it has met Mr M's request for the relevant documentation. Again if he consider there are errors or failings with these documents that is matter for him to pursue through the courts.

Finally on the issue of his credit file I note that Barclaycard has recorded his arrears as it was entitled to do. In conclusion I do not consider I can uphold Mr M's complaint on any of the grounds which he has put forward.

### **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 M to accept or reject my decision before 19 September 2016.

Ivor Graham  
**ombudsman**