

The complaint

Ms A is unhappy a broker didn't provide her with adequate information about entering into a conditional sale agreement with Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF). Ms A says she feels she was misled.

Ms A is represented in this complaint by one of her daughters. But for ease, I'll refer to Ms A throughout my decision.

What happened

Ms A says she believes she was misled into entering into a conditional sale agreement for a used car in May 2019. The total amount repayable under the agreement was £20,901.37 for a term of 48 months. The monthly repayments were £287.71. The application for the finance was arranged through a broker I'll refer to as D.

Ms A says her daughter wanted to go and have a look at a car she intended to acquire once she got her full driving licence, so Ms A went with her. Ms A says her daughter chose and test drove a car that she liked. Ms A left her daughter to have a conversation with the dealership about this car – Ms A says she wasn't part of this conversation.

Ms A says the dealership carried out a credit check on her daughter, but this wasn't successful. So instead, the dealership called Ms A over and said they needed to carry out a credit check on Ms A which she passed. As a result, Ms A says she was then given some paperwork to complete and sign instead of her daughter. Ms A says no explanation was given to her about the documents and when she requested the opportunity to take them away with her so that she could review them in detail at home, she was told this wasn't possible. Ms A says she told the dealership at this point she didn't want anything to do with the acquiring of the car and didn't want her name on any of the documents. But the dealership reassured her this wasn't the case and that she was just acting as a guarantor for her daughter. Ms A says the dealership told her the best way for this arrangement to work was that her daughter would pay her the monthly repayments each month. Ms A says she doesn't recall ever seeing or signing the conditional sale agreement.

Ms A says she and her daughter were asked to come back to the dealership the following day to sign further paperwork and to collect the car. BPF haven't been able to provide us with details of the paperwork and Ms A says she remembers seeing a pre-collection check list which she provided us with a copy of. This is an information document providing general information about ways to pay for the car which is addressed to Ms A's daughter. There is no signature on this document. Ms A says when she arrived, she was told to "*just sign them*" in relation to the other paperwork she was handed. Ms A says no explanation was given about the documents she signed on this day or the previous day.

Ms A's daughter went missing with the car in July 2019 and Ms A reported this to the police on the same day in an attempt to find her daughter. Ms A says she also contacted the dealership to ask them how she could trace the car as both her daughter and the car were missing. Ms A was told this wasn't possible and that her daughter shouldn't be driving the car as the agreement was in Ms A's name. It was at this point Ms A realised the agreement

was in her name and not her daughters. Ms A reported the matter to Action Fraud.

Upon finding this out, Ms A contacted BPF directly early August 2019 to ask if they could transfer the agreement into her daughter's name as she never wanted the agreement in her name. Ms A says her daughter returned with the car after some time and has asked for BPF to stop asking her to make the monthly repayments and to collect the car. Ms A says two payments had been made towards the agreement.

Ms A says both her and her daughter were told by the dealership that Ms A was just acting as a guarantor but that the conditional sale agreement would be in her daughter's name. Ms A says even then, she didn't understand what being a guarantor meant and that she didn't know she would be responsible for the repayments if her daughter failed to make them. Ms A says she thought being a guarantor meant she was only required to provide a reference for her daughter. Ms A says she feels the dealership have misled her by making it seem like they were simply using her bank account for the direct debit payments, since her daughter wasn't eligible for the finance herself. Ms A says she was never told the agreement would be in her name by the dealership. And had she known this; she never would have agreed to allowing this to happen.

BPF contacted D for further information about the sales process at the time. D said Ms A completed the application electronically and that the application process is designed so that a prospective customer logs in and answers a series of questions about their credit profile. D said Ms A would have been required to input certain information such as her driver's licence number – which they expect only Ms A had access to.

As a result, BPF said Ms A was liable for the payments under the agreement. Additionally, BPF say they don't offer a guarantor facility, so this wouldn't have been discussed at the time with Ms A.

In August 2019, Ms A says she offered to hand the car back to BPF, but BPF asked her to accept liability prior to doing. But Ms A didn't want to do this as she reiterated that she never agreed to have the conditional sale agreement in her name.

The agreement was then terminated in September 2021 and BPF have said Ms A hadn't made any payments since July 2019 and still hasn't returned the car. I can see from BPF's contact notes that Ms A says she tried to get the dealership to take the car back to sell it but had no luck. BPF advised Ms A she can go to other dealerships instead. Ms A says she returned the car to a dealership in 2019 and that it has been there ever since. Ms A provided us with the contact details of this dealership, which I'll share with BPF. The current balance outstanding on the account is £20,326.95 of which £8,329.09 is now classed as arrears. BPF have confirmed the account has been defaulted with a default date of 8 September 2021 and that they are currently preparing to repossess the car.

Our Investigator looked into Ms A's concerns. Ultimately, he said even if Ms A thought she was entering into the agreement as a guarantor for her daughter, she wouldn't be in a different position had the agreement been arranged like Ms A thought. He said this was because she'd still be responsible for the repayments under the agreement if her daughter failed to make them. Our Investigator also assessed the affordability of the agreement and concluded that while BPF didn't carry out proportionate checks, had they done so, he didn't think this would have shown that the finance was unaffordable for Ms A. So, our Investigator said that he didn't think BPF had acted unfairly by providing an agreement to Ms A and there wasn't anything to suggest Ms A was misled into entering into the agreement. As a result, Ms A remains liable for the amount owing under the agreement.

Ms A disagreed with our investigator's view. In summary, she said the crux of her complaint

was that the agreement was drawn up in her name against her wishes. And that she wouldn't have chosen to take out a finance agreement in any way. Ms A also maintained that she made the dealership aware she never wanted anything in her name and didn't want to pay anything towards the agreement. Ms A reiterated she was told she'd be a guarantor for her daughter and that she didn't electronically sign the credit agreement. Ms A also said she was financially vulnerable due to her previous inexperience with large purchases, lack of sophistication with financial products and there was an element of a language barrier there. So, the complaint has been passed to me to decide.

I issued a provisional decision setting out the below:

Quite a lot of the information I've been provided with is conflicting and I'm never going to be able to determine exactly what happened here. Where information is inconclusive or facts are in dispute, I'm required to make my decision on a balance of probabilities. The issue at the heart of this complaint is whether Ms A agreed to have her name on the conditional sale agreement or not and whether she was given adequate information about this at the point of supply. I've carefully thought about what both Ms A and BPF have said, but I'm more persuaded by Ms A's testimony. And I'll explain why.

Is it fair for Ms A to be held liable for an agreement she says she had no knowledge of? And was Ms A provided with adequate information about this agreement?

When thinking about what's fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 ('S56') is relevant to this complaint. This explains that, under certain circumstances, a finance provider is liable for what is or isn't said by a broker before a consumer enters into an agreement. I'm satisfied here that S56 means BPF are responsible for what Ms A was or wasn't told by D in relation to the conditional sale agreement. So, with that in mind, I'll go on to consider if Ms A was given adequate information about the agreement.

Ms A has acknowledged she thought she was entering into something – but she thought she was acting as a guarantor. I note some of Ms A's details were obtained for the purposes of the application, such as her direct debit details and place of work. However, Ms A says the dealer left the room with her card without an explanation and that she didn't provide her employer name, just her role and town of where she worked. But due to the industry she worked in, there was only one of this kind in the town she mentioned so she believes the dealer was able to work out the name of her employer. I also note Ms A agreed for a credit check to be carried out on her.

However, Ms A has been consistent throughout in saying she repeatedly told the dealership she didn't want her name on the agreement and didn't want any involvement in the finance. Ms A and her daughter were under the impression that Ms A was simply acting as a guarantor, although I appreciate BPF say they don't offer a guarantor facility. Ms A has also been able to give a thorough account of what happened and what she told the dealership at the time in not wanting to have her name on any of the finance. Ms A says she wouldn't have agreed to this as she doesn't earn much and regularly supports family members abroad by sending money to them. So, she wouldn't have agreed to taking out a financial commitment such as this as she needed to use her money for other important things. I can see from Ms A's bank statement that she was sending a considerable amount of money per month via money transfer providers to different personal named accounts, which I think evidences what Ms A has told us.

Ms A has also consistently told us that she never saw the credit agreement and doesn't agree she electronically signed the agreement. BPF have said D told them this process would have been carried out and completed at Ms A's home, rather than at the dealership.

Ms A has told us she didn't have a computer at home, so there's no way she would've completed the application and signed the agreement as D have suggested. I've looked at the process D have provided us with where they say Ms A would've needed to sign into the portal and electronically sign the conditional sale agreement.

I can see at the start of this process there are a set of security questions that Ms A would've needed to verify. These questions asked certain personal information about Ms A's credit history such as how long she'd lived in her current address, how long she'd had her mobile phone contract etc. And gave Ms A multiple choice answers. The next page of this process says that because some of the answers didn't match the information that was held about Ms A, another set of questions were being asked. But I can't see that the next set of questions were answered correctly. Nor what answers were selected in response to these questions. Instead, the following page asks Ms A for her driving licence number.

D have told us they have no way of determining what driving licence number was entered, as the field for where this information goes is blank. But they have said it would have had to have matched Ms A's otherwise it wouldn't have proceeded to the security questions. However, from the application process, the security questions appear before the driving licence number was required to be inputted. The next page following the driving licence number page is the pre-contract credit information. So, the evidence provided contradicts what D have told us. In any case, I understand D have said the driving licence number information can't be shared due to security reasons. But given other sensitive information has been provided in the same application process such as Ms A's bank details, I don't find D's explanation satisfactory. And I can't be sure that Ms A's driving licence number was provided, especially as she says she's never seen this process before. Even if I'd seen information to show Ms A's licence number had been inputted, overall, I'm not persuaded Ms A did complete this process which includes electronically signing the conditional sale agreement. I say this because the security questions were answered incorrectly, I haven't seen anything to suggest these questions were then answered correctly and I'm persuaded by the consistency of Ms A's testimony.

Ms A has been specific in telling us what documents she was given at the time and says these were handed to her in an envelope – she says these were car key insurance documentation, GAP insurance policy and the vehicle registration document. But Ms A hasn't been able to provide us with copies of these. Other paperwork was given to her daughter and also some follow up information about the car was sent to her daughter via her daughters' email address – which I've seen copies of. Ms A says she was never given a copy of the conditional sale agreement and contacted BPF to request a copy of this. I can see from BPF's contact notes that this happened in March 2021. An unsigned copy of the agreement was supplied to Ms A in March 2021 and an electronically signed copy was provided in April 2021. Ms A has also been consistent in telling us she didn't feel she was given an opportunity to read through the documents she was being asked to sign and felt rushed to sign them. So, she didn't have enough time to consider the documents further. And I think had she been more adequately informed about the conditional sale agreement at the time, I'm persuaded that Ms A would have raised questions about this.

BPF have acknowledged it's possible Ms A would have had to sign some dealer specific paperwork about the car itself at the time of supply but haven't been able to provide us with the documents or the specifics of those documents. Ms A hasn't been able to provide us with copies of these neither. So, I can't be sure what documents Ms A was being asked to sign at the time. But Ms A has provided us with a copy of a pre-collection check list that was addressed to her daughter. On balance, given Ms A's testimony about what she told the dealership about not wanting any involvement in the acquiring of the car, I'm persuaded by what Ms A told us that had she been given the time and opportunity to read the documents, she would have realised D had the agreement in her name and she'd have discussed her

concerns about this with them.

Ms A says two payments were made towards the agreement before she found out that the agreement was in her name. When being told by the dealership that her daughter shouldn't be driving the car as the agreement was in Ms A's name, Ms A contacted BPF. I've had a look at BPF's contact notes and I can see Ms A called them in August 2019. The notes say that Ms A says she was misled by the dealership as she was told she would be acting as a guarantor for her daughter. The notes also detail that Ms A reported matters to the police (a crime reference number has been noted) as her daughter had gone missing with the car and that Ms A said she felt tricked into entering into the agreement as she was only doing what she was told by the dealership. Following this call, there's further calls made by Ms A to BPF. And I can see the contact notes say Ms A was very upset as she was completely unaware of the finance agreement being in her name and asked if the agreement could be transferred over to her daughter's name. But BPF said this wouldn't have been possible and that they were unable to help Ms A further. Ms A also repeatedly tells BPF she told the dealership she didn't want anything in her name and that she wasn't given the opportunity to really read what she was being asked to sign. Not only does this corroborate what Ms A told us that she didn't realise the agreement was in her name, these are actions of someone who I think has been misled. I say this because she contacts BPF the moment she realises the agreement was in her name and repeatedly tells BPF she never agreed to this. Overall, I think BPF could have taken more steps to investigate things given Ms A repeatedly called them, saying the same thing about her recollections of events and that she never agreed to have the finance agreement in her name.

Ms A also says she was given a form by BPF in order to voluntarily terminate the agreement and return the car. But that this required her to accept liability of the agreement first. Ms A says she didn't sign this form and has provided us with a blank copy of the form as she didn't want to accept liability for something she never signed for. Having read BPF's contact notes, I can see Ms A tells BPF the same thing – in that she doesn't want to fill out the voluntary termination form as this would mean she's accepting liability for the agreement which she feels she was misled into entering into. I think this is further evidence that Ms A's testimony has been consistent.

Ms A says BPF spoke to a dealership who offered to try and sell the car for her as she no longer wanted anything to do with it. Although, I'm not sure what dealership BPF spoke to. Ms A dropped the car off at a dealership in August 2019 and I understand it's been there ever since. Having looked at the details of this dealership, it doesn't look like it's the same dealership that supplied the car. But I think this is as a result of BPF advising Ms A she can take the car to another dealership to see if she can sell it. As Ms A provided us with this dealership's contact details, we contacted them to find out where the car was. They said it has been with them for some time as Ms A had dropped it off which corroborates what Ms A told us. Having thought about this, I think this behaviour is consistent with someone who feels they were misled. I say this because I don't think Ms A would have taken this action if she wanted to have her name on the agreement.

I can see from BPF's contact notes Ms A let them know in October 2019 that she'd dropped the car off at a dealership and that she would only go and get the car if BPF transferred the agreement into her daughter's name. BPF reiterated that they couldn't allow this to happen. So, I think it's reasonable to believe BPF were aware at this point that neither Ms A nor her daughter were in possession of the car. So, I think they should've taken more steps at this point to take possession of the car.

Information about Ms A and her circumstances at the time of application

Turning to the information that was supplied in the application of this agreement. From the

internal screenshot provided by BPF, I can see some of Ms A's details don't appear to be correct. Firstly, Ms A's role is noted down as an 'accounts manager' for a shop. But Ms A has provided us with a letter confirming her role as a 'team member'. Also, her gross annual income has been noted down as '£398,894.91' with her net monthly income noted down as '£14,506.00'. Ms A has provided us with evidence showing she was earning around £330 a week.

BPF say they based their affordability assessment on Ms A's declared income and existing credit commitments. BPF have also said there was an error on D's systems in that they recorded an annual income of £398,894.91, but they don't know how that happened. BPF recognise the monthly income figure provided for Ms A was £14,506.00. BPF say their lending decisions are all made using the monthly income figure plus a credit check alongside how much the monthly repayments under the finance are.

CONC 5.2A.36(R) clearly sets out: 'A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment.'

With regards to this rule, I acknowledge that it is intended for customers who've misled businesses to get credit. In this case, it doesn't look like Ms A looked to deceive BPF to get credit and it may have been an inputting mistake by D. But even so, the income declared didn't likely correlate with the rest of Ms A's credit file. I say this because the amounts being declared during the application process were significantly higher than I'd potentially expect for the industry Ms A worked in. Even if BPF don't take into account the annual income like they say, they take into account the monthly income that was declared which again seems unlikely for the role and industry Ms A worked in. So, I think it's reasonable to think that questions should have been raised at this point and more could have been done when BPF carried out their checks. This might have meant Ms A was given further information at which point she may have decided not to carry on.

Overall, I don't think what happened here is straightforward. And I appreciate Ms A didn't complain about things as soon as the car was taken away from the dealership. I understand BPF have said Ms A would have known she was liable for the repayments one way or another, even if she thought she was acting as a guarantor. But the crux of Ms A's complaint is that she never knew her name was on the conditional sale agreement. Having thought

about everything, Ms A has been really consistent throughout that she never wanted to have the agreement in her name and her version of events haven't changed over time. On balance, I'm not persuaded Ms A was adequately informed at the point of supply that her name was going to be on the conditional sale agreement. So, I currently don't think Ms A should be held liable for this agreement.

Putting things right

I've next thought about what BPF should do to put things right. I understand Ms A made two payments towards the agreement. BPF have confirmed Ms A hadn't made any payments since July 2019. As Ms A's daughter had use of the car in the two months those payments were made, I currently won't be recommending Ms A get a refund of these payments.

As I'm persuaded by Ms A's version of events at the time and because I don't think Ms A was adequately informed about the conditional sale agreement at the point of supply, I think BPF should stop pursuing Ms A for the outstanding amount. As I've explained, I don't think Ms A would have agreed to the agreement had she been given all the information. So, I think BPF should remove all information about this agreement from Ms A's credit file – this

includes removing the default.

BPF say they're currently waiting to obtain a return of goods order so they can carry out a forced repossession of the car. BPF say they've done this as they don't know why Ms A has chosen not to return the car herself. As explained, Ms A doesn't want to fill out the form which requires her to accept liability of this agreement. And I can understand why Ms A has done this given I'm persuaded by her testimony that she didn't know the agreement was going to be in her name. With this in mind, I think BPF should contact the dealership that the car is currently at and arrange collection of the car at no cost to Ms A.

Ms A has told us this has caused her tremendous anxiety, especially as she never knew an agreement was taken out in her name. Ms A has been trying to resolve this since 2019 and appointed a legal representative as well as her other daughter in an attempt to try and resolve things quickly. Also, Ms A has told us her creditworthiness has been impacted as a result of the default on her credit file. Ms A has provided us with a letter from her bank where they've told her they're going to lower her credit limit as they didn't think she was able to repay the amount she was borrowing. I can understand Ms A's disappointment in finding this out, but lenders take several factors into account when deciding whether to lower a credit limit, so I can't be sure that this decision was made as a direct result of the default by BPF. Although, I appreciate a default can impact this decision. As previously explained, I don't think Ms A was given adequate information about the agreement. And had this happened, I don't think Ms A would have entered into the agreement. With all this in mind, I currently think BPF should award £300 compensation for the distress and inconvenience caused.

Responses to my provisional decision

BPF responded to my provisional decision and agreed with my recommendation. BPF also asked if Ms A can facilitate the collection of the car by instructing the garage where it is being held to release the car to their collection agents and by ensuring that all spare keys and the V5 document are made available to the collection agents.

Ms A responded and also accepted my provisional decision. Ms A did note that her other daughter paid off her credit card entirely to help relieve some stress when Ms A found out the agreement was in her name. And that she hasn't used the credit card since 2019. Ms A also said she doesn't have any other outstanding loans and her salary hasn't really changed, so the only thing that would have affected her creditworthiness is the default marker on her credit file by BPF.

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 understand Ms A's point that her creditworthiness has been impacted by the default and as I said in my provisional decision, a default is something lenders may take into account when making lending decisions. But I haven't seen anything to show me Ms A's credit limit was lowered as a *direct* result of the default on her credit file. And without that evidence, I'm not able to make that finding.

I understand BPF have asked that Ms A to provide any spare keys and the V5 document of the car. I think if Ms A is able to comply with this then I'd expect her to. If not, I still think BPF should carry out the actions as set out below.

Putting things right

My position on how BPF should put things right for Ms A remains the same as I set out in my provisional decision. But for ease, I've detailed the actions they should take here. BPF should:

- Stop pursuing Ms A for the outstanding amount due under the conditional sale agreement.
- Remove all information about the agreement from Ms A's credit file – this includes removing the default.
- Contact the dealership the car is currently at and arrange collection of the car at no cost to Ms A. I've provided the dealership contact details to BPF.
- Pay Ms A £300 compensation for the distress and inconvenience caused.

My final decision

For reasons explained above, I uphold this complaint. And I require Clydesdale Financial Services Limited trading as Barclays Partner Finance to carry out the actions as set out in the 'Putting things right' section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 22 March 2022.

Leanne McEvoy
Ombudsman