

Complaint

Mr S is unhappy with what Clydesdale Financial Services Limited (trading as Barclays Partner Finance "Barclays PF") has done in order to settle a complaint he's made.

Mr S complained that Barclays PF failed to carry out any affordability checks and he also complained that it paid an undisclosed commission to the motor dealer which supplied him with the vehicle.

Background

In September 2017, Barclays PF provided Mr S with finance for a used car. The cash price of the vehicle was £13,148.00. Mr S didn't pay and applied for finance for the whole amount. Barclays PF accepted Mr S' application and agreed to enter into a conditional sale agreement with him.

The amount borrowed was £13,148.00 and the conditional-sale agreement had interest, fees and total charges of £4,293.04 (made up of interest of £3,945.04, a credit facility fee of £149 and a completion fee of £199) and the total amount to be repaid of £17,441.04 was due to be repaid 48 monthly instalments of £285.98 followed by a final payment of £4,674.00 which Mr S had to pay if he wanted to keep the vehicle.

In October 2023, Mr S complained that Barclays PF didn't complete any checks and so the finance should never have been provided to him. He also complained that Barclays PF paid his motor dealer a commission that it did not disclose. Barclays PF did not issue its final response within eight weeks and informed Mr S that he had the right to refer his complaint to us. Mr S chose to refer his complaint to our service as a result.

Prior to the case being allocated to one of our investigators, Barclays PF informed us that it was prepared to make an offer to settle Mr S' complaint. It said that it was willing to write off the remaining balance on Mr S' agreement and transfer ownership of the car to him.

Mr S' complaint was considered by one of our investigators. As Mr S had paid less than the amount of the cash price of the vehicle, he thought that Barclays PF's offer to write off the remaining balance on the account and transfer ownership of the car to Mr S, was fair and reasonable in all the circumstances of this complaint.

Mr S accepted the outstanding balance on the agreement being written off but thought he was entitled to further compensation and asked for an ombudsman to review his complaint. In the period while the case was awaiting allocation to an ombudsman, Barclays PF confirmed that it had actioned the settlement it had proposed.

My findings

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

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr S' complaint.

As Barclays PF made an offer to settle Mr S' complaint, I do not need to consider whether Barclays PF should have agreed to lend to Mr S. I merely need to consider whether what Barclays PF has already done to put things right for Mr S is fair and reasonable in all of the circumstances of the complaint.

Our typical approach to putting things right on irresponsible and unaffordable lending cases

Where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced because typically those funds will have already been spent.

Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints. I've taking this into account in determining what it would be fair and reasonable for Barclays PF to do given the circumstances here.

Where a business provided credit which it should have realised was unaffordable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges that were paid or due to be paid on the credit. And if those interest and charges were paid also add 8% simple interest per year.

The position in Mr S' case

In this case, Mr S has only paid £10,981.35 of the £13,148.00 that Barclays PF lent him. So, by writing off the remaining amount outstanding on the agreement, Barclays PF has actually gone further than simply ensuring Mr S paid no interest, fees or charges and our typical approach to putting things right in irresponsible lending cases.

This is because part of the amount it is writing off includes £2,166.65 of the amount it originally lent and which Mr S as yet hasn't repaid. It has agreed to Mr S keeping and taking ownership of the vehicle in these circumstances too.

For the sake of completeness, I think that it's also worth me noting that in circumstances where goods are involved – i.e. such as where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, like here - it is usually appropriate for the car to be returned and the agreement ended. So this would have led to Mr S returning the car.

But that wouldn't mean that he wouldn't pay anything at all, or that what's he's already paid so far is sufficient. I would need to consider that Mr S has had use of the car for over seven years. And Mr S simply returning the car at this stage is unlikely to reflect this, in circumstances where it would be fair and reasonable to take account of the fact that Mr S had the use of a vehicle of his choosing for a period of time. This is particularly as Mr S entered into a personal contract type purchase agreement where the monthly payments were meant to reflect the cost of rental a vehicle of the type.

As this is the case, I'm satisfied that reverting to our approach on cases involving goods, wouldn't provide Mr S with a better outcome here either. And Barclays PF writing off the

remaining amount on his account as well as letting him keep the car fairly and reasonably compensates him for any irresponsible lending.

Distress and inconvenience

Mr S has said that he has suffered significant distress and inconvenience as a result of this agreement. He's had 20 months of stress as a result of this agreement and been off work.

I've thought about what Mr S has said. I do accept that Mr S has experienced an amount of frustration and annoyance as a result of being unable to make his payments and then being pursued for them.

However, while I appreciate that Mr S holds Barclays PF responsible for allowing him to enter the agreement, I also need to take into account that it was only able to accept Mr S' application after he chose to purchase the vehicle that he did, at the time that he did, in the first place.

Most importantly, I do have to take into account that Mr S will be over £2,000.00 better off as a result of having to repay significantly less than the amount of the cash price of the car that he's been allowed to keep. And this amount is substantially more than any award for distress and inconvenience – which are typically modest – that I would have made.

So overall, I'm satisfied that what Barclays PF has already done to put things right also adequately compensates Mr S for any distress and inconvenience he may have experienced here – although I do appreciate that Mr S doesn't agree that this is the case. I've therefore not been persuaded to make an additional award for this.

Mr S' concerns about commission

Mr S has also complained about the commission Barclays PF paid to his motor dealer. He says that this was not disclosed to him. I appreciate that Mr S believes that he should be entitled to further compensation for this.

However, what Barclays PF has already done to put things right for Mr S effectively places him in the position he would now be in had his conditional sale agreement never existed. I'm therefore satisfied that Barclays PF's actions in relation to writing off the outstanding balance and letting Mr S keep the car, unwinds the impact of any commission that Barclays PF might have paid to the motor dealer for introducing Mr S.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome. This is particularly as Mr S will have paid less than the cash price of the vehicle too.

Overall and having considered everything, I'm satisfied that what Barclays PF has already agreed to do to put things right for Mr S is fair and reasonable in all the circumstances of his complaint. So I'm not requiring Barclays PF to do anything more or anything further.

I appreciate this will be very disappointing for Mr S. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Clydesdale Financial Services Limited has done to put things right for Mr S is fair and reasonable in all the circumstances of this complaint. So I'm not requiring it to do anything more, or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 November 2024.

Jeshen Narayanan
Ombudsman