

complaint

Mrs R complains that she was mis-sold a Clydesdale Financial Services Limited (trading as Barclays Partner Finance) timeshare contract because the loan that was used to finance it was not affordable.

Mrs R is represented in this complaint by her friend.

background

Mrs R entered a contract for a timeshare in 2009. The purchase was financed by a loan from Barclays for £18,950 repayable at £194.22 over 180 months, meaning she would repay £35,000 over fifteen years. Mrs R was 77 years old at the time she entered the agreement and dependent on a retirement pension and an army widow's pension.

Mrs R says she only agreed to enter the contract because she was told she would be given £4,500 if she made the purchase which she could use to fund the loan repayments and that after two years she would be able to resell the timeshare for profit.

Mrs R used the £4,500 to make the repayments for approximately two years and when the £4,500 had gone she found she could not afford the repayments and was unable to sell the timeshare. She then complained to Barclays with the assistance of her representative.

Barclays says that Mrs R signed the terms and conditions of the timeshare and initialled each condition. It says these make it clear that resale is not guaranteed and that it was up to Mrs R to decide whether she wanted to take the loan. It also says it carried out its usual credit assessment and that Mrs R's age does not mean it was irresponsible to lend to her.

Our adjudicator considered that the complaint should be upheld and the credit agreement cancelled. In summary she said that the loan was only affordable to Mrs R because she used the £4,500 she was given when she took it out to make the repayments. Therefore, the loan was not affordable at the time it was taken out and is not affordable now.

Barclays disagreed with this. It says that Mrs R's income and expenses show that the loan would be affordable if she cut back on non-essential expenses and that the loan repayments are within industry guidelines on affordability.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I am persuaded that Mrs R only entered into the loan agreement because she could use the £4,500 from the relinquishment of her previous timeshares to pay the monthly instalments, and that she intended to sell the timeshare at the end of two years as had been suggested to her by the salesperson.

Barclays says that Mrs R's non-essential expenditure could be reduced and that this would show that the repayments were affordable at the time Mrs R took out the loan. I consider that Mrs R's evidence of expenditure does include some elements that could potentially be reduced, however, equally I consider that her list of expenditure is not exhaustive and some

of the amounts listed are likely to be underestimated, for example there is no allowance for clothing or emergencies. On balance, I consider that overall Mrs R's evidence of her income and expenditure is likely to be accurate in showing she had little available income each month after meeting her essential costs, and that she could not afford the loan repayments.

Barclays has also said the fact that Mrs R had maintained the loan repayments suggests that the loan was affordable at the outset and remains affordable now. I do not agree, as Mrs R has explained she has used the £4,500 to maintain the loan repayments.

I have also considered whether the timeshare contract was misrepresented to Mrs R because she says she understood would be able to sell the timeshare after two years. On balance, I do not doubt what Mrs R says she was told by the salesperson. And her actions, for example in using the £4,500 to meet the loan repayments, do appear to support what she has said. However, I also have to take account of the terms and conditions that Mrs R initialled and signed, which I consider to be clearly stated. Therefore, in the particular circumstances of this complaint, I am not persuaded it would be fair or reasonable to uphold this complaint on the basis of misrepresentation.

However, overall and on balance, I am satisfied that this complaint should be upheld as unaffordable lending, as I consider that the loan agreement was not affordable to Mrs R at the point of sale or now. And I conclude the credit agreement should now be cancelled.

my final decision

For the reasons I have given, my final decision is that this complaint should be upheld. In full and final settlement of it, I order Clydesdale Financial Services Limited to cancel the credit agreement.

Garry Hunter
ombudsman