

Complaint

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

Background

In July 2018, Barclays PF provided Ms H with finance for a used car. The cash price of the vehicle was £15,442.00. Ms H paid a deposit of £100.00 and entered into a 48-month conditional sale agreement with Barclays PF for the remaining amount, of £15,342.00, she needed to complete the purchase.

The loan had interest, fees and total charges of £3,501.57 and the total amount to be repaid of £18,843.57 (not including Ms H's deposit) was due to be repaid in 47 monthly instalments of £282.31 followed by an optional final payment of £5,575.00 which Ms H had to pay if she wished to keep the car.

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

The CMC, on Ms H 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 H's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Ms H'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 H 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 H. During this assessment, Ms H provided details of her monthly income which I understand that it cross-checked against the amount of funds which entered into Ms H's main bank account each month.

Barclays PF says it also carried out credit searches on Ms H 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 low amount of active credit which was being well maintained.

Furthermore, in Barclays PF's view, when repayments to the amount Ms H already owed plus a reasonable amount for Ms H's living expenses was deducted from her monthly income the monthly payments were still affordable. On the other hand, Ms H says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Ms H 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 H's actual living costs, rather than assuming Ms H's living expenses in order for its checks to have been proportionate 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 H's regular living expenses as well as her income and existing credit commitments.

I've considered the information Ms H has provided us with. Having done so, I'm satisfied that the information provided appears to show that when Ms H'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 say this because Ms H has said that she was working and was earning broadly the amount that she declared to during her application and the amount that Barclays PF's checks validated. Furthermore, when the amount Ms H says she paid for her rent is added to her existing credit commitments, she appears to have enough left over to make her repayments.

I accept that Ms H's actual circumstances at the time were worse than what the information about her committed living costs and existing commitments to credit shows. For example, having looked at the copies of the bank statements Ms H has provided us with now, I can see significant gambling, which the CMC has picked up on and referred to. It's also possible – but by no means certain – that Barclays PF might have decided against lending to Ms H had it seen this.

However, what I need to think about here is what were Ms H's actual committed living costs. This is not the same as considering whether if Barclays PF had reviewed Ms H's bank

statements it would have determined that it was a matter of fact that Ms H couldn't afford the monthly payments.

Indeed, bearing in mind checking bank statements wasn't the only way for Barclays PF to have found out more about Ms H's regular and committed living costs – it, or example, could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements which Ms H has now provided us with.

So, in my view, proportionate checks would not have gone into the level of granularity whereby Barclays PF ought reasonably to have requested bank statements and picked up on Ms H's gambling in the way that the CMC appears to be suggesting.

For the sake of completeness, I would also add that I have to consider Ms H's most recent submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Ms H clearly wanted the car she had chosen and it's fair to say that any explanations she would have provided are more likely to have been with a view to persuading Barclays PF to lend to her, rather than highlighting any unaffordability.

In these circumstances, I think that it is unlikely – and certainly less likely than not – that Ms H would have proactively disclosed her gambling and looked to have shown that the monthly payments for the agreement were unaffordable, in circumstances where the available information indicates that Barclays PF was reasonably entitled to consider that they were.

Finally, I've also seen that Ms H herself has said that her difficulties occurred after the onset of the pandemic. Ms H has said that her place of work closed after the onset of the pandemic like many other places in her industry. And her health declined after this leading to which in turn saw her having to rely on benefits.

I am sorry to hear about what Ms H has told us and very much sympathise with her difficulties. However, I don't think that Barclays PF could reasonably be expected to have anticipated the pandemic, or the effects that it would have, when it took its lending decision in July 2018. So I don't think that Barclays PF could have known that the pandemic would result in the payments becoming unaffordable either.

In reaching my conclusions, I've also considered whether the lending relationship between Barclays PF and Ms H might have been unfair to Ms H 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 H 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.

Overall and having carefully considered everything, given what I think further enquiries into Ms H's living expenses are likely to have shown Barclays PF, while I don't think that Barclays PF's checks before entering into this conditional sale agreement with Ms H did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Barclays PF from providing these funds, or entering into this agreement with her. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Ms H. 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 H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 27 November 2024.

Jeshen Narayanan
Ombudsman