

Complaint

Mr W 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 and that this caused ongoing financial difficulty.

Background

In November 2017, Barclays PF provided Mr W with finance for a used car. The cash price of the car was £12,281.25. Mr W paid a deposit of £100 and entered into a conditional sale agreement with Barclays PF for the remaining £12,181.25 he required to complete the purchase.

The loan had total interest, fees and charges of £2,674.27 (made up of interest of £2,673.24 plus a £1 completion fee) and a 48-month term. This meant that the balance to be repaid of £14,855.52 (which does not include Mr W's deposit) was due to be repaid in 47 monthly instalments of £226.16 followed by an optional final payment of £4,226.00 which Mr W had to pay if he wished to keep the car.

The statement of account appears to show that the agreement was settled on schedule. Mr W paid the optional final payment and took ownership of the car in November 2021.

In July 2024, Mr W complained to Barclays PF saying that it shouldn't have entered into this conditional sale agreement with him. He said that Barclays PF ought to have realised that the monthly payments were unaffordable for him and that this caused ongoing financial difficulty.

Barclays PF didn't uphold Mr W's complaint as it believed that Mr W had complained too late. Mr W remained dissatisfied at matters and referred his complaint to our service. When providing its file of papers on Mr W's complaint, Barclays PF reiterated its view that Mr W had complained too late.

Mr W's complaint was subsequently considered by one of our investigators. He 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 W. So he didn't think that Mr W's complaint should be upheld.

Mr W 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 W'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 W'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"). He 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 W's complaint. Given the reasons for this, I'm satisfied that whether Mr W's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr W's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr W has not only complained not about the decision to lend but has also alleged that the payments caused ongoing financial difficulty.

I'm therefore satisfied that Mr W'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 still doesn't agree we can look Mr W'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 W's case, I am required to take relevant law into account. For the reasons I've explained above, I'm satisfied that Mr W'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 W), 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 W's complaint, I therefore need to think about whether Barclays PF's decision to lend to Mr W, or its later actions resulted in the lending relationship between Mr W and Barclays PF being unfair to Mr W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr W's relationship with Barclays PF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr W'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 W.

Our approach to 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 W 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.

I've kept this in mind when determining Mr W's complaint.

Application to Mr W's complaint - Did Barclays PF act fairly and reasonably when agreeing to enter into this conditional sale agreement with Mr W?

Barclays PF says it agreed to this application after Mr W provided details of his income which it cross checked against information from credit reference agencies on the amount of funds going into his main bank account. It says it also carried out credit searches on Mr W which showed that didn't have any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") recorded against him. Furthermore, the amount he owed was low in comparison to his validated income.

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

On the other hand, Mr W says the monthly payments were unaffordable and caused ongoing difficulty.

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

The first thing for me to say is that Barclays PF didn't simply accept Mr W's declarations at face value as it carried out credit checks and cross-checked what he'd declared about his income. And given what Barclays PF saw on the credit check suggests that the amount of credit Mr W had was low and he was managing the credit he already had well, it's arguable that it was reasonable for Barclays PF to rely on an estimate of Mr W's living costs, rather than finding out more about what they actually were. This is because there was nothing obvious which suggested that Mr W fell outside the profile of the average borrower.

Furthermore, and in any event, I think that it's unlikely Barclays PF carrying out further checks would have made a difference here. I say this because the information Mr W has provided does appear to show that when his committed regular living expenses and existing

credit commitments were deducted from the amount of his anticipated monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I've noted that Mr W has now carried out a line-by-line analysis of his bank statements and has reached the view that he didn't have enough to make his payments. The first thing for me to say is that Mr W's analysis has been carried out with the use of bank statements and this includes all of his expenditure. I don't think that this analysis is representative of what a proportionate check is likely to have shown.

I also have to keep in mind that Mr W's most recent submissions are being made in support of a claim for compensation and any explanations Mr W 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.

So I think it unlikely that Mr W would have volunteered that he shouldn't have been lent to as he didn't have the funds to repay, had Barclays PF asked or found out more about his regular living expenses. This is particularly as Barclays PF wasn't required to request bank statements from him in the first place.

Finally, while I accept that this isn't in itself determinative, I do think that it is nonetheless worth noting that Mr W not only made his payments when they fell due for the period the loan was active, he also paid the optional final payment at the end of the agreement. In my view, Mr W's repayment record and actions do not support his income and expenditure analysis and instead supports the conclusion that this agreement was affordable for him.

Bearing this in mind, I'm satisfied that there is a reasonable argument for saying that the checks Barclays PF carried out before lending to Mr W were reasonable and proportionate. In any event, the available information suggest that Barclays PF carrying out further checks would more likely than not have shown it that Mr W could make the monthly payments to this agreement in a sustainable manner. And in my view, it is unlikely – and less likely than not – that Barclays PF would have declined to lend if it had obtained further information.

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

Having considered everything, while I can understand Mr W'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 W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 September 2025.

Jeshen Narayanan

Ombudsman