

The complaint

Mr U complains that Barclays Bank UK PLC failed in its duty of care to protect him from gambling harms when his gambling was obviously problematic.

What happened

I sent the parties a provisional decision in April 2024, in which I set out the following background information to the complaint and my provisional findings, as follows:

'Over the last 10 years Mr U said he developed an addiction to gambling and despite being a long-standing customer of Barclays it failed in its duty of care to protect him from harm from his excessive and sustained gambling. Mr U said Barclays' 'negligence is evident in its failure to identify and address these transactions, which were clearly indicative of a problematic pattern'. He said he has suffered gambling losses of over £500,000 including the loss of his home with a detrimental effect on his mental health and marriage.

On some days in the last four years Mr U said he made several transactions for thousands of pounds on 12 different gambling sites. He appreciates that Barclays can't tell him how to spend his money, but it still owes him a duty of care to take steps to ensure vulnerable customers or addictions are identified just like they can identify fraudulent transactions.

Mr U said he closed an account with Barclays in October 2022 that he used purely for gambling. He said his remaining account has been used purely for gambling for the past three years and has been permanently overdrawn for the past 12 years. He said despite this Barclays never contacted him to see if there was a problem or questioned a gambling transaction although some were for £10,000.

Mr U said his pattern of spending on gambling sites would have made anyone realise he had a serious mental health issue and an addiction. Mr U said during this time he took out a few personal loans that were paid into his Barclays' account to fund his addiction. Mr U called Barclays on 18 December 2023 and explained his situation. He said Barclays' agent was horrified and accepted that it had failed miserably, and opened a complaint and said he would flag Mr U's account. Mr U called again on 19 December 2023 and was given a reference number and passed to specialist team and was given an email address.

Barclays called Mr U on 22 December 2023, but he said the agent didn't seem to appreciate the extent of Barclays' negligence, or the damage caused insisting that Barclays had no responsibility. Mr U said the agent told him he will close the complaint and send a letter and cut the call off before Mr U could ask further question. Mr U said he was troubled that after his initial call on 18 December he was able to make transactions to gambling sites for a few days in spite of Barclays saying it had flagged the account.

In its response to Mr U on 23 December, Barclays said it doesn't block or delay payments unless to prevent fraudulent activity. It said there are no historic notes or marker to make it aware of Mr U's difficulties. Barclays said it has now put a marker about gambling on Mr U's account and it signposted him to help for addicted gamblers. It said Mr U can control how his card is used via its app by setting limits for online payments and cash withdrawals or have text alerts to track his money. It said he can turn off gambling spending for his debit card.

Barclays acknowledged that the gambling transactions affected 'the Account Character'. As Mr U had confirmed he made the transactions, Barclays considered them as authorised.

Barclays said it is aware of its obligations to ensure customers are protected from financial harm. It said given the nature of the transactions and the communication from Mr U, it hadn't missed an opportunity to assist him. But had he made contact prior to the complaint it would have discussed the options available, including restricting his access to gambling by self-exclusion. Barclays said it hasn't got any evidence this was undertaken by Mr U.

Barclays said following Mr U raising the issue it placed the relevant markers on his account. It said it has offered Mr U merchant controls, but his debit card currently has gambling transactions turned on. It recommended Mr U uses his app to put controls in place and said this requires the customer's consent. Barclays said it hadn't made an error in the handling of Mr U's account and wouldn't compensate him for his gambling transactions.

Mr U wasn't satisfied and referred his complaint to our service. He acknowledged customers regularly gamble but asks what is reasonable and what is a dangerous addiction. He said the volume of his transactions should have alerted Barclays to his problem, but its lack of action constitutes a breach of its duty of care, and its negligence caused him financial and emotional distress. He said the failure to implement safeguards against excessive gambling transactions reflects poorly on Barclays' commitment to customer wellbeing.

Our investigator said Mr U's accounts show many gambling transactions, which Barclays said wasn't unusual for Mr U over the years. She said Mr U's open account has an overdraft facility which over the years consisted of £500 overdraft and £1,000 emergency borrowing. This changed in 2020 to a £1,500 overdraft when Barclays treated emergency borrowing as an overdraft. She said as Mr U's overdraft hadn't changed Barclays haven't had to review this or assess affordability. She said it's not standard practice for banks to annually review overdrafts unless there is a reason to do so, such as an increase or decrease request.

The investigator said Mr U's accounts had a lot of credits from gambling winnings, payday loans and family money meaning it wasn't constantly at the maximum overdraft limit and was often brought back to credit. Barclays expects customers to manage their overdraft facility well by using it and then applying credits to cover it, which Mr U had done. She said the general use of the overdraft facility wouldn't have given Barclays a reason to intervene.

The investigator said Mr U's closed account had no overdraft and was in credit giving no indication of financial difficulty. She agreed with Barclays that gambling wasn't an unusual activity for Mr U and so there was less chance of its systems identifying the need for extra support. But she thought there were times that Barclays could have recognised a spending issue and if identified, some practical support could have been offered, including the option to block transactions. But she said when this was recently offered, Mr U chose not to use it and so she couldn't say that earlier intervention would have prevented further transactions.

The investigator said Barclays needs input and co-operation from a customer to be able to help them, but Mr U didn't make Barclays aware of his problem until recently and hasn't accepted the support Barclays offered. She said Mr U feels that Barclays should have closed his accounts and removed all facilities, but we wouldn't expect Barclays to do that as banks have to allow customers to use their own money as they wish within reason.

The investigator said Mr U was charged £35 a month for using the 'emergency borrowing' feature, which wasn't fair as Barclays was happy with the affordability of the total overdraft and could have changed this to an arranged overdraft to reduce charges. She said Barclays now offered to refund all charges Mr U has paid over the last six years, totaling £1,744.85 plus interest and this would put Mr U's account into credit, which she thought is fair. She said Barclays has suggested removing the overdraft to ensure Mr U doesn't face any further charges and to help support him with reducing his gambling.

Mr U wasn't happy with this as he was expecting substantial compensation. He requested an ombudsman review his complaint before legal action against Barclays. Mr U asked how Barclays could say the level of his gambling was affordable with no income into the account. Mr U said Barclays violated FCA regulations, requiring banks to monitor for signs of financial

distress and take action. Mr U said he had committed a fraud against himself and his family and if banks can intervene in other fraudulent transactions, why not here. He said if Barclays had intervened earlier and terminated his accounts the gambling would not have escalated.

What provisionally I've decided – and why

I was sorry to learn about Mr U's gambling addiction and the effect this had had on him. He says Barclays failed to intervene when it should have seen signs of the problem and financial difficulty and as a consequence should be responsible for his financial losses of around £500,000. Barclays says Mr U didn't say there was a problem, and it didn't see the signs and acted correctly to Mr U's payment instructions. Our service may only consider complaints about events that took place within the last six years, and this period runs to when Mr U complained in December 2023.

Mr U says he's never been offered any support by Barclays, and he feels they should have intervened and stopped him from making the transactions to gambling sites. He said the severity of his addiction can be seen most in the last four years. He said Barclays could have contacted him and taken some sort of action to stop him.

I have looked closely at Barclays' handling of Mr U's accounts to see if within the last six years there has been anything that ought reasonably to have triggered Barclays to intervene or contact Mr U about his gambling transactions. In other words, should the activity on Mr U's account have prompted Barclays to realise there might be a problem with his regular and substantial payments to gambling operators.

Mr U said Barclays had violated the Financial Conduct Authority regulations, which require banks to monitor for signs of financial distress and take appropriate action and other principles for the exercise of reasonable skill and care. I think he may be referring to the FCA's Consumer Duty which applies to all businesses from 31 July 2023. Before this there was no duty of care on banks to monitor customer accounts and most banks still don't manually monitor accounts or have a mechanism to look for gambling activity. Gambling is a legitimate activity and it's not the role of the banks to take a view about legitimate transactions, it is the role of the banks to act on customers' payment instructions.

It follows from this that there is nothing within the rules and regulations about an obligation on Barclays to control what a customer is spending their money on. However, Barclays does have a responsibility to assess whether providing credit to Mr U was a responsible thing to do, in other words would Mr U have suffered from financial difficulties and hardship by the provision of credit.

A bank is only likely to become aware of a potential problem when it has been alerted by the account holder or third party or flagged up for another reason such as financial difficulties. Barclays records show that Mr U's call of 18 December 2023 was the first time that the issue of his gambling addiction had been raised with the bank.

Barclays has said it will stop transactions where there is a suspicion of fraud but won't be liable for customers' spending patterns and cannot stop customers making authorised debit card payments. Barclays is required to process authorised debit card transactions without let or hindrance, so long as it doesn't suspect fraud. I don't agree with Mr U that he has committed fraud on himself and his family in the criminal sense of the term.

The change to a bank's non-intervention approach is where there is obvious financial hardship. Barclays is required to support customers that are in financial difficulty, and those who raise issues with compulsive spending. This is different from checking affordability, which is much broader, requiring a holistic review of a consumer's circumstances and is a forthcoming responsibility of UK regulated gambling operators. And so I have looked at whether there were signs of financial difficulty that ought to have led Barclays to review Mr U's account and intervene. These signs are commonly described as a regular use of an

unplanned overdraft, returned payments, or being over a credit limit or missing expected bills.

I've seen from the account statements that Mr U's open account has a planned overdraft which hadn't changed in amount over many years. Mr U says the account was only used for gambling transactions, however, I can see other transactions on the account, bill payments and ATM use. Most payments were for gambling transactions, but the account was not in constant overdraft, in fact due to credits from gambling winnings, and many payments from individuals it wasn't constantly at the maximum overdraft limit and was often brought back to credit.

Barclays expects customers to manage their overdraft facility well by using it and then applying credits to cover it, which Mr U had done. Mr U didn't request any increase in overdraft, and I don't think his use gave Barclays cause for concern so as to review it. Mr U's closed account had no overdraft and was in credit, giving no indication of financial difficulty.

The accounts don't show any returned payments. Mr U received payday loans in to the account, but the total amount over the six-year period is eclipsed by each of three single gambling transactions he carried out in this time. As the account didn't go above the arranged overdraft facility and it was being managed, I can't say receiving payday loans would on its own have triggered Barclays to intervene.

Mr U said there are regular cash payments to the account from his credit card. These are generally described as 'nft main disbursement,' which I take to refer to the purchase of non-fungible tokens, not cash advances. I have noticed other transactions for cryptocurrency and a direct debit in favour of Mr U's credit card account.

Mr U said no income has been paid into the account since 2021. There are regular transfers in of money from individuals, most of which Mr U has identified for us as loans, but this wouldn't have been information available to Barclays. And transfers from himself, presumably from another account which receives his income. I think the transactions on Mr U's account over six years were part of his normal banking pattern with Barclays. People use their accounts for different purposes and an account primarily for gambling purposes isn't particularly unusual.

I can't see any significant triggers in the account history that would lead me to say that Barclays made an error in allowing Mr U to make the gambling transactions. As Mr U generally managed his overdraft well, and stayed within the arranged limits, there is a strong argument to say that Barclays were right to not remove his overdraft earlier or close his account.

Mr U said if Barclays had intervened and terminated his accounts the gambling would not have escalated. We expect banks to help customers who reach out with problems such as gambling addiction. I think Mr U's comment negates his own responsibility to minimise harm from gambling. I haven't seen anything to suggest that he self-excluded from gambling operators or requested Barclays help before his complaint, and I don't think he applied blocks to payments to gambling operators when Barclays alerted him to this option or set a limit for gambling transactions via the Barclays app or excluded such transactions altogether.

Barclays had no grounds to terminate Mr U's accounts, which he says it should have done, as they were reasonably well managed. I say this because Mr U had an overdraft facility, which was used as intended, with transfers into the account to bring it back into credit. I haven't found instances of the overdraft being mismanaged or ignored. However, Mr U's account was primarily used for gambling and there was some evidence of loans being used to fund it. And so Barclays could have noticed this and asked him if he was comfortable about his gambling expenditure and signposted him to the available addiction support in case that was relevant to his circumstances. I would like Barclays to say why it didn't do this.

Even if Barclays had done this, I can't be sure that it would have made any difference to Mr U because it's well short of the action that he said was required to stop him gambling. And when Barclays did reach out in response to Mr U's complaint I can't be sure that Mr U stopped gambling. If this is incorrect, I would like Mr U to provide bank statements for the account in question for 2024 and any other account in to which he receives his salary income. It would also help for him to say what action he has taken to address his gambling addiction including if he has self-excluded from gambling operators and when.

In conclusion, I can understand Mr U's concerns about his gambling and the impact on his finances and family. However, I currently think it was reasonable for Barclays to consider Mr U's gambling and other transactions to be within his normal spending, and not to monitor those transactions as a matter of course. I haven't found so far that Barclays acted outside of the regulatory requirements on banks or treated Mr U unfairly and so it would be unfair for me to require Barclays to refund him his gambling losses.

As to the charges Barclays applied to Mr U's account, I am pleased that Barclays has offered to refund those added over the six years before Mr U's complaint. I agree with the investigator that these appear to be unfair given Mr U's overdraft arrangement at the time. Our role is to put Mr U back in the financial situation he should have been in had Barclays been more helpful in making sure he was paying reasonable charges. I currently think that Barclays offer to refund charges of £1,744.85 plus interest at 8% does this and is fair and reasonable in the circumstances.'

My provisional decision and the parties' responses

I provisionally decided to uphold the complaint in part. I intended to require Barclays to reimburse Mr U's account the bank charges and interest set out in my provisional decision, but not reimburse him for his gambling losses.

In his response, Mr U urged me to view his complaint as a unique incident due to the high value amounts, the volume of transactions and the length of time involved, rather than other cases of gambling addictions. He didn't accept that I could think the volume of transactions were regular and normal spending on gambling, and said the suggested award seems to favour Barclays entirely. He said refunding charges does not help him in any way.

Mr U sent two bank statements as evidence that he has taken steps to stop gambling as there are no payments to gambling websites from this, his new main account. He said if Barclays had terminated his banking facilities, it would have helped him enormously.

Mr U said he has discussed the provisional decision with his barrister, and his wife will take Barclays to court for gross negligence. He said this could be avoided if Barclays makes a goodwill payment for £100,000, without having to accept any responsibility or liability. He said whilst Barclays were not under a legal obligation to intervene, it should have done better in his case. Mr U sent us two recent statements for his other account.

I responded to Mr U to say I am considering his complaint on its own merits and its individual circumstances, but that doesn't mean there aren't aspects in common with similar issues that come to us in addressing complaints concerning gambling addiction. I pointed out that what I had actually said, *'I think the transactions on Mr U's account over six years were part of his normal banking pattern with Barclays. People use their accounts for different purposes and an account primarily for gambling purposes isn't particularly unusual.'*

I thanked Mr U for the two statements, but said these were for a different account from what I had requested. I had also asked what action he had taken to address his gambling addiction, but he hadn't responded on this point. We referred Mr U's suggested resolution of his complaint to Barclays.

Mr U said he would not be responding any further.

Barclays accepted the provisional decision. I had made the point that Mr U's account was primarily used for gambling, with some evidence of loans and so Barclays could have asked him if he was comfortable about his gambling and signposted him to addiction support.

Barclays responded that it has carried out several reviews of customers with gambling transaction histories that have indicated the possibility of problematical gambling. It said if a customer is identified as falling into the criteria set by the stakeholders as indicating problematical behaviour, it sends text messages, including a text message with follow up calls, with information around blocking gambling through the APP, etc. Barclays said that Mr U did not fall within the criteria set to generate this pro-active contact.

Barclays responded to Mr U's suggested resolution of his complaint by stating that it maintained the offer it had made regarding the refund of interest and charges as fair and would not provide anything further in relation to Mr U's complaint.

What I've decided – and why

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

I have looked again at the circumstances of his complaint. Having done so I remain of the view that outcome and redress set out within my provisional decision is a fair and reasonable response to Mr U's complaint.

I think it is worth bearing in mind that most banks don't manually monitor accounts or have a mechanism to spot gambling activity beyond identifying debit card payments made to gambling merchants through standardised codes. In most cases a bank is only likely to become aware of a customer having a gambling problem if it is alerted for another reason. Typically, this is because the pattern of spending has triggered fraud detection algorithms or there are signs of financial difficulty on the account that cause the bank to investigate further such as an unplanned overdraft, returned payments or missing expected repayments.

In Mr U's case, it's clear that he spent a large amount of money on gambling over several years. Mr U has pointed out that there were loans, but no income paid into this account and because of that he thinks Barclays should have intervened. It would have been preferable for Barclays to have intervened but there's no guarantee this would have made a difference as Mr U hasn't provided any information about the steps he could have taken to address his problems.

In any event, there were no indications that gambling was causing Mr U any financial difficulties. So there was no need for Barclays to review his account or his spending patterns. As I have said, it isn't the responsibility of Barclays to tell its customers what to spend their money on. However the account was funded Mr U was entitled to spend his money as he sees fit.

Having reconsidered the circumstances of Mr U's complaint, I remain of the view that Barclays' response is fair and reasonable as concerns Mr U's gambling losses. And I hope Mr U gets the help he needs to tackle his gambling addiction. I also remain of the view that the refund of the interest and charges Barclays applied to Mr U's account is fair and reasonable for the reasons I have given in my provisional decision.

I realise that Mr U will be very disappointed by this outcome though I hope he appreciates the reasons why it had to be this way. By rejecting this decision all options remain open to Mr U, including the legal action he has mentioned. Rejecting this decision would mean that Barclays does not have to refund Mr U the charges he incurred, but he said this refund would not help him in any way.

My final decision

For the reasons given here and in my provisional decision, this complaint is upheld in part. I require Barclays Bank UK PLC to repay to Mr U charges and interest of £1,744.85 plus interest at 8%.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 12 August 2024.

Andrew Fraser
Ombudsman