

## **The complaint**

Mrs B, who is represented by the Citizens' Advice Bureau, ("CAB") complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") did not carry out proper affordability checks when granting her loans to purchase holiday products.

## **What happened**

In April 2015 Mrs B along with her late partner purchased a trial membership of a holiday club from a company I will call C. This cost £3,995 and was funded by a loan from BPF. This was to be repaid over 24 months with repayments of £188.74. In September 2015 they decided to upgrade to full membership at a cost of £13,514. She took out a loan for £17,137 which was repayable over 120 months at £238.90 per month. This was used to pay off the original loan which stood at £ 3,623 and cover the upgrade.

The management charges which were due every other year. The period up to part way through 2018 was paid as part of the initial cost. They then paid £747.82 in 2018 and £99.86 in 2020. Their membership was suspended due to non-payment of the 2020 management fees.

C has told BPF that they took four UK holidays: 4 nights in August 2015, 4 nights in February 2017, four nights in August 2018 and a week in October 2018. C says the value of these amounts to £3,852.

Both loans were taken out in Mrs B's name though she says her partner completed the form. Both application forms show she was in employment with the same employer. The first shows her gross income as £33,000 and the second £18,000. The first shows she was with the same employer for 20 years and the second for 10+ years. The first shows mortgage/rent payments of £550 and the second shows £433. No other financial information is shown. The only other information requested is the amount due for other loans and credit cards to which Mrs B has answered 'no' or left it blank. I gather the last payment made by Mrs B was in September 2020.

Mrs B complained to BPF in early 2020 and it says that she didn't provide the additional information it needed to address the complaint. I understand that Mrs B's partner passed away in 2020.

In September 2021 CAB brought a complaint to this service where it was considered by one of our investigators who recommend it be upheld. He explained that when we consider complaints about the decision to lend money, we need to consider whether the business has conducted reasonable and proportionate checks to ensure the lending could be repaid sustainably over the full term of the loan. He referenced the FCA Handbook which contains the Consumer Credit Sourcebook (CONC) which includes a section on responsible lending.

He thought the basic check run by BPF wasn't sufficient and he noted Mrs B's had income from state benefits. After reviewing her income and expenditure he concluded that she had insufficient money left to cover the cost of the loan.

BPF didn't agree and asked to see Mrs B's bank statements from around the time of the purchases. It noted Mrs B had received a lump payment from the Department for Work and Pensions ("DWP") of £3,000. It said the application form showed she was employed and said its systems verified the level of income reported. It said that after the lump sum from DWP was paid in August 2015 her monthly income increased. This meant her income was greater than the figure used by BPF to determine the loan was affordable. It seems to have based this on the fact it had not been given evidence that Mrs B was required to cover household costs, utilities, or rent etc.

Despite its view that the loan was affordable it offered as a gesture of goodwill to:

- Refund of all payments made after 01/03/2020.
- Pay 8% interest of the refund of payments made after 01/03/2020.
- Cancel the loan so that Mrs B is no longer liable for the outstanding balance.
- BPF will support with facilitating an exit from the timeshare membership – should Mrs
- B wish to terminate the timeshare membership. If however she wishes to keep the timeshare, we would expect Mrs B to continue to pay her obligations under the timeshare membership.

Our investigator put this offer to the CAB, but received no reply.

I issued a provisional decision as follows:

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

*When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:*

*"(1) relevant:*

*(a) law and regulations;*

*(b) regulators' rules, guidance and standards;*

*(c) codes of practice; and*

*(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."*

*And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.*

*Having read and considered all the available evidence and arguments, I think this complaint should be upheld. I will explain why.*

*Our investigator set out the rules within CONC dealing with lending which I will repeat here:*

*CONC5.2A.4 states:*

*A firm must undertake a reasonable assessment of the creditworthiness of a customer before:*

*(1) entering into a regulated credit agreement;*

*CONC requires a business to undertake a reasonable assessment of the creditworthiness of a customer before entering into a regulated credit agreement. It says a firm must not do this until it has completed a creditworthiness assessment which it has based on sufficient information obtained through the customer or a credit reference agency. The firm must consider the customer's ability to make repayments throughout the duration of the agreement.*

*CONC 5.2A.15(2) states that:*

*The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current income.*

*CONC 5.2A.16(3) states that:*

*For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

*The purchases were made in joint names, but the loans were taken out in Mrs B's name alone. The information sought by BPF on the application form relevant to Mrs B resulted in minimal information being provided. By way of context I also understand the original offer by C was only available to UK homeowners with a combined income of £30,000 and Mrs B has said it was aware that neither she nor her husband owned a property.*

*On the matter of the salary figure reported on both forms I accept that these were not completed by Mrs B, but it is clear she did sign the forms and it was open to her to amend them as necessary. That said, I suspect that she was in a relatively high pressure sales environment and may have not noticed these figures. BPF was satisfied that the checks it did verify her income, but I am not clear how this was done given credit reference agencies do not record salary details.*

*The onus was on BPF to take reasonable steps to establish the applicant's income and I am not persuaded it did in this case. I am also concerned that the second application gives radically different information about her income and employment along with a much reduced monthly rent figure. This basic information and the discrepancies should have been sufficient to cause the bank to undertake a more thorough check.*

*Having reviewed her bank statements it is clear she was reliant on benefits and it is not disputed she was living in rented accommodation. I agree she kept her account in credit and was not in arrears with any other lenders. That said, I do not consider it reasonable to conclude she had no responsibility for household and other normal joint expenses. I think*

*BPF has taken an unreasonable view of what she was responsible for.*

*So I believe that BPF did not carry out reasonable and proportionate checks and the lending of money to Mrs B was irresponsible. However, I am aware that she and her husband did make some use of the product and so I consider that should be taken into account.*

*As I think the business should not have agreed to lend Mrs B money, I consider it should do the following:*

- Refund her all loan repayments and add 8% interest from the date of each payment to the date of settlement.*
- Refund any maintenance fees paid by Mrs B upon receipt of evidence of payment – and add 8% interest on these fee payments from the date of payment to date of settlement.*
- Cancel the loan agreement and ensure Mrs B no longer needs to repay the loan.*
- Remove the loan from her credit file, including any negative markers placed on her file due to the loan.*
- Arrange for the timeshare agreement to be ended or failing that take on any further liability for the timeshare including any future maintenance payments.*
- Deduct £3,852 from the money payable to Mrs B to reflect her use of the product.*
- As I don't think the business took prompt action after it learned the repayments were unaffordable, I also think it should pay Mrs B an additional payment of £500 for trouble and upset caused by the delay in taking action to treat her positively and sympathetically."*

CAB said Mrs B had nothing further to add and BPF made a number of points.

It said Mr B had contacted it in March 2020 regarding Mrs B's financial difficulties, but he had not replied to requests for further information.

It noted that the CONC rules and guidelines quoted had effect from 2018 and the loan predated this. It said that *"under CONC 5.2.3G the extent of the assessment needed to be proportionate and may include considering various factors, such as evidence of income or expenditure. There was no equivalent rule to CONC 5.2A.15R(2) or CONC 5.2A.17R(2) which would have required BPF to take reasonable steps to determine the amount or make a reasonable estimate of the customer's current income or non-discretionary income, as suggested by your provisional decision."*

BPF went on to explain that it had carried out checks using a credit reference company and these considered her financial situation, her level of debt and an affordability assessment. This used her credit commitments identified by bureau data and her declared net income.

BPF also said that it had no information to show she was responsible for rent or utility bills and where applicants are not the main income in the household this is not unreasonable. It added that even if the checks had not been reasonable or proportionate Mrs B's bank statements showed no sign of financial distress and she was able to make use of the timeshare. She met her loan payments until 2020. BPF repeated its earlier offer to Mrs B.

### **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 noted the comments made by BPF and after careful consideration I am not minded to change my provisional decision. I will explain why.

Firstly I will address the matter of CONC. The rules and guidelines in 2015 were different, but the substance remains much the same.

A lender must base its assessment on sufficient information and take reasonable care to make a fair assessment of an individual's financial situation. Its evaluation must be proportionate. In this case BPF has relied significantly on information and modelling from a third party and did not seek more detailed information direct from Mrs B. It also presumed she was not the main source of income in the household, though it has not explained why it took that view.

I do not know why the loan was taken out in Mrs B's name rather than in her partners or in joint names given the purchase was a joint one. It is possible that her credit was better, but I cannot say. However, it is something I would have thought would have been helpful to BPF in making its decision about lending a something the broker could have shared with it.

It is clear from the bank statements that she was reliant on benefits payments and despite this BPF says that the credit reference company verified her income with a high confidence score. I consider it reasonable to conclude that the income figures entered on the application form by her late partner were inaccurate and if further details had been sought then it is more than likely that the loan would probably not have been granted.

Mrs B and her partner lived in social housing and relied on benefits. No account was taken of her outgoings other than those shown on the credit report. It is not clear why the assumption was made that Mrs B had no other financial responsibilities other than the few shown on the credit file and the data examined by the third party. Quite simply, I am not persuaded that the checks were proportionate or reasonable as required at the time given they resulted in such a misleading portrayal of her financial status.

The fact that Mrs B maintained payments for several years does not of itself indicate that she didn't lose out. She made payments which reduced her limited income. BPF has also pointed out that she made use of the timeshare. I agree and in my proposed redress I have taken account of the use she and her partner had of the timeshare so that she does not benefit unfairly.

Overall after giving due consideration to the arguments put forward by BPF I consider this complaint should be upheld and redress paid as set out below which is slightly different from my original proposal. On reflection, I consider the sum due for distress and inconvenience should be £300.

### **Putting things right**

I consider BPF should:

- Refund Mrs B all loan repayments and add 8% interest from the date of each payment to the date of settlement.
- Refund any maintenance fees paid by Mrs B upon receipt of evidence of payment – and add 8% annual simple interest on these fee payments from the date of payment to date of settlement.
- Cancel the loan agreement and ensure Mrs B no longer needs to repay the loan.
- Remove the loan from her credit file, including any negative markers placed on her file due to the loan.

- Arrange for the timeshare agreement to be ended or failing that take on any further liability for the timeshare including any future maintenance payments.
- Deduct £3,852 from the money payable to Mrs B to reflect her use of the product.
- As I don't think the business took prompt action after it learned the repayments were unaffordable, I also think it should pay Mrs B an additional payment of £300 for trouble and upset caused by the delay in taking action to treat her positively and sympathetically."

### **My final decision**

My final decision is that I uphold this complaint and I direct Clydesdale Financial Services Limited trading as Barclays Partner Finance to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 21 May 2024.

Ivor Graham  
**Ombudsman**