

complaint

Mr L complains that a conditional sale agreement with Clydesdale Financial Services Limited, trading as Barclays Partner Finance, was mis-sold to him.

background

A used car was supplied to Mr L under a conditional sale agreement with Barclays Partner Finance in January 2017. The car was about three years old and it had been driven for 26,512 miles. Mr L complained to Barclays Partner Finance in July 2018 that the agreement had been mis-sold to him and that it was unaffordable for him from the outset. He wasn't satisfied with its response so complained to this service. Mr L claimed back a year's worth of his monthly payments under the agreement by a direct debit indemnity from his bank – and Barclays Partner Finance says that it honoured that request. But it says that that left his account £2,633.15 in arrears. Barclays Partner Finance sent a default notice to Mr L and it defaulted the account earlier this month by which time the balance had increased to £4,051. It also terminated his agreement but hasn't yet repossessed the car. Mr L has continued to use the car and its mileage is now over 50,000 miles.

The investigator recommended that this complaint should be upheld in part. He said that when the car was returned to, or repossessed by, Barclays Partner Finance it would be sold and the proceeds of sale would be used to reduce the outstanding balance. He said that he'd then expect Barclays Partner Finance to try to agree a suitable repayment plan for the remaining balance – and that it must be sympathetic to Mr L's financial situation.

Mr L has asked for his complaint to be considered by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

A credit provider should make proportionate checks about the affordability of the credit before providing credit to a customer. What's proportionate will depend on the circumstances of the agreement.

Barclays Partner Finance says that it received information that Mr L had been employed for more than three years at the time of his credit application and that his annual income was £17,000. It also says that his application was automatically approved by its systems (which would've involved a credit check). And it says that Mr L didn't contact it about his agreement until July 2018. At that time he'd made 17 monthly payments of £202.55 to Barclays Partner Finance.

I'm not persuaded that Barclays Partner Finance has provided enough evidence to show that it made proportionate checks about the affordability of the credit for Mr L before it provided credit to him. Nor am I persuaded that it's provided enough evidence to show that it properly assessed the affordability of the credit for Mr L.

But Mr L has used the car since January 2017 – and he says that its mileage is now 50,989 miles. So he's used the car to drive more than 24,000 miles. Mr L claimed a refund of twelve months of his payments to Barclays Partner Finance under the agreement from his bank under a direct debit indemnity – and Barclays Partner Finance honoured that request. It says

that the outstanding balance on his account is now £4,051 – and that it will use the proceeds from the sale of the car to reduce that amount – but that Mr L will then need to repay that amount. It's now defaulted his account and terminated his agreement but hasn't yet repossessed the car.

I consider that it's fair and reasonable in these circumstances for Mr L to pay for the use that he's had from the car. Because of the direct debit indemnity claim that he's made, he's only made nine monthly payments of £202.55 to Barclays Partner Finance. And I consider that it would be fair and reasonable for him to return the car to Barclays Partner Finance so that it can be sold – and if he doesn't do so I consider that it would be fair and reasonable for it to repossess the car from Mr L (to the extent that it's legally entitled to do so). Barclays Partner Finance can then sell the car and use the proceeds of sale to reduce the outstanding balance of Mr L's account.

Barclays Partner Finance should then try to agree a repayment plan for that amount which takes account of Mr L's income and expenditure. And in doing so it's required to respond positively and sympathetically to any financial difficulties that Mr L is experiencing. But I find that it wouldn't be fair or reasonable for me to require Barclays Partner Finance to take any other action in response to Mr L's complaint.

my final decision

For these reasons, my decision is that I uphold Mr L's complaint in part. And I order Clydesdale Financial Services Limited, trading as Barclays Partner Finance, to try to agree a repayment plan with Mr L for the amount that he owes to it (after deducting any sale proceeds from the car if it's returned to it or repossessed).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 July 2019.

Jarrold Hastings
ombudsman