

complaint

Mr T1 brings this complaint on behalf of his father, Mr T2. He complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("Barclays"), mis-sold his father three loans, and wrongly rejected his claim under section 75 of the Consumer Credit Act 1974 about solar panels.

background

In late 2014 Mr T2 bought solar panels, heat pumps and a new hot water system for his home. This was financed by loans by Barclays, totalling over £13,000. Mr T1 says that Barclays did not do enough to check that his father could afford to repay the loan, and points out that his father was already on a debt management plan for credit card arrears. He says the solar panels were not suitable as his father's home is shaded by trees. The house is still cold, and his father's electricity bills have nearly doubled. He says that his father, who is 80, will not see a return on his investment for 20 years. So he argues that the loan was mis-sold, and the solar panels and other equipment were not fit for purpose. He wants all the equipment to be removed, the refund of the deposits which were paid, and the loans cancelled.

Barclays did not accept that the loans were mis-sold. Mr T2 had told it his income was £23,000 a year. It had checked his credit file and decided that he was credit-worthy. Mr T2 had passed the bank's lending criteria, and it would not refuse him a loan just because of his age, or because he was retired, because it doesn't want to discriminate against its elderly customers. The loans were for two years and five years, not 20 years. Mr T2 would only have to pay £364 a month for the first two years, and then £204 a month for the next three years. Also, it had not seen any evidence to suggest that there was anything wrong with the equipment.

Our adjudicator did not uphold the section 75 complaint, due to lack of evidence. And he pointed out that Mr T2 had delayed signing up to a new tariff – which he needed to do to make money from the solar panels – until October 2015. But the adjudicator did think that Mr T2 could not afford all three loans. He thought that Barclays should have realised that Mr T2 might have over-estimated his gross income, and should have asked him for proof, such as bank statements. And he thought that Barclays had not given enough weight to Mr T2's other liabilities. So he suggested that Barclays should cancel one of the loans, refund it with eight percent interest, remove that loan from Mr T2's credit file, and arrange for one of the heat pumps to be removed. He thought the other two loans were still affordable, partly because Mr T2 had been able to make his repayments on those.

Barclays did not accept that any of the loans were not affordable. It recalculated Mr T2's income based on his bank statements. Based on its new figure of nearly £19,700 a year (which includes his wife's income), it concluded that Mr T2 would still have passed the bank's affordability checks, and could still afford to repay all three loans. So it asked for an ombudsman to consider this complaint.

my findings

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

the section 75 claim

In some circumstances, section 75 gives a consumer the same right to bring a claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or a misrepresentation by the supplier. So to uphold this complaint, I would have to find that there has been a breach of contract or misrepresentation. But for the same reasons our adjudicator gave, I can't find that that has happened. There is no evidence that there is anything wrong with the equipment which was installed. Mr T1 invites me to infer that there must have been a problem because his father's electricity bills went up. But Mr T2 delayed opting in to a "feed-in tariff" until a year after installation. He needed to opt in to the tariff in order to benefit financially from the solar panels. So it's not surprising that he hasn't seen any benefit yet. I don't find that the supplier is at fault. It follows that Barclays was right to reject the section 75 claim.

the loans

Since Mr T2's wife lives with him, she also benefits from having the solar panels and other equipment to the same extent as he does. So I think it's reasonable to take her income into account as well as his.

In its new calculations based on Mr T2's bank statements and other evidence, Barclays worked out that their combined average income was about £1,640 a month, or £19,680 a year. After deducting Mr T2's repayments on its three loans, and another loan he had with a third party, it calculated that they would be left with an average disposable income of £1,100 a month. It maintains that that should be enough for them to live on, and so all three loans were affordable. And it pointed out that Mr T2 had no previous defaults on his credit file.

I think that would normally have been a reasonable way to assess affordability. £1,100 a month sounds like enough to live on. But I agree with the adjudicator that Barclays should not have accepted a pensioner's self-declared income of £23,000 without seeking to verify it, as that seems rather high. And if Barclays had asked to see his bank statements, it would have realised that Mr T2's expenditure was significantly higher. It would also have seen that Mr T2's account was almost always overdrawn, which might have suggested that he was struggling to manage his money.

Our adjudicator used a different method to work out their average monthly income, which came to £1,804 a month (or about £21,650 a year). He then itemised and added up all of their expenses over the period January to June 2014, and worked out their average expenditure (including the third party loan) as being £1,526 a month. That left them with a disposable income of £278 a month, which is not enough to cover all three loan repayments to Barclays. Mr T had been able to keep up payments on two of the loans, which totalled £204 a month. The one he failed to pay was a two year loan at £160 a month. So the adjudicator recommended cancelling that loan.

I would revise the adjudicator's income figures slightly. He took into account a £500 gift from Mr T1, which Barclays (rightly, in my view) disregarded. And he left out two minor sources of low income which Barclays took into account (again rightly). If the adjudicator's sums are adjusted for these matters, his monthly income figure comes to £1,740 (or £20,880 a year). I agree with his figures for expenditure. So the disposable income was £214 a month. That is still enough to pay for two loans, but not the third. The shortfall is £150.

I have considered whether the bank's calculation of income or the adjudicator's (as revised by me) is the more accurate. Since Mr T2 was able to pay back two of the loans, which he

couldn't have managed to do on the bank's figures, I think it's likely that the adjudicator's figures are more accurate. So I rely on those.

Of course, the expenditure given above is based on Mr T2's old electricity bills, before the solar panels were fitted. But after they were fitted, Mr T2 would have had more money to spend, if only he had opted in to the feed-in tariff in a timely manner. Barclays knew that. So I have considered whether he might have saved £150 a month on the feed-in tariff. The supplier estimated that the solar panels would save Mr T2 £444 in the first year, which is £37 a month. So it wouldn't have been enough.

For those reasons, I agree with the adjudicator's assessment that the third loan was not affordable. It should be cancelled and the payments he did make should be refunded with interest. The loan should be removed from his credit file. The heat pump should be removed, unless the supplier advises that this is too impractical to do – for example, if it is connected to another piece of equipment in such a way that to remove it would compromise the other equipment.

my final decision

My decision is that I uphold this complaint. I order Clydesdale Financial Services Limited, trading as Barclays Partner Finance, to:

- Cancel the two year loan and remove it from Mr T2's credit file.
- Refund the repayments made by Mr T2 towards that loan, with 8% simple interest per year calculated from the date each payment was made to the date the refund takes place.
- Remove, at the bank's expense, the air to air heat pump which was financed by that loan, unless the bank is advised by an independent third party (which may be the original supplier) that to do so would be impractical or would be likely to have a detrimental effect on the proper operation of any of the other equipment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T2 to accept or reject my decision before 29 February 2016.

Richard Wood
ombudsman