DRN-5043582

Complaint

Ms T complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance ("Barclays PF")) unfairly entered into a conditional-sale agreement with her. She's said the agreement was unaffordable for her.

Ms T is being represented by a Claims Management Company ("CMC").

Background

In June 2018, Barclays PF provided Ms T with finance for a used car. The cash price of the vehicle was £8,082.95 and Ms T also purchased £499 of extras. So the total amount of the purchase was £8,581.95. Ms T paid a deposit of £900.00 and entered into a 60-month conditional sale agreement with Barclays PF for the remaining amount, of £7,681.95, she needed to complete the purchase.

The loan had interest, fees and total charges of £2,688.45 (made up of interest of £2,388.45, a credit facility fee of £150 and a completion fee of £150) and the total amount to be repaid of £10,370.40 (not including Ms T's deposit) was due to be repaid in 59 monthly instalments of £170.34 followed by a final payment of £320.34.

The finance was repaid in full in September 2023 and Ms T complained, via the CMC, two months later in November 2023. Barclays PF didn't uphold Ms T's complaint and as Ms T remained dissatisfied the complaint was referred to our service.

Ms T's complaint was considered by one of our investigators. He didn't think Barclays PF had done anything wrong or treated Ms T unfairly. So he didn't recommend that Ms T's complaint should be upheld.

The CMC, on Ms T behalf, disagreed with our investigator's assessment and asked for her complaint to be passed to an ombudsman for a final decision.

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 Ms T's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Ms T's complaint. I'd like to explain why in a little more detail.

Barclays PF needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Barclays PF needed to carry out proportionate checks to be able to understand whether Ms T could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Barclays PF carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Barclays PF says it agreed to this application after it completed an income and expenditure assessment on Ms T. During this assessment, Ms T provided details of her monthly income which I understand that it cross-checked against the amount of funds which entered into Ms T's main bank account each month.

Barclays PF says it also carried out credit searches on Ms T which not only showed that she didn't have any significant adverse information – such as defaulted accounts or County Court Judgments ("CCJ") - recorded against her, but that she didn't have an excessive amount existing credit outstanding.

Furthermore, in Barclays PF's view, when repayments to the amount Ms T already owed plus a reasonable amount for Ms T's living expenses was deducted from her monthly income the monthly payments were still affordable. On the other hand, Ms T says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Ms T and Barclays PF have said.

The first thing for me to say is that bearing in mind the term of the agreement and its total cost, like our investigator, I'm satisfied that Barclays PF needed to take further steps to ascertain Ms T's actual living costs, rather than assuming Ms T's living expenses in order for its checks to have been reasonable here. Barclays PF did not do this so I'm satisfied that its checks before lending in this instance weren't proportionate.

As Barclays PF should have done more, I've gone on to decide what I think Barclays PF is more likely than not to have seen had it done that here. Given the circumstances here, I would have expected Barclays PF to have had a reasonable understanding about Ms T's regular living expenses as well as her income and existing credit commitments.

I've considered the information Ms T has provided us with. Having done so, I'm satisfied that the information provided appears to show that when Ms T's committed regular living expenses are combined with her credit commitments and then deducted from what Barclays PF believed she received at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I've seen that the CMC has questioned the inclusion of benefit payments as part of Ms T's income and has made some comparisons with the that Barclays PF carried out here and the checks carried out by mortgage providers before providing a mortgage.

I've considered what the CMC has said but I have a number of issues with the arguments that it has advanced here.

Firstly, Ms T did not declare that she was on benefits at the time of her application she declared an income based on her employment and this was cross-checked against information from credit reference agencies and there wasn't anything to indicate that Ms T had been inaccurate in her declaration.

So Barclays PF wasn't aware that Ms T was in receipt of benefits and I can't see how it ought reasonably to have been aware that this was the case in order to factor it into its assessment either.

Secondly, Ms T wasn't being provided with a mortgage she was being provided with the funds to for a vehicle which her entire family was able to benefit from. So find the comparison with what a mortgage provider might or might not do somewhat bizarre and not useful either.

This is particularly as even if one was to take the view that Ms T was in receipt of child benefit for the benefit of her children, Ms T having a car to be able to transport them was to their benefit. So it's not immediately apparent to me that such payments being used towards the car payments was unreasonable or not in keeping with the purpose of child benefit.

Furthermore, as the benefits the CMC has referred to were funds that Ms T was in receipt of, I'm satisfied that Barclays PF was entitled to take them into account. Indeed the CMC appears to be suggesting that Ms T's application should have been declined despite it appearing that the payments were affordable solely because Ms T was in receipt of some benefits. I think that such an approach would be arbitrary, arguably discriminatory and certainly not in keeping with what is fair and reasonable.

Overall and having carefully considered everything, I don't think that Barclays PF's checks before entering into this conditional-sale agreement with Ms T did go far enough. However, as the information provided doesn't suggest that obtaining more information would have shown the monthly payments to be unaffordable, I'm satisfied that doing more won't have prevented Barclays PF from providing these funds, or entering into this agreement with her.

I have thought about what the CMC has said about the costs of the loan being high. However, the information regarding the cost of the agreement, which is set in the background section of this final decision, is taken directly from the credit agreement Ms T signed. So I think that Ms T was notified of the costs of the agreement before she entered into it. And as Ms T's signed the agreement and agreed to be bound by the terms, I can only assume that she was happy to accept these terms and proceed with the finance.

In reaching these conclusions, I've also considered whether the lending relationship between Barclays PF and Ms T might have been unfair to Ms T under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Barclays PF irresponsibly lent to Ms T or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Ms T. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms T to accept or reject my decision before 30 October 2024.

Jeshen Narayanan
Ombudsman