

Complaint

Mrs F has complained about a series of unsecured personal loans that she was provided with by Barclays Bank UK PLC ("Barclays"). She says Barclays kept offering her a number of credit facilities as part of her account. She started off by taking a small manageable loan but was continually offered further loans before having repaid what she already owed.

Mrs F went on to say that she was never asked to provide any information about her earnings and she was continually offered credit in circumstances where Barclays ought to have seen that she was constantly using her overdraft to cover her priority debts.

Background

As far as I can see, Mrs F was provided with five loans by Barclays between December 2013 and December 2017. For the sake of clarity, I've set out the sequence of Mrs F's loans below. Her loan history is as follows:

Loan	Taken	Repaid	Amount	Consolidation	Received*	Repayments	APR
1	Dec 13	Oct 15	£10,500.00	None	£10,500.00	36 @ £341.39	13.9%
2	Oct 16	Feb 17	£27,000.00	None	£27,000.00	60 @ £615.12	13.9%
3	Feb 17	Jun 17	£42,000.00	Loan 2	£15,991.02	60 @ £976.61	14.9%
4	Jun 17	Outstanding	£50,000.00	Loan 3	£8,536.23	60 @ £1,162.63	14.9%
5	Dec 17	Outstanding	£1,700.00	None	£1,700.00	36 @ £57.85	14.6%

* funds advanced to Mrs F.

Mrs F was also provided with an overdraft and credit cards by Barclays. But as they don't form part of this complaint, I won't be looking at whether Barclays acted fairly and reasonably when providing those products to Mrs F.

In its response to Mrs F's complaint, Barclays didn't agree its checks were inadequate. It said a number of factors such as Barclays account history, personal details disclosed by a customer such as income and financial commitments, credit rating, as well as other factors are considered when it decides to lend. And it didn't think that there was anything to suggest that it shouldn't have provided these loans to Mrs F. One of our adjudicators looked at Mrs F's complaint and agreed Barclays hadn't acted unfairly when providing these loans. Mrs F disagreed and requested the matter be considered by an ombudsman.

My provisional decision

On 25 February 2020, I issued a provisional decision setting out my initial findings on Mrs F's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

Firstly, I summarised the regulatory framework, relevant law and what I considered to be relevant publications at the time (this is copied in full in the appendix to this decision and I ask Barclays and Mrs F to read this again in order to give proper context to this final decision).

In light of the relevant rules, law and publications, I explained that there were three overarching questions I needed to consider in order to decide what was fair and reasonable in the circumstances of this complaint. These were:

1. Did Barclays, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs F would be able to repay her loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mrs F would've been able to do so?
2. Bearing in mind the circumstances, at the time of each application, was there a point where Barclays ought reasonably to have realised it was increasing Mrs F's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided her with further credit?
3. Did Barclays act unfairly or unreasonably in some other way?

In considering the first overarching question – whether Barclays completed reasonable and proportionate checks to satisfy itself that Mrs F would be able to repay her loans in a sustainable way – I explained that the rules and regulations throughout the time Barclays lent to Mrs F required it to carry out a reasonable and proportionate assessment of whether she could afford to repay any loan.

I explained that any affordability checks had to be both “borrower-focused” and “proportionate”. So Barclays had to think more widely than simply whether it would get its money back from Mrs F. What Barclays needed to do was think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mrs F*.

I also explained that what constitutes a proportionate affordability check was dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I provisionally found that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I explained that there may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability and, any foreseeable changes in future circumstances.

I then proceeded to look at the checks Barclays carried out at the time of the loans and considered whether they were proportionate. I started by saying I found Barclays' response to Mrs F's complaint and what it provided to support its position to be very disappointing. It disagreed its checks were inadequate and simply regurgitated details of what its usual process would involve. It relied on all the loan applications having taken place online and has also said it considered a number of factors such as Barclays account history, any personal details disclosed - such as income and financial commitments, credit rating, as well as other factors.

There was no explanation of which, if any, of these checks were undertaken at each of the loan applications or what exactly these checks revealed about Mrs F's financial circumstances at the respective times. Indeed it appeared to me that Barclays simply expected this service to accept that all of Mrs F's loans were affordable because its systems approved them. Considering Barclays said it gathered sufficient information to inform its lending decisions, I thought that it was extremely disappointing Barclays hadn't provided it to me. Equally I also found it disappointing that Barclays had been unable to tell me what it knew about Mrs F's circumstances when she applied for her loans.

I made it clear that this service could not and would not look for evidence and construct an argument to support Barclays' defence of Mrs F's complaint. If Barclays couldn't provide the information it relied on and describe why this information showed it was fair and reasonable to lend to Mrs F on each occasion, then I couldn't and wouldn't reach the conclusion that its checks before providing these loans were proportionate. I said this while especially mindful of the fact that in terms of loans 2 to 5, at least, it approved a number of applications for significant sums of money in a relatively short period of time.

Without any explanation from Barclays on this matter, I wasn't prepared to take it as read its lending decisions were fair. I invited Barclays to provide more detail on these points, its checks and what they showed, in its response to my provisional decision. But as things stood, I was minded to find that Barclays hadn't carried out reasonable and proportionate checks before providing any of these loans to Mrs F.

As Barclays didn't carry out proportionate checks for these loans, I can't say for sure what proportionate checks would more likely than not have shown. So I needed to decide whether it was more likely than not that a reasonable and proportionate affordability check would've told Barclays that it was unfair to offer these loans to Mrs F.

Mrs F had a current account with Barclays. And to help us understand for ourselves what Barclays would more likely than not have discovered if it had completed reasonable and proportionate checks prior to providing Mrs F's loans, we asked Barclays to provide us with copies of her bank statements.

Barclays provided the ledgers for Mrs F's account, which as I understood it detailed all the account transactions. And even though I didn't know what checks Barclays completed at the time, I thought it was perfectly reasonable for me to rely on these ledgers to ascertain Mrs F's financial position at the time of the respective applications as Barclays was in possession of this information at the time.

I started by taking a look at Mrs F's financial position at the time she was provided with loans 1 and 2. I thought that a proportionate check for loans 1 and 2 would have involved finding out – for example – about Mrs F's normal monthly outgoings and regular financial commitments.

- Loan 1

Having considered the information contained in Mrs F's account ledgers, I didn't think that a proportionate review of Mrs F's financial circumstances, would have shown Barclays that it shouldn't have provided loan 1.

I said this because while there were some signs I was concerned about such as payments being made to a debt collection agency and Mrs F having a significant number of existing credit commitments, it looked like the intention was for this loan to consolidate some of Mrs F's existing debts. Indeed Mrs F's account ledgers indicated that's precisely what happened when she received the funds.

Equally although it appeared that Mrs F spent some of the month overdrawn, it was clear that her monthly salary brought her account into credit and she did maintain a credit balance for a reasonable period of time each month. I was also mindful that Mrs F didn't consider this loan to be unaffordable either.

So overall and having considered the information before me, I was satisfied that should a reasonable and proportionate check have been carried out before loan 1 was provided, this wouldn't have indicated Mrs F would more likely than not have had difficulty repaying this loan. And it followed that at that stage I was inclined to find that reasonable and proportionate checks wouldn't have prevented Barclays from providing loan one to Mrs F.

- Loan 2

I noted Barclays' referral to loan 1 having been repaid early. But Mrs F's account ledgers showed that she was only able to settle this loan by using the proceeds from a loan of £13,500.00 which she took out with another provider in October 2015. So for the sake of clarity and the avoidance of doubt, I started by saying that I didn't think Mrs F's first loan being repaid early was in itself indicative of her being in a healthy financial position, or itself demonstrated that loan 2 was affordable.

Loan 2 was provided in October 2016. It was for £27,000.00 and due to be repaid in monthly instalments of around £615 over a term of five years. So the payments for this loan were almost double that of loan one and Mrs F was committed to making these payments for a significantly longer period.

Much like at the time Mrs F applied for loan 1, I also thought that there were some significant warning signs about Mrs F's overall financial position and her capacity to repay further credit at the time of this loan. For example, I could see that Mrs F had four credit cards including one with Barclays that were at their limit. Mrs F's Barclays credit card looks to have had a balance that was over its limit in six of the seven months leading up to loan 2. And this was despite Mrs F's credit card limit being increased in August 2016.

Mrs F also had catalogue shopping accounts and what looks to be an outstanding loan for a hire purchase agreement too. Finally I was also concerned with Mrs F's overdraft usage in the period leading up to loan 2 as well. Mrs F hardly ever saw a credit balance – her existing

commitments immediately swallowed up her salary as soon as it was credited. And it was my view that it ought to have been apparent Mrs F was not using her overdraft for occasional use – in fact she was reliant on it to meet her day-to-day living expenses. And I made it clear that I would have expected this to have played an important part in Barclays' decision on whether to provide loan 2 to Mrs F.

That said while there were some significant warning signs about Mrs F's overall indebtedness, her ability to take on any more and her overall financial position, I was mindful that the purpose of this loan was recorded as debt consolidation. And, in these circumstances, there may well have been an understanding that Mrs F was going to pay off her existing commitments and only have this loan payment going forward.

Equally considering that Mrs F did repay a significant amount of existing debt after she was provided with loan 1, I didn't think it was unreasonable for Barclays to proceed on the basis that Mrs F would do the same thing on this occasion.

All of this left me minded to find that while there were clear warning signs that Mrs F's financial position had worsened since loan 1 was provided, it nonetheless wasn't unreasonable to lend. I thought that Mrs F had indicated she'd settle some of her existing debts. Bearing in mind she'd done that previously and doing so again would mean she would more likely than not be able to sustainably repay this loan, I was inclined to say reasonable and proportionate checks for loan two would more likely than not have shown that it wasn't unfair for Barclays to provide this loan to Mrs F.

I then explained why I didn't go on to recreate affordability checks for loans 3 to 5. This was because in addition to assessing the affordability of each *individual* loan provided to Mrs F by Barclays, I also thought it was fair and reasonable to look at the *overall pattern* of lending. I was mindful that the relevant rules and guidance made it clear that a lender shouldn't continue lending where the loans are unsustainable or otherwise harmful and/or it's apparent that the customer may be experiencing financial difficulties.

By this stage, I'd already explained that while I thought there were some clear warning signs Barclays ought to have been alert to when it provided loans 1 and 2 – Mrs F's worsening debt position and her living in her overdraft - I didn't think I could say that the pattern of lending had, in itself, become demonstrably unsustainable or harmful – such that I could reasonably say the facts spoke for themselves. This was mainly due to the fact that I was currently prepared to give Barclays the benefit of the doubt and say it wasn't unreasonable for it to believe Mrs F would use the funds advanced for loan 2 to reduce her debts elsewhere, rather than increase her overall indebtedness.

Looking at loan 3, though, I didn't think that Barclays had any reasonable basis for concluding that Mrs F would be able to sustainably repay what it was advancing. I was minded to reach this conclusion for a number of reasons.

Firstly Mrs F applied for additional amount of almost £16,000.00 a mere four months after she was provided with £27,000.00. In my view, this, in itself, was a warning sign that Mrs F's financial position – which, on any objective measure, had worsened between loan 1 and loan 2 – may well have worsened further after loan 2 had been advanced.

I also saw that while Mrs F did pay off the outstanding balance on her credit cards after she was provided with loan 2, her credit card accounts were back around their respective limits by the end of January 2017. It appeared to me that she was only making minimum payments

to these balances and this included Mrs F's credit card with Barclays. Mrs F's catalogue shopping balance had also crept up too.

Finally, I'd also seen that Mrs F continually remained overdrawn each month too. Her salary would enter her account on the final day of each month. But then all of her bills and regular payments went out the following day once again leaving her substantially overdrawn. I highlighted that Mrs F only ever saw a credit balance, on a temporary basis, for one day each month and spent the rest of the time incurring additional overdraft fees and charges. And, in these circumstances, Barclays ought reasonably to have been aware of the likelihood Mrs F would only be able to make her loan repayments by using her overdraft and therefore borrowing further.

I didn't think that Mrs F's financial position had materially improved by the time Barclays provided her with loans 4 and 5 either. The balances on Mrs F's existing accounts temporarily dipped after Mrs F made larger payments after she'd been in receipt of the funds from loan 3. But the balances soon increased back to the position they were in before. And I also saw that Barclaycard increased the credit limit on Mrs F's Barclays credit card in the months leading up to the application for loan 4.

Indeed at the time Barclays provided Mrs F with loan 5, with Barclays alone she:

- already had an existing loan for £50,000.00,
- had a credit card with a limit of £2,500.00 which had a balance of almost £2,000.00 on it;
- had an overdraft of £2,000.00 which she spent most of the month in, despite Barclays' own literature saying that this product was only to be used occasionally and in the short-term.

I simply couldn't see how and why Barclays could reasonably have believed that Mrs F would be able to sustainably repay this lending when the information it had in front of it suggested the opposite was far more likely. Mrs F's borrowing history with Barclays demonstrated a clear inability to repay what she owed without borrowing further. And her debt with Barclays alone had grown to an unsustainable level. It was clear that Mrs F's debts were spiralling and these additional loans were unfairly increasing Mrs F's indebtedness to an unsustainable level.

To put this into context, I pointed out that when Barclays provided Mrs F with loan 2 she was required to make 60 monthly payments of around £616. This increased to 60 monthly payments of almost £980 for loan 3 and 60 payments of approaching £1,200.00 by the time of loan 4. And by the time of the final loan Mrs F was required to make additional payments of around £60 a month on top of the £1,200.00 she was already committed to as well as payments to her credit card and her overdraft.

Indeed it seemed to me the only reason Barclays might have stopped lending to Mrs F, when it did, was because it stopped receiving payments from her when they reached a level where she simply couldn't make them anymore. Mrs F might have had a relatively high salary. But it was clear from the information Barclays had that she her expenditure was correspondingly high and I thought that she was reliant on credit in an attempt to meet her commitments.

In these circumstances, I couldn't see how or why Barclays could reasonably have believed these loans weren't unsustainable or otherwise harmful for Mrs F and didn't unfairly and excessively increase her overall indebtedness. From this perspective, having carefully considered everything, I found that Barclays ought fairly and reasonably to have realised any further lending was unsustainable and harmful for Mrs F by the time it provided loan 3.

So given all of Barclays' obligations and what I thought was fair and reasonable taking into account the circumstances and everything I'd covered, I thought that Barclays acted unfairly in providing Mrs F with loans 3 to 5.

Finally I considered the third of the overarching questions that I thought were relevant to my determination of Mrs F's complaint. And having done so, I hadn't seen anything that led me to conclude Barclays acted unfairly or unreasonably towards Mrs F in some other way.

All of this led to me issuing a provisional decision which found that:

- Barclays *didn't* complete reasonable and proportionate checks on Mrs F to satisfy itself that she was able to repay any of these loans;
- it wasn't the case reasonable and proportionate checks *would* more likely than not have individually shown Mrs F was unable to sustainably make the repayments for loans one and two;
- Barclays ought fairly and reasonably to have realised that the loans from loan 3 onwards were unsustainable or otherwise harmful for Mrs F and were unfairly and excessively increasing her overall indebtedness;
- Barclays didn't act unfairly or unreasonably towards Mrs F in some other way.

So overall my provisional decision found that Barclays had not acted fairly and reasonably to Mrs F when providing her with the loans from loan three onwards.

I then went on to consider whether Mrs F suffered adverse consequences as a result of Barclays unfairly giving her loans 3 to 5. I did think this was the case because these loans had the effect of unfairly prolonging Mrs F's indebtedness to Barclays by excessively increasing her indebtedness. I thought Mrs F ended up having to commit more and more of her income towards the monthly payments until it reached a stage where she simply couldn't afford to continue doing so.

I'd already spoken about the impact this had on her ability to meet her other essential commitments. And I also thought that these loans being provided in these circumstances unfairly prolonged what was an adverse and precarious financial position for Mrs F.

So overall and having carefully thought about everything provided and what was fair and reasonable in the circumstances of this case, I provisionally concluded that Mrs F lost out because Barclays unfairly gave her loans 3 to 5, which it ought to have realised were unsustainable, harmful and unaffordable for her.

I finally set out a method of putting things right for Mrs F, which I found addressed Barclays' failings and Mrs F's resulting loss.

Barclays' response to my provisional decision

Barclays responded to my provisional decision. Its response:

- apologised for the lack of detail provided previously and agreed that it should have provided this before my provisional decision;
- accepted that with the benefit of hindsight it could have done more before providing loans 4 and 5 to Mrs F. But it maintained that it didn't act unfairly or unreasonably in providing loan 3;
- said that as part of the terms of its Current Account, it collected monthly data from the Credit Reference Agencies to help it understand a customer's creditworthiness. Adverse details such as missed payments, the use of pay day loans, and similar details would prevent it from lending. This check was completed on each application it received from Mrs F. There was no record of Mrs F struggling to repay her creditors from this, as they were all up to date at the time of each application it received, with no adverse details for the previous 6 years. This again supports its decision to lend on each occasion.
- said the loan purpose Mrs F declared on each of her applications was used to form part of the eventual lending decision. Loan 3's purpose was recorded as being debt consolidation. This had worked out well for Mrs F after loan 1 and it's agreed the decision to provide loan 2 was reasonable. This is important because this helped to shape the decision on loan 3;
- argued that it was sensible for Mrs F to consolidate existing credit into loan 3 considering the APR was more favourable. While Mrs F didn't follow the same economic behaviour as she displayed after loan 1 and did increase her indebtedness at this point, it was still affordable for her to do so and the onus was on her to close her existing lines of credit;
- pointed out that Mrs F's average income in the months proceeding loan 3 placed her in the top 5% of earners in the UK. The regular expenditure calculated was overestimated because it considered payments to credit that would no longer be paid as they were being consolidated into loan 3. But even with this overestimated monthly expenditure the loan repayment for loan 3 only took up 42% of her monthly disposable income, which means the loan was clearly affordable.

Mrs F's response to my provisional decision

Mrs F confirming that she accepted that my provisional decision. And she made no further points for me to consider.

My findings

I've considered all the available evidence and arguments provided from the outset, including the responses to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; and relevant codes of practice. I've set out all of this in the appendix to this decision.

Taking into account the relevant rules, law and publications, I remain of the view that the three overarching questions that I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

1. Did Barclays, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs F would be able to repay her loan in a sustainable way?
 - a. If so, did it make a fair lending decision?
 - b. If not, would those checks have shown that Mrs F would've been able to do so?
2. Bearing in mind the circumstances, at the time of each application, was there a point where Barclays ought reasonably to have realised it was increasing Mrs F's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided her with further credit?
3. Did Barclays act unfairly or unreasonably in some other way?

Barclays hasn't challenged my conclusion that these overarching questions are relevant to me deciding this complaint. Indeed, bearing in mind its acceptance of my findings on loans 4 and 5 and my reasons for this, the content of its response suggests it's my findings on these matters in relation to loan 3 that it disagrees with.

I want to start by thanking Barclays for the clarification it has provided on the checks in general that it carries out before approving an application. And before I go on to consider Barclays comments I do have a general observation about what it has said in relation to Credit Reference Agency information. Specifically it has said:

"Barclays collect monthly data from the Credit Reference Agencies (CRAs) to help us understand a customer's creditworthiness. Adverse details such as missed payments, using of pay day loans, and similar details prevent us from lending to customers. This check was completed on each application we received from Mrs F. There was no record of Mrs F struggling to repay her creditors from this, as they were all up to date at the time of each application we received, with no adverse details for the previous 6 years".

I set out in my provisional decision that Mrs F's credit card with Barclays appears to have had a balance that was over its limit in six of the seven months leading up to loan 2. And this was despite Mrs F's credit card limit being increased in August 2016. I (and I think most reasonable observers would) consider information recorded about a borrower exceeding their credit limit – especially over such an extended period - to constitute adverse information.

I don't agree with Barclays' view that the mere existence of adverse information on a consumer's credit file, in itself, should automatically prevent a lender from providing additional lending. But I am concerned that Barclays is arguing that the veracity and robustness of its checks and process, in itself, resulted in a fair lending decision being made even though it doesn't appear to have followed its process in one of the loans it says was fairly and reasonably provided.

In any event, notwithstanding Barclays' apparent failure to follow its own processes, I need to decide whether reasonable and proportionate checks would more likely than not have shown Barclays that Mrs F would be able to repay loan 2 in a sustainable way. And for the reasons I've explained, on pages 4 and 5 of this decision (as well as my provisional decision of 25 February 2020), on balance, I don't think that reasonable and proportionate checks would more likely than not have shown that Mrs F wouldn't have been able to sustainably make the payments to loan 2.

I now turn to Barclays' comments regarding loan 3.

As I understand it, Barclays accepts that it ought to have realised it was increasing Mrs F's overall indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided her with loans 4 and 5. But while Mrs F's overall indebtedness may have increased after loan 2, it wasn't unfair for it to have provided loan 3, even though this increased her indebtedness further, because the monthly repayments were clearly affordable. It has referred to Mrs F's monthly income placing her in the top 5% of wage earners in the UK and it having relied on Mrs F saying this loan would be used to consolidate debt, which she did do after taking loan 1 when the same loan purpose was recorded during the course of that application.

I've thought about what Barclays has said. But I think it's important for me to explain that Barclays was required to establish whether Mrs F could sustainably make her loan repayments. In my view, this is wider than simply establishing any loan payments were affordable on a strict pounds and pence basis. Of course, the loan payments being affordable in this way is a reasonable starting point for establishing a consumer could sustainably make their repayments. But it doesn't automatically follow this will always be the case.

This is because CONC (which was in place at the time loan 3 was provided) defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender ought reasonably to realise a borrower won't be able to make their repayments sustainably, if they're unlikely to be able to make their repayments without borrowing further. I don't think that Barclays took account of this when providing loan 3.

I explained, in my provisional decision, that while Mrs F did pay off the outstanding balance on her credit cards after she was provided with loan 2, her credit card accounts were back around their respective limits by the end of January 2017. Barclays' arguments appear to suggest that its expenditure estimation was based on Mrs F continuing to make the payments she had been making. But she was clearly only making minimum payments to these balances and this included Mrs F's credit card with Barclays. These minimum payments weren't enough for the balance to be cleared within a reasonable period of time. So, in my view, the figures Barclays used to estimate Mrs F's expenditure were flawed.

I've also considered Barclays' argument that the onus was on Mrs F to close her existing lines of credit. For the avoidance of doubt, I want to be clear in saying that I did not and I'm still not saying that Barclays needed to close down Mrs F's existing lines of credit. Clearly it didn't have the authority to close the accounts Mrs F held with other providers. And in the case of the other lines of credit Mrs F held with Barclays, I've been clear in saying that they haven't formed part of this complaint. So I've not looked into whether Barclays had grounds to close those accounts and therefore make no comment upon those matters here.

What I'm saying here is that Barclays was aware that rather than reducing, Mrs F's debt had increased considerably in the period after loan 2 was provided. Mrs F's outstanding balances on her existing credit were substantial. The failure of loan 2 to at least stabilise Mrs F's financial position was indicative of a pattern of providing further credit causing substantially more debt.

So I think that Barclays ought to have placed more weight on this more recent pattern, which in my view while emerging before loan 2 had been provided was now established, when considering whether to provide loan 3. It should have done this rather than assumed that Mrs F would do the same as she did after she was taking loan one, which was provided more than three years before, when her debts were smaller and involved a quarter of the amount now being advanced. In my view, increasing Mrs F debt by such a considerable amount so soon after loan 2 had been provided, in these circumstances, was unsustainable.

Finally, I think Barclays has overlooked that Mrs F continually remained overdrawn each month too. As I've explained, her salary would enter her account on the final day of each month. But then all of her bills and regular payments went out the following day once again leaving her substantially overdrawn. I highlighted that Mrs F only ever saw a credit balance, on a temporary basis, for one day each month and spent the rest of the time incurring additional overdraft fees and charges.

So Barclays failed to take account of the fact that Mrs F was likely to make her loan repayments from her overdraft and therefore borrowing further. Again, in my view, this means that Barclays ought to have realised that loan 3 was simply unsustainable for Mrs F.

Having carefully thought about all of Barclays' further points, I remain of the view Mrs F's complaint about loan 3 (as well as loans 4 and 5) should be upheld. So I think that Barclays should put things right for Mrs F. And I'll now set out what Barclays should do.

Fair compensation – what Barclays needs to do to put things right for Mrs F

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Barclays putting Mrs F in the position she'd now be in if she hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mrs F was given the loans in question and she used the funds – albeit in reality she's effectively used a substantial proportion of what was advanced to repay previous loans. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs F back in the position she would be in if she hadn't been given loans 3 to 5 in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Barclays to put things right in the following way.

As I've explained, the main effect of Barclays lending to Mrs F in the way that it did is that it left her in a position where she wasn't able to properly settle her debt. This was because

Mrs F kept having to find additional funds to pay the substantially increasing payments to her Barclays loans. And then she had to borrow again from Barclays as making the payments was preventing her from meeting her other commitments, which meant that her overall indebtedness substantially increased until she ended up defaulting.

The amount Mrs F defaulted on was inflated because of paid and unpaid interest and charges on loan 3 - which shouldn't have been provided and which led to a larger amount being advanced for loan 4 - and interest and charges on loans 4 and 5. I don't think it's fair and reasonable to expect Mrs F to pay the extra when she shouldn't have been provided with these loans in the first place. So, in order to put things right in this case, I think that Barclays needs to ensure Mrs F is left in the position where she only needs to pay back the money she actually received on loans 3 to 5. So it should add up the total amount advanced on loans 3 and 5 to the amount Mrs F was given (as new funds) for loan 4.

The payments Mrs F made to loans 3,4 and 5 should be deducted from this. This will then leave a new outstanding balance. I understand that Barclays has been accepting affordable repayments to what Mrs F owes through a debt management plan. Barclays should continue accepting these payments for the remaining period that this plan remains in place.

Once the plan ends Barclays should consider whether it would be fair and reasonable to write off any balance that remains taking into account whether there is any prospect of it being repaid within a reasonable period of time. As this may well conclude with Mrs F not having repaid the capital she was originally advanced and she's in a debt management plan, I'm not making any direction in relation to Mrs F's credit file.

My final decision

For the reasons given above and in my provisional decision of 25 February 2020, I'm upholding Mrs F's complaint. I direct Barclays Bank UK PLC to settle Mrs F complaint in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs F to accept or reject my decision before 9 November 2020.

Jeshen Narayanan
ombudsman

Appendix – relevant considerations as set out in my provisional decision

- A The regulatory framework**
 - B Other relevant publications – including good industry practice**
 - C Barclays' own information**
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A The regulatory framework

Regulation by the Office of Fair Trading (up to 31 March 2014)

Barclays gave Mrs F her first loan in the period up to the end of March 2014. During this time it held a standard licence from the Office of Fair Trading (“OFT”), which permitted it to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

- (1) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
 - (a) *the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
 - (b) *such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
 - (c) *practices and procedures that the applicant proposes to implement in connection with any such business;*
 - (d) *evidence of the kind mentioned in subsection (2A)*
- (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
 - (a) *committed any offence involving fraud or other dishonesty or violence;*
 - (b) *contravened any provision made by or under—*
 - (i) *this Act;*
 - (ii) *Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
 - (iii) *any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
 - (c) *contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
 - (d) *practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) [my emphasis].

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome on Mrs F's first loan.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice.

Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

“In a sustainable manner” is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*

- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower's financial situation at the time the credit is sought;*
- *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action...when/if there are signs of apparent / possible repayment difficulties.

Regulation by the Financial Conduct Authority (from 1 April 2014)

By the time of loan two and for all of Mrs F’s subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved to the rules of the new regulator the Financial Conduct Authority (“FCA”). Barclays was authorised by the FCA at this time so it was subject to the FCA’s rules in respect of consumer credit activities from 1 April 2014.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. CONC also replaced the requirements set out in Section 55B. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm’s obligations in relation to responsible lending; and CONC 6 which sets out a firm’s obligations after a consumer has entered into a regulated agreement.

CONC 1.3G provides guidance on financial difficulty. It says:

“In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*

- (3) *outstanding county court judgments for non-payment of debt;*
- (4) *inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) *consecutively failing to meet repayments when due;*
- (6) *agreement to a debt management plan or other debt solution;*
- (7) *evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling”*

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

- (a) *the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

[Note: paragraph 4.1 of ILG]

- (b) *the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

B Other relevant publications – including good industry practice

The ILG and CONC set out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Barclays were subscribers to the Lending Standard Board's Lending Code and currently subscribe to the Standards of Lending Practice which replaced it in July 2016.

The Lending Code

Section 4 of the Lending Code is concerned with Credit Assessments. It says:

Personal customers

50. Before lending any money, granting or increasing an overdraft or other borrowing, subscribers should assess whether the customer will be able to repay it in a sustainable manner. They should do this by considering the potential for the borrowing to adversely impact the customer's financial situation, information from CRAs, including existing financial commitments where provided, as well as the following, as appropriate:

- The type and amount of credit being sought;*
- How the customer has handled their finances in the past;*
- Any known future financial commitments of the customer;*
- Any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- Internal credit scoring techniques (if used by the subscriber);*
- The customer's declared income;*
- Why the customer wants to borrow the money and for how long; and*
- Any security provided.*

51. Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.

52. Assessment may also include other checks that have not been listed above.

53. The requirement to consider information from CRAs does not apply in specialist customer segments such as private banking where use of CRA data may not be appropriate.

54. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.

55. Subscribers should ensure they are familiar with the requirements of the Code Sponsors' Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used.

56. If a lending application is declined following credit assessment, the subscriber should explain the main reason why if asked by the customer. If the decline is as a result of information obtained from a CRA search, the subscriber should provide the customer with contact details for the CRA.

The Standards of Lending Practice

The standards relating to assessing the affordability of credit are set out in the 'Product Sale' section of the Standards of Lending Practice. The relevant section says:

“5. Before providing any form of credit, granting or increasing an overdraft or other borrowing, Firms should assess, from the information available to the Firm at the time, whether the customer will be able to repay it in a sustainable manner without the customer incurring financial difficulty or experiencing significant adverse consequences. [CONC 5]”

There is also a section on ‘*Money Management*’ and paragraph 3 of this section says:

“3. Firms should monitor customers’ credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support.”

C Barclays' own information

Barclays' own website has a section entitled 'Our lending commitments and what we expect from you'. The first part of this information says:

"As a lender, we have a responsibility to act fairly and as part of this we have committed to follow the Standards of Lending Practice. This note sets out some of our key responsibilities and what we ask of you, to ensure that the relationship works well for both of us.

- *We will lend responsibly and aim to provide a product that is affordable for you.*
- *We will provide you with information about our products and services and how they work, in a clear and understandable way, so that you can decide what's best for you and your needs.*
- *We will endeavour to make sure our products and services offer, wherever possible, the flexibility to meet your needs.*
- *We will treat you fairly and reasonably at all times and make sure that you are provided with a high level of service.*
- *If you tell us about any inaccuracies, for example around the personal information we hold about you, we will act quickly to put it right.*
- *We will always aim to help you if we see, or you tell us, that you are having trouble financially. We will seek to understand your overall circumstances, try and identify options that you can afford and where appropriate, provide a reference to free debt advice."*

Barclays' website also has a description of overdrafts. It says:

"A short-term safety net

Our overdrafts offer a short-term way to borrow money up to an arranged limit. We make it easy for you to work out how much they could cost and provide a number of ways to help you manage your money."

Mrs F's overdraft renewal letter also says:

"Your limit

Your overdraft limit is £2000. Overdrafts offer a short-term way to borrow money up to an arranged limit for occasional use. You can make payments out of your account up to this limit whenever you need, but you should regularly pay into your account to reduce the amount you owe. It may adversely impact your credit rating if you go over your overdraft limit. Your overdraft is not to be used for the purchase of investments such as stocks and shares.

Repayable on demand

Your facility is repayable on demand. This means that you must repay everything you owe when we ask you to. Wherever possible, we will give you advance notice of repayment but we do not have to give advance notice."