

The complaint

Miss C complains about credit granted to her by Clydesdale Financial Services Limited trading as Barclays Partner Finance (Barclays).

What happened

Barclays agreed credit of £6,236 for Miss C in October 2018 in order to acquire a used car. The cash price of the car was £6,437. The total amount owing under the agreement came to £7,916.80 including interest and charges. Miss C paid £400 up front and the remainder was to be repaid in 48 monthly instalments of £156.60.

The credit was granted under a conditional sale agreement meaning Barclays was the owner and Miss C was, in essence, paying for the use of the car. Miss C had direct debits returned in 2019 and into 2020 and made no payments in 2020, apart from a lump sum payment in December. She paid another lump sum in February 2021 and then resumed her direct debit payments temporarily. The account was eventually defaulted in April 2021 and the agreement terminated. The balance on the account was £4,150.50 at the time of writing.

Miss C said that Barclays should not have agreed to lend to her because she couldn't afford to meet the repayments. She said that she was struggling financially at the time and had difficulty with her mental health. Miss C that Barclays didn't carry out adequate checks before lending to her to see if she could afford or cope with this finance.

Barclays didn't uphold Miss C's complaint. It said it carried out a number of checks prior to making its lending decision. These included an affordability check, a credit file check and assessment of the application details against internal lending criteria. When it received Miss C's complaint it carried out a manual affordability check and still found that the loan would have been affordable.

Miss C wasn't happy with this response and referred her complaint to us. Our investigator looked into what happened when Miss C's finance was agreed and found that Barclays should have carried out a more comprehensive affordability assessment than it did before entering into an agreement with her. However, they also found that further checks wouldn't have shown the credit to be unaffordable and so didn't recommend that her complaint be upheld.

Miss C didn't agree with this recommendation. She said that she was struggling with her finances at the time and Barclays should have known this. Miss C explained that she was living in her overdraft and had recently increased her credit card borrowing. Miss C asked for her complaint to come to an ombudsman for a review and it came to me.

I issued a provisional decision on 20 June 2023 explaining why I planned to uphold Miss C's complaint. I shared the information I'd relied on and allowed time for either party to comment on what I'd said or provide any new arguments or information for consideration. Barclays agreed with my provisional decision and I haven't had any comment or new information from Miss C.

This is my final decision on this complaint and will be legally binding on both parties should Miss C choose to accept it.

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.

Having reconsidered everything and having no further comments or information to consider, I've seen no reason to depart from my provisional conclusions. I'll set out my reasons again for upholding Miss C's complaint and explain what needs to happen now to put things right for her.

The Financial Conduct Authority (FCA) was the regulator when Barclays lent to Miss C. Its rules and guidance said that before agreeing credit for Miss C, Barclays needed to check that she could afford to meet her repayments sustainably. In other words without incurring or increasing problem indebtedness, without having to borrow further, and while meeting her other debt payments and other normal outgoings. These checks needed to be proportionate to the nature of the credit (the amount and term, for example) and to Miss C's particular circumstances.

Ultimately, Barclays needed to treat Miss C fairly and take full account of her interests when making its lending decision. It would not be lending fairly if "it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."

With this in mind, my main considerations are did Barclays complete reasonable and proportionate checks when assessing Miss C's application to satisfy itself that she would be able to make her repayments sustainably over the term of the agreement? If not, what would reasonable and proportionate checks have shown? Did Barclays make a fair lending decision?

Barclays said that it carried out sufficient affordability checks before agreeing credit for Miss C. According to Miss C's application record her gross annual income was £23,000, which would equate to a monthly net income of less than £1,600. Barclays said the income figure it relied on was verified by its internal systems using details from the bank account Miss C held with it. I don't know if Barclays took steps to verify Miss C's income at the time of her application or later when it reviewed its affordability checks following her complaint. Barclays also said it checked Miss C's credit file but has been unable to provide us with this information and so I don't know what it knew about her existing debt. In addition, I've seen no evidence that Barclays looked into Miss C's other expenses before agreeing to lend to her.

Altogether, in this case I am unable to find that Barclays carried out a proportionate check or took into account all the information it had access to. Miss C would need to meet her repayments for four years and could potentially lose access to the car if she couldn't manage this. I think it would have been proportionate in this case for Barclays to have considered Miss C's means in more depth before lending to her.

Miss C provided us with bank account statements from the time, including her Barclays statements, and a recent copy of her credit file. I've relied on these to consider what Barclays was likely to have found out about her means had it investigated further. As mentioned, I don't know if Barclays took this information into account at the time, although it had access to it.

The statements show that Miss C was receiving about £1,350 a month in wages and about £350 in state benefits including child benefit. (This may be the origin of the gross annual figure of £23,000). Miss C was paying about £260 a month towards her existing debts. These included revolving debt of about £7,000, loans of about £2,000 and fees to Barclays for her overdraft of £2,120. The statements show that Miss C's income wasn't enough to take her out of her overdraft and she'd been reliant on this credit throughout 2018 at least. The statements also show that Miss C's usual living costs including household bills, food and petrol came to about £650 a month. My estimate leaves Miss C with about £630 after meeting these costs and her car finance payment for other costs such as clothing, child-related costs or rent.

This brings me to the consideration of Miss C's circumstances at the time. Miss C shared with us that she was living in rented accommodation until August 2018. Her rent was £850 a month plus council tax of £90. Miss C explained that she was struggling financially and was reliant on credit cards and her overdraft for necessities. She moved out of her rented accommodation and lived with a friend for a time while she was waiting for temporary council accommodation. Miss C told us that she moved into affordable housing in December 2018 where her rent was £650 a month.

Barclays customer contact records show that Miss C's address details changed twice before January 2019. The agreement began in October 2018, when Miss C was waiting to be housed. Miss C's bank statements show her rental payments prior to her moves but don't cover beyond September 2018. It seems plausible to me that Miss C would need to pay rent, though perhaps not at her previous rate and Barclays should have taken this cost into consideration.

Taking everything into account, I don't think the finance repayments were affordable for Miss C or sustainable over the agreement term. I think it's more likely than not that Barclays would have concluded the same had it carried out a proportionate check and it would have declined to lend to her. I've concluded that Barclays was irresponsible to have entered into this agreement with Miss C.

As mentioned above, Miss C had problems meeting her repayments. Her direct debits for January and December 2019 were returned and she didn't make payments again until December 2020. Meanwhile she'd defaulted on most of her debt, including her Barclays current account overdraft, and incurred two county court judgements. I think agreeing this credit added to Miss C's financial difficulties and I'm upholding her complaint.

Miss C shared with us that she had been diagnosed with mental health conditions at the time and was taking medication for these. She said that she wasn't in the correct state of mind to have entered into the agreement. Let me say at this point that I am sorry to hear that things have been so difficult for Miss C. I've reviewed the customer notes along with everything else available and I haven't seen anything which makes me think that Barclays would have, or should have, been aware about her mental health conditions and considered that these impacted on her ability to make decisions about her finances. So I can't find that Barclays got something wrong in this regard specifically.

Putting things right

The cash price of the car was £6,437. Miss C paid a £201 cash deposit and so borrowed £6,236 from Barclays. She's repaid £3,371.40 in total since the agreement began, including her deposit and a £199 advance payment. I understand that Miss C hasn't made any payments towards the agreement for some time. So Miss C's payments for the car don't come to more than the amount she borrowed.

Miss C told us that she would like to retain the car and come to an arrangement with Barclays to pay the outstanding balance, minus any interest or charges incurred under the agreement. Barclays can extend this offer to Miss C if it wishes. I don't feel I can direct Barclays to do so, given how much of the amount borrowed would remain outstanding and that Barclays would need to consider the affordability of any arrangement for Miss C.

Putting Miss C back into the position she would have been in had Barclays not agreed to the credit would begin with returning all her payments. However, Miss C has had the use of the car from October 2018 to now, some 55 months, and she's driven it 29,345 miles. I think it's fair Miss C pays something for that use. Afterall, Barclays is the owner of the car and Miss C would likely have had to pay to stay mobile if she hadn't had the use of the car over the years.

There isn't an exact formula for working out what a fair usage charge should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement and Miss C's usage of the car, for example. I think it would be fair in this case for Barclays to retain all the payments Miss C's made as a usage charge.

I understand that the agreement has already been terminated. Barclays should now:

- Collect the car with nothing further for Miss C to pay;
- Retain all her payments towards the car as a usage charge;
- Remove all adverse information from Miss C's credit file in relation to the agreement.

My final decision

For the reasons I've set out above, I am upholding Miss C's complaint about Clydesdale Financial Services Limited trading as Barclays Partner Finance and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 16 August 2023.

Michelle Boundy
Ombudsman