DRN-5181523

Financial Ombudsman Service

The complaint

Ms B complains Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) irresponsibly entered into a personal contract purchase (PCP) agreement because it didn't complete appropriate checks to ensure the agreement was affordable for her.

What happened

Ms B entered into the PCP agreement with BPF in July 2014 in order to acquire a used car. The cash price of the car was £8,444 and Ms B paid a deposit of £100. The term of the agreement was 49 months. Ms B was to pay 48 monthly repayments of £140.49 and there was a balloon payment of £4,025. The total amount payable under the agreement was £10,868.52.

Ms B is represented in her complaint. For ease of reading, I'll simply refer to Ms B throughout this decision.

Ms B complained to BPF about irresponsible lending in November 2023. She said she didn't have sufficient disposable income to be able to afford the monthly repayments. She also had an existing car finance agreement which wasn't being replaced and it meant more than 20% of her income would have been spent just on car finance payments. Ms B said there were existing delinquencies and that she didn't fully understand the financial risks.

BPF responded to the complaint on 21 November 2023. It didn't resolve Ms B's complaint and she asked our service to look into it.

On 1 October 2024, I issued a provisional decision. I said:

> *Where the evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances. I have taken into consideration the relevant rules and regulations in place at the time BPF made the decision to lend to Ms B, including the relevant rules and regulations directly referred to by Ms B in her submissions to our service.*
>
> *We explain how we handle complaints about irresponsible lending and unaffordable lending on our website. I've used this approach to help me decide Ms B's complaint. BPF needed to ensure that it didn't lend irresponsibly as set out in CONC. In practice, what this means is that BPF needed to carry out proportionate checks to be able to understand whether any lending was affordable for Ms B before providing it.*
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> *In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Ms B's complaint. These two questions are:*
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> 1. *Did BPF complete reasonable and proportionate checks to satisfy itself Ms B would be able to repay her loan in a sustainable way?*
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>   - *If so, did it make a fair lending decision?*

- *If not, would reasonable and proportionate checks have shown Ms B would have been able to do so?*

2. *Did BPF act unfairly in some other way?*

Did BPF complete reasonable and proportionate checks to satisfy itself Ms B would be able to repay the agreement in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and size of the payments for the credit being applied for, as well as the borrowers' personal circumstances at the time of the application.

BPF explained that Ms B had a good credit history and confirmed her annual income was £23,000. Therefore, it assessed the proposed new lending payments of £140.49 would be affordable. It said she maintained a perfect credit history up until she settled her account in full in April 2018.

However, I haven't seen evidence BPF sought to verify Ms B's income, or that it estimated her overall expenditure. I've reviewed the credit search carried out by BPF and can see Ms B did have other credit commitments, but these were being maintained. From the search itself, I don't think there were indicators Ms B was in financial difficulty. But this wasn't sufficient to be able to conclude the lending was affordable and sustainable for her. This is bearing in mind the duration of this agreement was 49 months, the total amount repayable was £10,868.52 (including the final payment) and the monthly repayments were £140.49. The credit file did show she had other credit commitments, including another car finance agreement, which she would also need to maintain.

For these reasons, I'm not satisfied BPF completed proportionate checks to ensure the agreement was affordable and sustainable. I think it would have been reasonable to gather further information about Ms B's financial circumstances to ensure the lending was responsible. And I don't think BPF did enough to satisfy itself Ms B could sustainably make the repayments without considering Ms B's other non-discretionary spend or verifying her income.

Would reasonable and proportionate checks have shown that Ms B would be able to repay the agreement in a sustainable way?

In order to consider what information BPF were likely to have gathered had it completed reasonable and proportionate checks, I've reviewed Ms B's bank statements which cover the three-month period leading up to the lending decision. For clarity, I'm not saying BPF needed to obtain these bank statements to ensure its checks were proportionate. However, the statements do give a good indication of what BPF would likely have discovered if they'd asked for further information about Ms B's financial circumstances at the time.

I note from her statements Ms B received an average income of around £1,589 leading up to the lending decision. This was mainly made up of her salary and child benefit. She also had another small regular incoming payment of £33.80 which has been included. It is reasonable to include the child benefit in the overall income because it would be put towards some of the expenditure which I've considered. This expenditure, such as food costs, was also very likely to have been for the benefit of the child.

In respect of her expenditure, I appreciate Ms B's circumstances changed. I have to consider what reasonable and proportionate checks were likely to have discovered at the time of the lending decision. When doing this, I must also consider that Ms B wanted the car, and it is with this in mind that she would have presented her financial circumstances to BPF had it sought to obtain further information.

Ms B said she separated from her husband in September 2014 and became solely responsible for the bills and mortgage. At the time of the lending, Ms B had an agreement with her then husband that he would pay towards their joint mortgage, and she would contribute to other household expenditure. I'm satisfied this is also reflected by Ms B's bank statements from the time because they don't show she was making payments towards the mortgage or transferring money to her then husband as a contribution.

I also asked Ms B about the cash withdrawals she made from the account to understand more about these transactions. However, she can't recall exactly what these were for given the amount of time which has passed. She did note cash was used a lot more for petrol and food shopping back then. Looking at the statements, I'd note I can see expenses for food and petrol. Overall, I'm unable to conclude it's likely all the cash withdrawals were for non-discretionary spend, or this is what was likely to have been discovered through proportionate checks.

Having considered everything, I think reasonable and proportionate checks were likely to have shown Ms B's committed spend, including non-discretionary spend and credit commitments, was around £950. This includes payments towards another car finance agreement of £212.06. I understand this was not being replaced. It also includes (but is not limited to) payments towards food, petrol, communication accounts and insurance.

Taking into account Ms B's income, I think reasonable and proportionate checks were likely to have shown Ms B had disposable income of around £639. I'm satisfied this disposable income was sufficient to show the agreement was likely to be affordable and sustainable for Ms B. Ms B would be left with around £498 following the repayments of £140.49. This also means that had some of the cash withdrawals been for non-discretionary spend, checks were still likely to have shown the agreement was affordable. I've also accounted for the additional costs which are associated with running another vehicle.

Whilst I do appreciate Ms B had other credit commitments, including another car finance agreement, I can see from her credit file they were all up to date. For these reasons and because it seems proportionate checks were likely to have shown the agreement was affordable, I'm also not persuaded there was anything to suggest Ms B's finances would be adversely affected by this agreement.

Overall, I'm satisfied it's likely that had BPF carried out reasonable and proportionate checks, such checks were likely to have shown this agreement was affordable and sustainable for Ms B. I appreciate my decision will be considerably disappointing for Ms B and her circumstances changed shortly after entering the agreement, but I've taken into account what the evidence shows and what I think BPF were likely to have reasonably discovered at the time.

<u>*Did BPF act unfairly in some other way?*</u>

Having reviewed the evidence I have, I don't think BPF acted unfairly in some other way. I've thought about whether the relationship might have been unfair under

Section 140A of the Consumer Credit Act 1974. However, for the reasons already given, I don't think BPF lent irresponsibly to Ms B or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I note this was a PCP agreement which includes a larger final repayment. This generally means the monthly repayments are lower. This is a type of flexible agreement. If the consumer wishes to keep the car they need to make the final repayment, otherwise the consumer can decide not to keep the car and end the agreement or trade it in using the guaranteed minimum future value. I appreciate Ms B has raised concerns about negative equity, the terms not being clear and BPF being unable to provide a copy of the signed agreement.

BPF have confirmed it has not retained a signed copy of the agreement. However, BPF has provided system notes confirming documents were received on 10 July 2014. BPF said it wouldn't have gone ahead with the lending without a signed agreement. The system notes do show the agreement going live after the documents were received. It also provided a customer copy of the agreement and pre-contractual documentation. I'm satisfied from what I've seen its more likely than not these documents were completed at the time given the record of documents being received by BPF. It's not unusual for there to be limited evidence given the amount of time which has now passed.

Additionally, I'm satisfied these documents made the terms of the agreement clear. The documents confirmed the final payment needed to be paid if Ms B wanted to keep the car. The documents also confirmed how the guaranteed minimum future value for the car worked. It explained this value was based on the mileage limit not being exceeded and the car being in a good state of repair (allowing for fair wear and tear). The documents also provided further information about the mileage and the condition of the car, including the charges associated with excess mileage. Therefore, I'm satisfied it is likely sufficient information was provided at the point of sale, so the terms of the agreement were reasonably clear and an informed decision could be made.

Overall, I haven't seen anything which would lead me to conclude BPF acted unfairly.

I gave both parties the opportunity to respond. As both parties have responded, I've proceeded to issue a final decision on the matter.

Ms B didn't agree with the provisional decision. In summary, she said:

- CONC 5.3.1(4)(b) G required lenders to do more than rely on self-declared information from applicants. BPF failed to verify Ms B's income and didn't adequately assess her expenditure or non-discretionary spend, particularly because her income included child benefit. The reliance on child benefit should have been a red flag because these benefits are earmarked for the welfare of the child and not to service credit obligations.
- The disposable income of £639 (after committed spend), does not factor in the broader context, such as Ms B's role as a mother of a 12-year-old child and the inherent unpredictability of day-to-day costs for a family. The daily amount Ms B would have been left with is clearly inadequate.
- CONC 5.2.1(2) R stresses the requirement for lenders to consider the potential for a credit commitment to *"adversely impact the consumer's financial situation."* BPF failed to account for the broader financial vulnerabilities that Ms B was exposed to,

including existing credit obligations and the necessity to secure an additional line of credit to meet the balloon payment. The fact she had to take out further credit to make the final payment is a red flag because this confirms the lending decision pushed her into financial distress for a further seven years.

- BPF failed to properly consider the implications of Ms B's other credit commitments. BPF did not verify her income or take her overall financial situation into account, such as the use of child benefit to manage existing obligations. By disregarding these key indicators, BPF compounded Ms B's financial difficulties.
- The Office of Fair Trading's (OFT) guidelines on irresponsible lending (March 2010) said lenders must ensure that borrowers can meet repayments in a sustainable manner. Given the precarious state of Ms B's finances, it is evident that BPF failed in this duty. BPF should not have approved the credit given the signs of reliance on child benefit and other credit sources, which clearly indicated financial strain.
- Ms B raised concerns about the lack of explanation regarding the negative equity risks associated with the agreement and the broader financial ramifications of such an agreement. It is BPF's responsibility to ensure that a borrower fully understands the potential outcomes of the credit agreement, particularly the implications of a balloon payment and the potential for negative equity. The failure to communicate these aspects adequately deprived Ms B of making an informed decision about the long-term risks of the agreement, a violation of the principle set out in OFT guidance.
- The lack of a signed agreement is troubling and the fact that BPF can't produce this essential document raises concerns about the transparency and procedural fairness of the credit agreement, further supporting the view that Ms B was not fully informed.

BPF added the following in response to the provisional decision:

- It doesn't agree there were negative equity risks in relation to the agreement. Ms B's agreement clearly explained that the decision as to whether to keep the vehicle or hand it back at the end of the term was hers alone. There is no requirement for customers with such agreements to pay the final payment if they prefer not to.
- It adheres to all regulatory and data protection requirements regarding storing documents and there is no requirement for it to store documents over six years old. The agreement was taken out over ten years ago.

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.

Having fully considered everything which has been submitted, I see no reason to depart from the conclusions I reached in my provisional decision, and I'll explain why. Firstly, I'd note I remain of the view BPF did not carry out reasonable and proportionate checks. So, I will not comment on this further and I'll turn to what remains disputed by Ms B, particularly what reasonable and proportionate checks were likely to have shown at the time and whether it was right for BPF to lend to her.

Disposable income, child benefit and existing credit commitments

I think BPF were likely to have discovered through reasonable and proportionate checks that Ms B was in receipt of child benefit because it formed part of the income she was receiving at the time. Additionally, it is reasonable to include these payments when assessing her overall income, because some of Ms B's expenditure would likely be for the benefit of her child. It's not unusual for families to be in receipt of this payment and it doesn't necessarily mean this agreement was unaffordable.

I set out in my provisional decision what I think reasonable and proportionate checks were likely to have shown about Ms B's disposable income. I've considered what BPF were likely to have discovered about Ms B's committed expenditure, including her existing credit commitments. I remain satisfied, after accounting for the repayments under this agreement, Ms B would be left with around £498. I've thought about Ms B's circumstances at the time, and I've taken into account the relevant regulations and guidance. Having done so, I'm satisfied this amount is enough to show Ms B was likely to be able to make the repayments affordably and sustainably.

Taking everything into account, I remain of the view reasonable and proportionate checks were likely to have shown this agreement was affordable. And, based on what I've seen, I don't think such checks were likely to have shown Ms B's financial situation would be adversely impacted by this agreement (CONC 5.2.1(2) R).

Information about the credit agreement

Ms B said she had to take out additional credit to repay the balloon payment. I appreciate the balloon payment was a fairly significant sum for Ms B to repay in one go. However, the balloon payment was optional under the agreement. Additionally, when consumers take out agreements with a balloon payment, generally they will benefit from lower monthly repayments.

I set out in my provisional decision why I'm satisfied it's likely the point of sale documents were completed at the time Ms B entered the agreement. Whilst I do appreciate Ms B's concerns, I remain of the view that the limited information now available doesn't mean the agreement wasn't signed or properly entered. This is because of the time which has passed since the agreement commenced, as well as the system notes I have seen.

Additionally, BPF were reasonably clear about the terms of the agreement and how it worked to enable Ms B to make an informed decision. For example (and as I've explained in my provisional decision), it set out how it calculated the guaranteed minimum future value and clearly explained Ms B would need to pay extra costs if the vehicle was not kept in a good state of repair or if she went over the mileage limit. I'm satisfied these key features were reasonably clear throughout the point-of-sale documentation and in the terms of the agreement. Whilst I appreciate Ms B took out further credit in order to pay the balloon payment, this payment was optional and I'm satisfied the circumstances in which additional costs would need to be paid were fairly set out.

Overall, I'm satisfied there is no reason to depart from the conclusion I reached in my provisional decision. The evidence satisfies me reasonable and proportionate checks were likely to have shown this agreement was affordable and sustainable for Ms B. And I don't think such checks would have revealed indicators that this agreement was likely to adversely impact Ms B's financial circumstances. I also haven't seen anything which persuades me BPF acted unfairly in some other way.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

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

Laura Dean
Ombudsman