

Complaint

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

Background

In July 2019, Barclays PF provided Ms L with finance for a used car. The cash price of the vehicle was £13,145.00 and Ms L also paid £349 for an insurance policy. Ms L didn't pay a deposit and entered into a 49-month conditional sale agreement with Barclays PF for the total amount, of £13,494.00, she needed to complete the purchase.

The loan had interest, fees and total charges of £3,074.04 and the total amount to be repaid of £16,568.04 was due to be repaid in 48 monthly instalments of £252.98 followed by an optional final payment of £4,425.00 which Ms L had to pay if she wished to keep the car.

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

The CMC, on Ms L 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 L's complaint.

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

Barclays PF says it also carried out credit searches on Ms L which showed that she didn't have any recent significant adverse information – such as defaulted accounts or County Court Judgments ("CCJ") - recorded against her. There may have been a default recorded but it was from more than a year prior to this application. It, in any event, considered that Ms L's active credit commitments were being well maintained.

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

I've thought about what Ms L and Barclays PF have said.

The first thing for me to say is that bearing in mind the circumstances, like our investigator, I'm satisfied that Barclays PF needed to take further steps to ascertain Ms L's actual living costs, rather than assuming Ms L'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 L's regular living expenses as well as her income and existing credit commitments.

I've considered the information Ms L has provided us with. Having done so, I'm satisfied that the information provided appears to show that when Ms L's discernible 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. So I don't think that Barclays PF doing more in this instance would have made a difference to its decision to lend.

I accept that Ms L's actual circumstances at the time are different to what the information about her committed living costs and existing commitments to credit in her name shows. For example, having looked at the copies of the bank statements Ms L has provided us with now, I can see payments to credit which do not appear in the credit search which Barclays PF carried out, or the copy of the full credit report Ms L has provided. But given Barclays PF wasn't required to obtain copies of bank statements and, in any event, Ms L herself hasn't been clear on what these payments were for, I don't think that Barclays PF were ware of them, or that it ought reasonably to have been aware of them either.

I've noted that the CMC has referred to Ms L making payments to two CCJs and being overdrawn. However, I can't see any CCJs on the search information Barclays PF obtained or on Ms L's full credit report. So I can only assume that the CMC has made a mistake. This

is especially as I think it is unlikely that Barclays PF would have lent to Ms L at an APR of 8.5% if it had been aware that Ms L had multiple CCJs recorded against her.

Equally, Ms L's use of her overdraft was not excessive and certainly not indicative of someone who was struggling in the way the CMC has suggested. Indeed, while I appreciate that this doesn't, on its own, demonstrate that the agreement was affordable, I'm nonetheless mindful that Ms L maintained all of her payments and she even settled the finance in full (including paying the optional final payment) around a year early.

Given the large payment, Ms L made to settle the finance early, this does appear to appear to undermine the CMC's assertions that the monthly payments were unaffordable and that Ms L's overdraft usage is indicative of her experiencing financial distress.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 30 December 2024.

Jeshen Narayanan
Ombudsman