complaint

Mr M complains he was mis-sold a solar panel system and a loan provided by Clydesdale Financial Services Limited (trading as Barclays Partner Finance) and he can't afford repayments.

background

The background to this complaint and my initial conclusions were set out in my provisional decision dated 9 July 2015; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr M's complaint should be partly upheld and what Barclays should do to remedy the situation. I invited further comments from the parties before I reconsidered the complaint and issued my final decision.

Mr M doesn't disagree with my provisional decision. But he would rather the solar panels weren't removed as that's likely to be very stressful. He says he has already paid Barclays about £3,000 so it should keep that and allow him to keep the installation.

Barclays has asked me to reconsider my decision. In summary, it says the loan is affordable and the lending wasn't irresponsible because

1. It needs to see pensions and bank statements covering the period of the loan's inception to properly assess affordability - but even on a partial assessment Mr M's credit commitments only represent about 11% of his income;
2. Mr M and his wife are likely to have savings they haven't mentioned and, at the point of sale and for several months after, Mr M's current account was in credit;
3. The income and expenditure form Mr M provided via a debt charity isn't an accurate reflection of his financial circumstances - and the information it contains can't be taken into consideration when assessing affordability; and
4. Even if Mr M was in financial difficulties in 2014 that doesn't mean the loan was unaffordable at the point of sale.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. Having done so, I have reached the same conclusions overall as I set out in my provisional decision for much the same reasons.

credit assessment/affordability
Barclays refers me to The Finance and Leasing Association (FLA) Lending Code 2006 - as the relevant guidance on credit assessment when this loan was taken out. It says the 2006 code "specifies that the proportion of applicant's gross income spent on consumer credit should be considered when making a lending decision and it is for this reason we have based our assessment on this lending code". "

The 2006 code says, insofar as it's relevant, lenders assessing a credit application "*may consider factors which may show a high risk of experiencing financial difficulties which includes…spending more than 25% of gross income on consumer credit*". Barclays has reviewed the information available about Mr M's income and expenditure and considers his expenditure on consumer credit is only about 11% of income so it's "well within the guidelines" - and "the remainder of Mr M's non-credit commitments can't be taken into account when assessing irresponsible lending".

I disagree. The FLA produced a revised code in 2012 that replaces the 2006 code and applies to all consumer credit agreements entered into on or after 1 February 2012. The section dealing with credit assessment has been amended and no longer refers to consideration of percentage of income spent on consumer credit.

The 2012 code requires responsible lenders to make sure applications go through a sound and proper credit assessment *"which assesses [the borrower's] ability to repay the loan in a sustainable manner"*. And it includes new considerations lenders may wish to take into account such as the type of loan and the amount of credit, as well as the borrower's "financial situation" and "personal circumstances".

These amendments reflect the provisions of the Office of Fair Trading's Guidance on Irresponsible Lending[1] that I referred to in my provisional decision. In the OFT's view assessing affordability is a "borrower focussed test". It should involve the lender assessing more than simply the borrower's ability to repay.

And lenders should take reasonable steps to assess the ability to repay in a sustainable manner "without the borrower incurring financial difficulties and/or experiencing adverse consequences" - taking into account information the creditor is aware of at the time. The credit should be able to be repaid out of income and/or available savings while meeting "normal/reasonable outgoings".

Barclays says it looked at Mr M's income and his credit score and had no reason to consider the loan might be unaffordable. But Barclays knew Mr M was a pensioner on a fixed income of about £18,000 a year. And he would have to repay over £12,000 over 10 years. This was a non-essential purchase with uncertain returns and Mr M had told the salesman he was buying the system to save him money. So, on balance and in the particular circumstances here, I'm not persuaded Barclays did enough to adequately assess whether this loan was affordable for Mr M in a sustainable manner.

I consider it would have been reasonable for Barclays to take Mr M's overall financial situation into account. And I think it should have asked about his expenditure in particular. I'm satisfied that if it had done so Barclays would have found, amongst other things, that Mr M suffers from a number of health conditions that necessitate higher expenditure than might usually be expected. And, on balance, I find it's unlikely that Barclays would have agreed to lend him the money.

savings/credit balance

Barclays has been provided with bank statements from 2012 until 2014 for two accounts belonging to Mr M. But it considers Mr M and his wife may have savings they haven't mentioned. Like many retired couples I think Mr and Mrs M may well have some savings. But, on balance, I consider they are unlikely to be at a level that's significant here.

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[1] published in 2010 and updated 2011

Mr M says he installed these panels because he wanted to reduce his outgoings - by saving on bills. And he paid an increased deposit of £2,500 (instead of £250) to reduce the amount he'd have to pay back each month. So I think it unlikely Mr M would have agreed to borrow over £7,500 and pay over £4,000 interest if he had savings he could have used to fund the purchase.

Barclays also refers me to Mr M's current account which had a four figure credit balance after the panels were installed. It says that shows Mr M had the means to pay but refused to do so. Mr M is on a fixed income and in poor health. I don't think it's unusual for someone in his situation to try and keep his account in credit – at a level that caters for emergencies and unexpected expenditure.

I noted in my provisional decision that Mr M's current account suggests his expenditure exceeded his income regularly during the six months before he took out the loan. I'm satisfied a similar pattern emerges in the six months after. Mr M told Barclays he was struggling to meet the loan payments the month after he got the panels. He approached a debt charity for advice shortly after that. It says he has about £20 a month left after reasonable expenditure is subtracted from income.

Barclays considers the information in income and expenditure form prepared by the debt charity doesn't accurately reflect Mr M's financial situation. But I'm satisfied the figures aren't unreasonable. They're supported in some instances by evidence from Mr M's current account. And where some expenditure seems higher than might be expected, I consider a reasonable explanation has been provided.

Barclays agreed to accept substantially reduced payments from Mr M in early 2014. If it hadn't done so and Mr M had continued to pay £100 a month it's unlikely he could have maintained his credit balance. I note that Mr M told Barclays he was looking into releasing equity from his home and cancelling life insurance to find the money to meet these payments. And, on balance, I'm not persuaded that he chose not to pay, or that his credit balance means I can reasonably find this loan is affordable, in all the circumstances.

financial difficulties

Barclays says that even if Mr M was in financial difficulties in 2014 that doesn't mean the loan was unaffordable at the point of sale. But, as I noted in my provisional decision, I've seen no evidence that Mr M's circumstances changed materially between November 2013 and 2014. He approached the debt charity early in 2014 and Barclays agreed to accept reduced payments in view of his financial situation not long after. So, I'm satisfied, on balance, it's unlikely he could afford the repayments from the outset.

For the reasons I have given I am not persuaded that Barclays did enough to assess whether this loan was affordable and sustainable for Mr M. I find it was unaffordable from the outset and Barclays shouldn't have lent him the money.

I think it's regrettable that Barclays didn't engage with Mr M to try and agree a way forward that might have avoided the need to remove the installation. In the absence of such agreement, I consider the only fair and reasonable outcome here is for me to direct Barclays to cancel the loan, arrange to have the system removed and restore Mr M's house to its original condition, at no cost to him. And refund his payments along with interest – having first deducted the amount of any savings and payments he has received.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it I order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to

1. make arrangements to remove the solar panel system and restore Mr M's house to its original state at no cost to Mr M;
2. unwind the finance agreement and refund any payments Mr M made under it (including the deposit) - taking account of the savings and rebates Mr M has received as a result of having the installation;
3. pay interest on any refund at 8% simple from the date of payment to the date of settlement; and
4. remove any adverse information recorded about the loan from Mr M's credit file.

HM Revenue & Customs may require Barclays to take off tax from the interest paid. Barclays must give Mr B a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 October 2015.

Claire Jackson
ombudsman

copy of provisional decision

complaint

Mr M complains that he was mis-sold a solar panel system and a loan provided by Clydesdale Financial Services Limited (trading as Barclays Partner Finance) and he can't afford the repayments.

background

In October 2013, Mr M took out a loan with Barclays for the installation of solar panels. The loan was for almost £15,000 repayable over 10 years at nearly £100 a month. Mr M was 70 years old at the time, and dependant on a fixed income. He says he only agreed to the installation and the finance because the salesman said

1. rebates from his electricity supplier would cover the loan repayments; and
2. electricity generated would save about £30 a month.

The system was installed in mid-November. A month later Mr M complained to Barclays that the benefits were much lower than he had been led to believe and he was struggling to afford the monthly repayments.

Barclays says the supplier gave reasonable estimates of rebates and savings – but it didn't guarantee them. And the availability of solar power and electricity usage both fluctuate throughout the year - so Mr M should have waited longer to make a fair assessment of the benefits of the system. Barclays says it checked Mr M's credit record and had no reason to believe he might not be able to afford the loan repayments.

When Mr M first raised a complaint with this service, in early 2014, it appeared that his rebate was less than half the supplier's estimate. And his electricity bills hadn't reduced by very much. Our adjudicator found it likely that misrepresentations were made, so he considered Barclays should cancel the loan and refund Mr M's payments. But he recommended Mr M should keep the panels, as removal might damage his house – and Barclays should keep the advance payment of £2,500 to reflect the benefit Mr M will continue to receive from the installation.

Barclays disagrees. It says the supplier has since obtained further evidence from Mr M which shows that:-

- Mr M received a rebate of £720 from December 2013 until November 2014. Whereas the supplier estimated he would receive £657 - so the system over performed and provided a better return than anticipated;
- it hasn't been possible to draw a direct comparison between Mr M's before and after electricity bills. But the amount of electricity used was at his discretion so it's not fair to hold Barclays responsible for that anyway; and
- Mr M knew the benefits were estimated not guaranteed when he took out the loan.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr M's complaint against Barclays is in two parts. He says the solar panel salesman made various misrepresentations (which induced him to install the system and take out the finance) and Barclays was irresponsible to lend him the money because he can't afford to pay it back.

misrepresentation

Under section 75 of the Consumer Credit Act 1974 if Mr M has a claim for breach of contract or misrepresentation against the solar panel supplier he may be able to bring it against Barclays as well. For me to be able to uphold this part of Mr M's complaint I must be satisfied that a false statement was made - and that Mr M was induced into entering the agreements because of it.

Mr M met with the solar panel salesman in mid October 2013. There's no dispute that his property was surveyed and he was given a document called "*Solar PV initial survey, quotation & order form/contract of sale"* - which I shall refer to as *"the quotation".*

Mr M asked for time to consider the matter and the salesman left the quotation with him. I note Mr M says he discussed it with a family member who advised against it, because he thought the figures "didn't add up" – by which I understand him to mean that the figures in the quotation weren't as good, or the same, as the financial benefits Mr M said the salesman had described.

Two days later Mr M contacted the supplier and agreed to install the system and take out the loan. Mr M says he decided to go ahead because he wanted to save money and the salesman *guaranteed* the system returns would repay the loan and reduce his electricity bills by about 75% - saving him £30 a month.

It's impossible for me to be certain what was said when Mr M met the salesman. Mr M has provided some handwritten notes (made at the time by a family member). And the salesman has provided a statement. I have considered these carefully, along with the quotation paperwork. And I have to weigh up the information Mr M says he got from the salesman with the terms of the written agreement he signed.

That agreement estimated that Mr M was likely to receive the following annual benefits:-

1. £569.18 rebate from his electricity supplier by way of the feed in tariff ("FIT")
2. £88.64 rebate for electricity exported to the grid
3. £294.14 saving on annual electricity usage.

So the total estimated rebate (1 and 2 above) was £657.82. And the estimated usage saving was a presumed 50% or £294.14 a year (calculated in accordance with industry standards and from Mr M's electricity bills).

From information available now there appears to be no dispute that Mr M received a total rebate of £720 in the year following installation. And Mr M's electricity bill for May to August 2014 (the only one I have seen) says he used over 50% less electricity during that period than he did for the same period in the previous year.

So I am not persuaded I can reasonably find that the benefits estimated in the quotation were exaggerated or misrepresented. I appreciate Mr M says the salesman led him to expect much more - that the rebate would cover his monthly loan repayments and his monthly electricity payment would come down substantially.

But the total rebate estimated in the quotation works out at about £54 a month – which is only just over half Mr M's monthly loan repayment. So, if the salesman told Mr M that the rebate would definitely cover that, I would have expected Mr M to ask why the quotation figure was so much lower. And I'm not persuaded I can fairly hold Barclays responsible for the fact that he didn't.

I have no doubt Mr M wanted to reduce his monthly electricity payment - and he expected that to come down by about 75% because of what the salesman said. The annual electricity usage saving estimated in the quotation is £294.14. That averages about £24 a month. And M's monthly electricity payment before the installation was £35 a month. So I am not surprised he anticipated that would go down to about £10 if he got the solar panels. Mr M's monthly payment did reduce, but only by £5 initially to £30 and then (by July) to £26. It's not entirely clear to me why that's the case - as Mr M's May to August bill suggests savings of about 50% *were* being achieved.

But a number of factors influence the calculation of a monthly electricity payment – such as the standing charge (about £8 a month here), how much electricity is used at different times of year and the way the energy supplier spreads the cost over the year. These are variables Barclays has no influence over. And I'm not persuaded it would be fair of me to find that the estimated usage saving was exaggerated or misrepresented because Mr M's monthly payment didn't go down in the way he expected.

And, I can't reasonably exclude the fact that the agreement Mr M signed contains a disclaimer which says (insofar as it's relevant) *"the performance of a PV system is impossible to predict with certainty ….this estimate …is given as guidance only and should not be considered as a guarantee of performance".* I note a similar disclaimer is prominently displayed in the declaration of satisfaction Mr M provided to Barclays when the solar panel system was installed. So I can't fairly conclude that the system's performance and its estimated benefits were guaranteed to be achieved.

I realise my findings above are likely to disappoint Mr M. I can see he feels strongly that the benefits of this solar panel installation were grossly exaggerated. And I want to assure him that my conclusions are no reflection on what he has said, I have no doubt that potentially greater system benefits were discussed when he met the salesman. But, for the reasons I have given, I'm not persuaded that I can reasonably find the likely returns were exaggerated or guaranteed. So I can't safely uphold this complaint on the basis of misrepresentation.

affordability

Mr M says he installed this system because he wanted to save money. But, because it hasn't generated the returns he expected, he can't afford to repay the loan he took out to finance it. And Mr M considers Barclays was irresponsible to lend him the money in the first place.

Barclays says it checked and approved the loan following its usual processes – checking Mr M's income and credit score. And it had no reason to consider the loan might be unaffordable for him.

I acknowledge that borrowers have a responsibility to consider whether a loan is appropriate for their circumstances. And the decision to provide credit is a commercial one for a lender, which is not something this service will generally interfere with. So for me to find this lending was irresponsible I would have to be persuaded that no reasonable lender would have given Mr M the loan.

Under the Office of Fair Trading's ("OFT") Irresponsible Lending Guidance any assessment of affordability must be based on the customer's financial circumstances when the loan was provided. And the lender should look at whether the borrower is likely to be able to sustain repayments over the lifetime of the loan – and whether those repayments can be maintained without further borrowing.

So I have considered what happened carefully. I take the following into account:-

- Mr M was 70 years old when he took the loan out and experiencing poor health;
- He told the salesman the main reason he wanted the solar panels was to save money;
- The supplier says the financial benefits of the installation can't be predicted with certainty;
- Mr M is on a fixed pension income which has little prospect of increasing;
- This loan was for nearly £15,000 and repayable over 10 years;
- Mr M hasn't met one full loan repayment. I can see he may have withheld the first payment (due in November 2013) because of missing paperwork and disappointment with the system returns. But, I'm satisfied the following month Mr M told Barclays that he was already in financial difficulties;
- Mr M was so concerned about his inability to meet payments that he told Barclays in December 2013 he was looking into releasing equity from his home and cancelling life insurance premium payments;

- In February 2014, Mr M completed an income and expenditure form (with the help of a debt adviser). It shows he has less than £20 a month left after essentials are paid for. I'm satisfied the expenditure appears reasonable, taking into account Mr M's personal circumstances;
- In response to Mr M's complaint that the loan was unaffordable Barclays told this service it would need to see more documents (such as six months bank statements) to assess affordability;
- Statements from Mr M's (joint) bank account, for the six months before he took out the loan, indicate that regular expenditure exceeded regular income in three months out of six and overall spending was about £500 more than regular income;
- There doesn't seem to have been any material change in Mr M's finances since he took out the loan; and
- In response to Mr M's financial difficulties Barclays agreed, in March 2014, to accept substantially reduced repayments of about 25% of the contractual monthly payment.

Having considered Mr M's personal and financial situation, and the circumstances overall, I find it would have been reasonable (in the particular circumstances here) for Barclays to have done more to assess whether this loan was affordable and sustainable for him. Had it done so, I consider it's unlikely that Barclays would have agreed to give Mr M the loan.

redress

Having found the lending to be unaffordable from the outset I must consider the most appropriate form of redress. I could require Barclays to reduce the amount owing on the loan by removing all interest and other charges and apply payments made to date to reduce the amount of capital borrowed and rework the repayments for the balance so that Mr M is able to afford them going forward. But that's likely to result in Mr M taking many years to repay the loan, and in the circumstances here, I'm not persuaded that's reasonable.

Our adjudicator's view (albeit he reached it for different reasons) is that Mr M should keep the panels and Barclays should keep his deposit of £2,500. And I note what he says about the possibility that removal might damage Mr M's house. But that would mean Mr M has had the benefit of most of the money. And he's likely to receive an ongoing benefit - in the form of rebates and electricity savings. So I don't think that's fair to Barclays.

And, having considered carefully the circumstances overall, I am minded to order Barclays to remove the panels, restore Mr M's property to its original state and unwind the finance agreement - refunding any payments Mr M has made (including his deposit) but taking account of any savings and rebates Mr M has received from having the installation. If either party considers this proposed outcome should be changed, I invite them to let me have their reasons in response to this provisional decision.

my provisional decision

For the reasons I have given, and subject to any further information or comments I may receive from Mr M and Barclays by 10 August 2015, my provisional decision is to uphold this complaint. And I intend to order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to:-

1. make arrangements to remove the solar panels and restore Mr M's house to its original state at no cost to Mr M;
2. unwind the finance agreement and refund any payments made under it (including the deposit) with interest at 8% simple - taking account of the savings and rebates Mr M has received as a result of having the installation;
3. remove any adverse information recorded about the loan from Mr M's credit file.