

## **Complaint**

The estate of Mr H says that Barclays Bank UK PLC (“Barclays”) irresponsibly provided a loan to Mr H which it is now unfairly pursuing repayment of, in circumstances where it previously said the outstanding balance had been written off.

## **Background**

In November 2018, Barclays provided Mr H with a loan for £17,000.00. The loan had an APR of 4.4% and a term of 60 months. This meant that the total amount to be repaid of £18,956.40, which included interest, fees and charges of £1,956.40, was due to be repaid in 60 monthly payments of £315.94. Mr H made the payments to this loan until he sadly passed away in January 2021.

After probate was granted, in May 2021, Mr H’s estate’s (“the estate”) legal representative complained, on behalf of the estate, that Mr H shouldn’t have been provided with the loan in November 2018. Barclays didn’t uphold the estate’s complaint.

Nonetheless, its final response of 30 July 2021 confirmed that the outstanding balance on the loan had been written off on 14 June 2021 as a result of Mr H passing away. Barclays has subsequently said that its complaint handler made a mistake in saying that the loan balance had been written off. In reality, the loan account was showing as having a zero balance because it had been passed to another area in line with its bereavement process.

What remains in dispute here and effectively is the main crux of this complaint, is when the estate was notified of this error. On one hand, the estate states that it wasn’t notified of this error ahead of the distribution of the funds. And, in its view, as the funds were distributed in good faith and in reliance upon Barclays’ statement in its final response, it is unfair and inequitable to require repayment of the loan at this late stage.

On the other hand, Barclays says the state was notified the loan balance remained payable in advance of the funds being distributed and therefore it is reasonably entitled to recover this amount.

The estate’s complaint was considered by one of our investigators. And she thought it was unfair for Barclays to expect the balance on the loan to be repaid. So she thought that the balance should be written off and as the amount outstanding was more than the interest, fees and charges on Mr H’s loan, she didn’t consider it necessary to consider the affordability aspect of the complaint as this wouldn’t have changed the position.

Barclays disagreed with our investigator’s assessment and so the case was passed to an ombudsman for review as per the next stage of our dispute resolution process.

## **My provisional decision of 31 August 2023**

I issued a provisional decision – on 31 August 2023 - setting out why I wasn't intending to uphold this complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started out by saying that it was my view that there were three separate issues for me to consider. I set out that I would consider each of them in turn. And I started by looking at whether Barclays needed to write off the outstanding balance on the loan.

*Was it unfair for Barclays to ask the estate to repay the outstanding balance on the loan?*

As I'd explained, there wasn't any dispute that in June 2021 Barclays informed the estate's legal representative that:

*"Moving forward, the Loan was written off on 14 June 2021 with a zero balance as Mr H is deceased".*

Both the estate and its legal representative argued that this statement was reasonably relied upon when the funds from the estate were dispersed. And as a result, it was unfair and inequitable for Barclays to expect repayment of the balance at this late stage.

I carefully thought about what's been said.

However, as I understood it the legal representative was initially notified in April 2021 that there was an outstanding balance on the loan, which Barclays expected to be repaid. There didn't appear to be any dispute that this was the case, as the complaint regarding Mr H having been irresponsibly provided with the loan in the first place was made shortly after this.

The final response to this complaint did suggest that the balance had been written off on 14 June 2021 because Mr H had passed away. But I noted that there was also an outstanding balance on a Barclaycard credit card account. And I would have expected the legal representative to query why this balance wasn't also being written off in similar circumstances, as the loan was being written off due to Mr H being deceased.

I also explained that I would also have expected the legal representative to know that a lender writing off the balance on a loan simply because the borrower passed away, in circumstances where the estate had assets, wasn't the norm. I also kept in mind that the legal representative had made a complaint that Barclays irresponsibly provided that loan in the first place. However, the final response clearly stated that this complaint wasn't being upheld. And there was no suggestion that the loan balance was being written off as some kind of gesture of goodwill either.

More importantly, while the estate had said that it wasn't notified about the correct position in relation to the outstanding balance until 5 January 2022, which was after the proceeds were distributed, the evidence that I had been provided with indicated that, at the very least, the legal representative was informed the balance hadn't been written off well in advance of this.

I said this because I had been provided with recordings of phone calls between the estate management company responsible for notifying the legal representative of any outstanding balances and the legal representative. In the first of these phone calls, in November 2021, the estate management company contacted the legal representative to explain that as result of the legal representative sending correspondence disputing that a balance remained on the loan, it had gone back to Barclays to confirm whether one did. And Barclays had confirmed that a balance of £7,112.11 remained outstanding.

The second of the phone calls I listened to took place in December 2021. During this phone call the estate management company once again notified the legal representative that a balance on the loan remained outstanding, as well as a Barclaycard credit card and a water bill. The legal representative stated that it was waiting for the sale of a property to complete but that it was still disputing the balance on the loan. In my view, all of this pointed to the legal representative, at the very least, being aware that Barclays didn't consider that this loan had been written off.

So while I accepted that it was possible that the estate itself might not have been made aware that the loan balance remained outstanding until January 2022, which was after the property was sold and the proceeds paid out, for the sake of completeness I went on to make it clear that I was not making a finding this was actually the case at this point, at the very least the legal representative was aware of this.

In these circumstances, I didn't think that it was reasonable for the funds from the property sale and the rest of the estate, to have been disbursed while the legal representative was on notice that further funds could still be required to repay an outstanding loan amount.

This was particularly the case given what I had already said about it being the case that the legal representative ought to have known that writing off a balance on a loan simply because the borrower passed away, in circumstances where the estate had assets, wasn't the norm. I explained that the estate may argue that at best it was only the legal representative that was made aware of the loan not having been written off before the proceeds of the estate were dispersed and it could not be held responsible for any liability.

However, the legal representative was responsible for settling any liabilities before passing the remaining funds onto the estate. And the legal representative was made aware that a dispute remained over an outstanding liability. I was therefore satisfied that the legal representative was not entitled to continue placing reasonable reliance upon what had been said about the loan having been written off in the July 2021 final response. In my view, it ought to have been clear that the repayment of the outstanding balance on the loan remained in dispute.

Furthermore, I set out that if the estate was unhappy that this was information that the legal representative didn't pass on, before dispersing the funds, then this was a matter it needed to take up with the legal representative.

Overall, I was satisfied that the legal representative had been made aware that Barclays didn't agree that the outstanding balance on the loan had been written off, before the estate was finalised. As this was the case, I was satisfied that the legal representative (and by definition the estate) wasn't entitled to place reasonable reliance upon the statement in the final response and so this left me minded to conclude that Barclays did not need to write off this balance.

#### *Was the loan irresponsibly provided to Mr H in November 2018?*

The estate had also argued that notwithstanding what Barclays said about having written the loan off, it was, in any event, irresponsibly provided to Mr H in the first place. So I considered whether this was the case.

I went on to explain that we've explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Mr H's complaint.

Barclays needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice, what this meant was that Barclays needed to carry out proportionate checks to be able to understand whether Mr H could afford to make his repayments before it provided this loan to him in November 2018.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to provide loans to a customer irresponsibly.

In truth, I thought that Barclays' arguments regarding what it did to check Mr H's ability to make his payments at the time and why this was sufficient, were bordering poor. And it hadn't really said much about what it did to establish that the loan repayments were affordable for Mr H before lending to him.

Nonetheless, I understood that it was Barclays' view that a credit search was carried out which showed Mr H's existing commitments were relatively well maintained at the time, although it hadn't been able to produce the results of this. It also confirmed that this loan was provided for debt consolidation purposes, Mr H was an existing Barclays customer and it provided copies of his bank statements.

In Barclays' view all of the information it gathered and it had since considered demonstrated that Mr H could comfortably afford to make the repayments he was committing to. On the other hand, the estate said that it was irresponsible for Barclays not to settle Mr H's existing debts directly and it also said that Barclays failed in its safeguarding as Mr H was suffering from dementia at the time.

I carefully thought about what the estate and Barclays had said.

There had been some debate about the sales channel for this loan. But having considered the loan agreement it seemed clear to me that Mr H applied for his loan online. Nonetheless, Mr H was an existing Barclays customer. So I thought that Barclays would have had a reasonable amount of information about him before it decided to proceed with his loan application. And having considered the copies of the bank statements provided, it did look as though Mr H had the disposable income to make the repayments to the loan.

I said this because when Mr H's regular committed expenditure is deducted from his monthly income there are sufficient funds left over for Mr H to make these payments. Indeed, I had also seen the estate refer to Mr H also receiving rental income and having other sources of funding available to him too. And in these circumstances, I was even more persuaded of the fact that the loan was affordable.

I also considered what the estate had said about Barclays' lack of safeguarding. But I hadn't seen anything to indicate that Barclays was, or that it ought reasonably to have been, aware that Mr H may have been suffering from Dementia. Given Mr H's statements also appear to show that he was managing his own finances at the time and this was an online loan application so Mr H won't have spoken to Barclays for it to be able to identify Mr H's condition in the way the estate had suggested, I was satisfied that Barclays didn't unfairly fail to take account its safeguarding obligations.

The estate had also suggested that Barclays acted irresponsibly by not directly settling the debts Mr H was consolidating with his existing creditors. However, there wasn't a requirement for a lender to 'restrict' funds provided for consolidation purposes by paying them directly to a borrower's existing creditors.

Furthermore, Barclays could only make a reasonable decision based on the information it had available at the time. It won't have known for sure that Mr H would have used the funds to reduce his indebtedness. But, in any event, this appeared to be a first loan Barclays was providing to Mr H for consolidation purposes and there wasn't a history of Mr H obtaining funds and then failing to consolidate debts elsewhere in the way he committed to either.

So given the circumstances, I was satisfied that Barclays was reasonably entitled to believe that Mr H would be left in a better position after being provided with this loan, particularly as this loan had a much lower interest rate, of 4.4% APR, than any credit card balances Mr H would be consolidating.

It was also my understanding that Mr H did go on to repay the balances on the debts he was looking to consolidate. Therefore, while I thought about the estate's arguments in relation to Barclays not taking steps to 'restrict' the way the proceeds of the loan could be used, I was not persuaded that this meant it had acted irresponsibly.

Overall and having given careful thought to the arguments presented, while I had not been presented with sufficient evidence that Barclays did carry out reasonable and proportionate checks before lending to Mr H, I was nonetheless minded to conclude that carrying out such checks wouldn't have prevented it from lending. As this was the case, this left me minded to conclude that Barclays did not irresponsibly provide this loan to Mr H.

*Did Barclays act unfairly by using balances in Mr H's current accounts to reduce the outstanding balance on the loan?*

Finally the estate had also argued that Barclays unfairly used balances in Mr H's current and savings accounts to reduce the outstanding balance on this loan.

I acknowledged that the estate believed that Barclays wasn't entitled to take this course of action. However, the terms and conditions of Mr H's Barclays' accounts did permit Barclays to use the funds held in his accounts to reduce amounts that he owed.

I also added that offsetting amounts held against amounts owed when someone passed away is in line with good industry practice. Particularly, as it reduced the administrative burden of paying out funds to an estate only for them to have to be repaid again.

Furthermore, as I had already set out that I was minded to conclude that Barclays didn't have to write off the outstanding balance on the loan, I was satisfied that Barclays offset the amounts that were in Mr H's current and savings accounts against an amount that was legitimately owed.

As this was the case, I was minded to conclude that Barclays didn't act unfairly or unreasonably towards the estate with regard to this matter either.

So overall and having considered everything, I didn't think that Barclays acted unfairly or unreasonably and I wasn't intending to uphold the estate's complaint.

**Barclays' response to my provisional decision**

Barclays confirmed receipt of my provisional decision. It said that it had noted my comments and wished to confirm that it did carry out checks regarding Mr H's ability to repay his loan. But as it wasn't able to obtain evidence of these checks in a legible format, it carried out a retrospective income and expenditure assessment using Mr H's bank statements.

### **The estate's response to my provisional decision**

The estate also responded to my provisional decision. It stated that its concern wasn't that Barclays acted irresponsibly by not settling the debts Mr H was consolidating with his existing creditors, it was that it had not offered to do so.

The estate also maintained that lending £18,000.00 to an alcoholic with dementia, who had no clear need to raise funds was astonishing.

### **My findings**

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

The estate has confirmed that its concern wasn't that Barclays hadn't settled Mr H's existing debts it was that Barclays hadn't offered to do so. I've thought about what the estate has said and I'm sorry that it feels that its argument wasn't fully considered.

Nonetheless, it remains the case that there wasn't a requirement for Barclays to offer to settle existing debts with the proceeds of loans – particularly as there isn't anything to suggest that Mr H had a history of failing to consolidate existing debts after taking out consolidation loans.

Furthermore, I still haven't been provided with anything to indicate that Mr H didn't repay the balances in question. So, in any event, I'm not persuaded that Barclays not offering to repay Mr H's existing balance made a difference here.

I appreciate that Barclays believes that it carried out sufficient checks before agreeing to provide Mr H with his loan. However, without any evidence of what these checks showed, I cannot take it as read that these were proportionate and showed the loan payments to be affordable.

Nonetheless, as I explained in my provisional decision, I don't think that Barclays was aware, or could reasonably be expected to know, about the matters the estate has referred to. I appreciate that the estate considers it astonishing that Barclays lent £18,000.00 to Mr H given his circumstances at the time.

However, as I'm satisfied that the monthly loan payments were affordable (notwithstanding any cash withdrawals being made) and I don't think that Barclays was aware of the circumstances the estate has referred to, I'm not persuaded that it was unfair for the loan to have been provided in these circumstances.

Overall and having considered everything, I'm still not upholding this complaint. I appreciate that this will be very disappointing for the estate. This is especially in light of the time it has taken for the case to reach this stage and it was initially told that this complaint should be upheld. But I hope that it will understand the reasons for my decision and at least feel that its concerns have been listened to.

Finally, I note that Barclays offered to make a payment of £150, in light of any distress experienced by the estate. As our investigator explained, I'm not able to make an award for

distress and inconvenience to the estate of a deceased complainant. Nonetheless, I understand that Barclays is still willing to pay the £150 it offered.

The estate has confirmed that it will be contacting Barclays directly, albeit it isn't clear whether this is in relation to this offer, or other matters. In any event, I leave it up to the parties to resolve the payment of this amount for should the estate wish to accept Barclays' offer.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 31 August 2023, I'm not upholding the estate of Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 2 November 2023.

Jeshen Narayanan  
**Ombudsman**