

Complaint

Mr F complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance ("Barclays PF")) unfairly entered into a conditional sale agreement with him. He's said that the agreement was unaffordable for him and his struggle to make his repayments caused him ongoing financial strain.

Background

In February 2018, Barclays PF provided Mr F with finance for a used car. The cash price of the car was £5,358.00 and Mr F purchased £1,048.00 worth of extras. This resulted in the total amount of the purchase being £6,406.00. Mr F paid a deposit of £700. He then entered into a conditional sale agreement with Barclays PF for the remaining amount of £5,706.00.

The loan had total interest, fees and charges of £2,397.40 (made up of interest of £2,049.00, a credit facility fee of £149 and a completion fee of £199) and a 60-month term. This meant that the balance to be repaid of £8,103.40 (which does not include Mr F's deposit) was due to be repaid in 59 monthly instalments of £131.74 followed by a final monthly payment of £330.74.

In May 2024, Barclays PF was notified that Mr F wanted to make a complaint as he felt that it shouldn't have entered into this conditional sale agreement with him. Mr F said that Barclays PF ought to have realised that the monthly payments were unaffordable for him and he ended up struggling to make his repayments which caused him ongoing financial strain.

Barclays PF did not uphold Mr F's complaint. Mr F remained dissatisfied at Barclays PF's final response and referred his complaint to our service. When providing its file of papers on Mr F's complaint, Barclays PF told us that it believed Mr F had complained too late.

Mr F's complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Barclays PF that it shouldn't have entered into the conditional sale agreement with Mr F. So she didn't think that Mr F's complaint should be upheld.

Mr F disagreed with our investigator and the complaint was 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Barclays PF has argued that Mr F's complaint was made too late because he complained more than

six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr F's complaint as being one alleging that the relationship between him and Barclays PF was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr F's complaint. Given the reasons for this, I'm satisfied that whether Mr F's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr F's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr F has not only complained not about the decision to lend but has also alleged he suffered ongoing financial strain as a result of struggling to make his repayments.

I'm therefore satisfied that Mr F's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Barclays PF. I acknowledge Barclays PF may not agree that we can look Mr F's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr F's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr F's complaint is about the fairness of the lending relationship between him and Barclays PF, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Barclays PF) and the debtor (Mr F), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr F's complaint, I therefore need to think about whether Barclays PF's decision to lend to Mr F, or its later actions resulted in the lending relationship between Mr F and Barclays PF being unfair to Mr F, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr F's relationship with Barclays PF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr F's ability to repay in circumstances where doing so would have revealed the repayments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Barclays PF didn't then somehow remove the unfairness this created.

I'll now turn to whether Barclays PF acted fairly and reasonably when entering into the conditional sale agreement with Mr F.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 any lending was sustainable for Mr F before providing it.

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.

Did Barclays PF act fairly and reasonably when entering into the conditional sale agreement with Mr F?

Barclays PF says it agreed to this application after Mr F provided details of his income which I understand may have been cross checked against information from credit reference agencies on the amount of funds going into his main bank account each month.

It says it also carried out credit searches on Mr F which showed that he didn't have any significant adverse information – such as defaults or county court judgments - recorded against him. Furthermore, Mr F had low outstanding balances - he had balances totalling less than £400 across his credit cards - on his existing credit.

In Barclays PF's view, when reasonable repayments towards the amount Mr F owed on his active accounts, plus a reasonable amount for Mr F's living expenses were deducted from his monthly income the monthly payments were affordable.

On the other hand, Mr F says the monthly payments were unaffordable and entering into the conditional sale agreement with him in these circumstances meant he suffered ongoing financial strain as a result of struggling to make his repayments.

I've thought about what Mr F and Barclays PF have said.

Given Mr F's declaration of income, the lack of adverse information on Barclays PF's credit check, Mr F's low amount of outstanding credit and Mr F paid a deposit equivalent to five months' worth of monthly payments, there is a reasonable argument for saying that Barclays PF's checks were reasonable and proportionate in this instance. And as the information gathered as a result of these checks suggested that Mr F could make the monthly repayment required, it wasn't unreasonable to lend.

In any event, even if I were to agree that Barclays PF ought to have done more before lending to Mr F, I don't think that it doing so would more likely than not have made a difference. I say this because at the absolute most, I would have expected it to have found out more about Mr F's actual living expenses, rather than assuming that he would have sufficient funds left to meet them. However, the information Mr F has provided doesn't show

me that Barclays PF finding out more about his actual living expenses would have led to it concluding that the monthly payments were unaffordable for him.

I appreciate that Mr F says that the information gathered did not accurately reflect his position. For example, I've seen that Mr F has said he was unemployed and in receipt of benefits at the time of this application and that he had defaulted on a loan. But I can't see that Barclays PF was aware of either of these things. Indeed, Mr F hasn't provided anything to show that he had a default recorded against him at the time.

I have also noted that Mr F has provided statements for a basic bank account and has said that the fact that he had such an account, which he wasn't allowed a debit card on, in itself demonstrates that he couldn't afford the payments to this agreement. However, it's unclear why Mr F has provided these statements, as I don't think that these are the statements for his main account.

I say this because the direct debit instruction, which Mr F will have signed, authorised Barclays PF to take the payments for this agreement from an account with a different financial institution. The direct debit instruction clearly states that the other account was in Mr F's name. I also understand that the monthly payments were taken from this account too.

Given this is the case, I'm not persuaded by Mr F's arguments about the relevance of him having a basic bank account. I'm also satisfied that I cannot draw any meaningful conclusions about Mr F's income and expenditure from the transactions on these statements.

I also have to keep in mind that Mr F's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mr F wanted the car that he had chosen. I therefore think that any explanations Mr F would have provided at the time are more likely to have been with a view to persuading Barclays PF to lend, rather than highlighting any unaffordability. I think it unlikely that Mr F would have sought to demonstrate that the monthly payments were unaffordable, when I think what Barclays PF is likely to have seen as a result of carrying out proportionate checks suggests that they were.

Having considered all of this and weighed it up in the round, I don't think that Barclays PF accepted an application that it ought reasonably to have realised was unaffordable for Mr F, or that it ought reasonably to have realised would cause significant harm to him. Indeed, while I accept that this isn't in itself determinative, I do think that Mr F settling the finance, on schedule¹, does tend to support the fact that the payments were affordable for him. As this is the case, I don't think that it was unfair for Barclays PF to have entered into this conditional sale agreement with Mr F, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr F and Barclays PF was unfair to Mr F. I've not been persuaded that Barclays PF created unfairness in its relationship with Mr F by irresponsibly lending to him when it entered into this conditional sale agreement with him. And I don't find Barclays PF treated Mr F unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr F's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr F. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

¹ The agreement was settled three months after it was originally due to be settled. However, this was because Mr F successfully applied for a three-month pandemic payment break in April 2020. Mr F therefore made his payments broadly in line as scheduled.

My final decision

My final decision is that I'm not upholding Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 April 2025.

Jeshen Narayanan
Ombudsman