DRN-5925029

The complaint

Mrs H's complaint is, in essence, that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, (the 'Lender') acted unfairly and unreasonably by providing her with a loan that she couldn't afford. In bringing the complaint, Mrs H is represented by Mrs M.

What happened

Mrs H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 October 2016 (the 'Time of Sale'). She and her partner Mr H, entered into an agreement with the Supplier to buy 1420 fractional points at a cost of £11,399 (the 'Purchase Agreement').

Mrs H paid for their Fractional Club membership by taking out a loan of £11,399 from the Lender in her sole name (the 'Credit Agreement'). The application form she completed indicated that she was retired and in receipt of a private pension amounting to £660 a month and a state pension of £700 a month.

Mrs M wrote to the Lender in June 2020 to complain about Mrs H being provided with the finance. The Lender wrote to Mrs M in June 2020 to say that it was dealing with the complaint as quickly as possible. And it informed her that she could refer the complaint to this service if she wanted to.

Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, didn't uphold the complaint on its merits.

Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I asked the business for information about the affordability checks it carried out before it provided Mrs H with the loan. And I asked Mrs M to provide evidence of Mrs H's bank statements prior to taking out the loan.

Both parties provided the information I requested. The lender explained that Mrs H's loan was assessed using the information provided at the time of the application and that Mrs H passed income and affordability checks using both income validation and affordability checks, external Credit Reference Agency data, and internal assessment data. It said Mrs H had stated she received £1,360 a month and as per the CAIS information her outgoings from Credit cards/store cards and other lending totalled £675 a month. On that basis the loan was deemed affordable to Mrs H.

Mrs M provided copies of Mrs H's bank statements from 2016 and said the income and expenditure breakdown was just for Mrs H, and was the position in 2016. Mrs H was the house owner and responsible for all bills.

I issued a provisional decision explaining why I thought Mrs H's complaint should be upheld. Mrs M said on behalf of Mrs H that she would accept the provisional decision, and the Lender also said it accepted my provisional decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that, and as both parties have accepted my provisional decision, I see no reason to change what I said in it. So, I remain of the opinion that the complaint should be upheld, as I don't think the loan was affordable for Mrs H. Although the Purchase Agreement was taken out jointly by Mrs H and her partner, the loan as I've already said, was taken out in Mrs H's sole name. So, I will refer to Mrs H throughout the rest of this decision.

I've set out my reasoning again below, and I want to reiterate that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mrs H's complaint.

There are several questions that I've thought about when deciding if the Lender treated Mrs H fairly and reasonably when it provided her with the loan.

1) Did the Lender complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay her loan in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did the Lender make a fair lending decision?
4) Did the Lender act unfairly or unreasonably in some other way?

<u>Did the Lender complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay her loan in a sustainable way?</u>

The rules that the Lender had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mrs H could afford to repay the loan she was wanting to take out. This is often referred to as an "affordability assessment".

The rules don't set out what specific checks it needed to carry out, but they do set out that those checks needed to be proportionate to the circumstances of the application. The checks the Lender needed to carry out as part of its affordability assessment, had to be "*borrower focussed*". What I mean by this, is that the checks needed to consider whether paying the loan back would cause Mrs H any difficulties or have any adverse consequences for her.

I think what this meant in practice, was that the scope and extent of the Lender's checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability. This isn't an exhaustive list.

And because of the above, I think reasonable and proportionate checks needed to be more thorough if Mrs H had a low income. This would reflect that it could be more difficult for her to make the loan repayments with a low income.

The Lender's checks would also need to be more thorough the higher the amounts Mrs H had to repay, as it would be more difficult to make higher loan repayments on a given income. The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is a greater risk of a negative change in circumstances affecting Mrs H's ability to repay, where repayments need to be sustained over a longer period.

With these principles in mind, I've thought about whether the Lender completed reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay her loan in a sustainable way.

In summary then, the circumstances of the loan application are as follows:

• Mrs H was applying for a loan for £11,399 repayable over 180 months, which had an APR of 11.9%. The loan repayments were £131.66 a month.

• Mrs H was recorded by the Lender on the application form as having an annual income of approximately £10,500 when the loan was taken out, (it was £16,320 a year based on the income figures provided.)

• The checks the Lender says it carried out, showed that Mrs H had existing credit commitments totalling £676.05 a month. It also said there was a good history of Mrs M making payments to the loan and no significant evidence of missed payments and arrears in the first 12 months of the loan being taken out. It had assessed the affordability of the loan using information provided at the time of the application, CAIS data and an internal assessment.

The Lender has said that based on the checks it carried out, it thought the loan was affordable for Mrs H. So, I've gone on to consider if the checks it carried out were reasonable and proportionate, and whether it made a fair lending decision in respect of that loan.

The Financial Conduct Authority (FCA) Consumer Credit Sourcebook (CONC) rules, under which the Lender operated at this time, require lenders to take proportionate steps to establish whether a loan applicant can afford the loan – including, in most circumstances – taking steps to verify customer declarations about income and expenditure. So, I think it was important for the Lender to have conducted checks which gave it a thorough understanding of Mrs H's financial position,
and to scrutinise the information it gathered carefully, asking follow up questions where necessary, before agreeing to lend.

I think the information the Lender had about Mrs H's income and her outgoings in respect of other credit, should have led it, in this particular case, to interrogate her financial circumstances (and in particular her income and outgoings) in a borrower focussed fashion. I can't see any objective reason why based on the information it had, the Lender assumed the loan was affordable for Mrs H. It seems to me that the information it had about the amount she was paying monthly for her existing credit, together with her declared monthly income, should have acted as a "red flag" for it to make further enquiries.

I say this because in my opinion, the evidence that it had on the application form which showed Mrs H had total annual income of £10,500 (which was in fact £1,360 a month) and the CAIS data which showed she was making payments of £676.05 (nearly 50% of her monthly income) towards her existing credit obligations, should have made the Lender consider whether the loan would be objectively affordable for her; and at a minimum led it to carry out further checks. I think the information the Lender had, should have been considered in a wider context, rather than just as to whether or not its checks showed any obvious adverse information, such as missed or late payments.

So, taken together, I think the information the Lender had about Mrs H, should have prompted it to look more closely at her financial circumstances and carry out further borrower focussed checks; to ensure that the lending it was proposing to provide to her, was sustainably affordable for her.

<u>What would reasonable and proportionate checks have shown at the time?</u>

I think the Lender should have ensured that the scope and extent of its checks were adapted to the circumstances of Mrs H's application and took account of the information it had obtained from its initial checks. This was a sizeable loan with a total amount payable (including interest) of £23,698 over the 15-year term, which Mrs H was paying on her limited retirement income. And it was in addition to Mrs H's existing borrowing which was over £24,000.

Given this and the information the Lender had about Mrs H's income, further checks would in my opinion, need to verify her income and expenditure, in addition to the checks the Lender had already carried out. And this was in my opinion, needed to establish that she was able to afford the loan.

So, I don't consider the checks the business carried out to have been proportionate because it didn't appear to carry out borrower focussed checks in respect of Mrs H's income and expenditure. It could have obtained actual figures in a variety of different ways and didn't necessarily need to look at bank statements. But I think the bank account statements provided by Mrs H are reasonably indicative of what proportionate borrower focussed checks would have shown in this particular case.

Mrs H has provided copies of her two bank account statements which cover the three months prior to this loan being taken out. I think they provide insight into what reasonable and proportionate checks might have shown.

The statements show that Mrs H's monthly income was a combination of state and private pension which amounted to £1,170 a month - £14,046 a year. This was different to the £1,360 a month recorded on the application form and was 86% of the £16,320 income figure that was required to be confirmed on the loan offer letter dated 25 October 2016.
In respect of Mrs H's expenditure, it's not clear to me what assessment the Lender carried out. From what it has said, it seems it used the CAIS information to assess her outgoings. But I can't see how any realistic assessment of expenditure could be carried out by just considering her existing credit monthly payments. And it seems to me that Mrs H's essential expenditure needed to be taken into account. From what I can see her essential expenditure which included water bill, council tax, electricity/gas, telephone and internet etc; came to approximately £450 a month. In addition, the statements appear to support monthly expenditure of approximately £400 on food. And that doesn't appear to me to be an unreasonable figure in respect of food and other miscellaneous expenditure. So, Mrs H's essential expenditure and credit repayments appear to have been approximately on average £1,500 a month.

Also, the statements show that the accounts generally had a low credit balance at the end of each month or were on occasion overdrawn.

Did the Lender make a fair lending decision?

As I've said, the statements indicate to me that in the months preceding the loan being provided to Mrs H, there was a lack of disposable income due to the income and expenditure going in and out of the account. Also, the accounts generally had a low credit balance and one account was on occasion overdrawn. And by providing the loan to her, I think the Lender exacerbated what was already a difficult financial situation for Mrs H. And I think that if the Lender had carried out reasonable and proportionate borrower focussed checks; it would have identified that Mrs H was struggling financially.

I think the information the Lender already had about Mrs H, together with the information it would have seen if it had carried out reasonable and proportionate checks, by understanding more about her actual income and expenditure rather than essentially relying on estimates, should all have led it to conclude that it was unlikely Mrs H would be able to sustainably afford to make the monthly payments for this new loan.

The Lender disagrees the loan was unaffordable because Mrs H managed to make the repayments with no missed payments or arrears. I've thought carefully about this, but I don't agree. Just because with hindsight Mrs H did make the payments, that doesn't mean that it was correct for the Lender to have provided the loan, if the reasonable and proportionate checks it should have carried out, would have shown the loan was unaffordable. And as I've explained, I think the checks the Lender should have carried out would have shown that the loan wasn't sustainably affordable for Mrs H. Ultimately, the lender needed to make sure Mrs H was able to repay the loan sustainably. Simply making the repayments doesn't indicate they were being made through sustainable means, nor does it take away that proportionate checks at the outset would have revealed the lending was likely to be unaffordable.

For the reasons I've set out, I think in the particular circumstances of Mrs H's case, the Lender should have concluded that it wasn't appropriate to provide her with the loan.

Fair Compensation

Having found that Mrs H shouldn't have been provided with the loan as it wasn't affordable for her, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs H and her partner Mr H, agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved. Here's what I think needs to be done to compensate Mrs H with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mrs H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), the Lender should also refund the annual management charges Mrs H paid as a result of Fractional Club membership.

(3) The Lender can deduct:

i. The value of any promotional giveaways that Mrs H used or took advantage of; and
ii. The market value of the holidays* Mrs H took using their Fractional Points.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mrs H's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mrs H's Fractional Club membership is still in place at the time of this decision, as long as she and Mr H agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mrs H took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

My decision is to uphold Mrs H's complaint about Clydesdale Financial Services Limited, trading as Barclays Partner Finance. It needs to calculate and pay Mrs H compensation using the methodology I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 December 2025.

Simon Dibble
Ombudsman