

complaint

Mr S complains that a fixed sum loan agreement was mis-sold to him by Barclays Bank UK PLC and that the loan was unaffordable for him.

background

Mr S has a Barclays fixed sum loan agreement. He's complained about the bank's decision to lend to him, saying it has led to him getting deeper into debt and incurring overdraft fees. He said he wasn't in paid employment, had no income of his own and that his wife was the main wage earner. Mr S suggested that the loan should be made to his wife. He felt the loan wasn't affordable and that it shouldn't have been made to him. Mr S also expressed concern that he was receiving further loan invitations from Barclays. He wasn't satisfied with the bank's response so complained to us.

Our investigator thought it was reasonable for Barclays to lend based on the overall household income, noting that some of the loan money was used to repay existing debts owed by Mrs S. He took the view that the loan was affordable and didn't think that the overdraft usage was a direct result of Mr S struggling to maintain the loan repayments. He said that if Mr S didn't wish to receive marketing material from Barclays he should ask it to stop sending it to him.

Mr S has asked for his complaint to be reviewed. He says, in summary, that:

- his wife wasn't added to the loan even though it was her salary that made up the finances in the joint account and the Lending Code Section 4 deals with affordability and joint applications;
- Barclays didn't take into consideration his financial situation or make proper affordability checks;
- Barclays was made aware of the financial difficulties that he's been experiencing since December 2017; and
- he wasn't afforded the opportunity to take up a 14-day cooling off period.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Barclays on 10 January 2020. In my provisional decision I said as follows:

"At the time of taking out the loan, in 2016, Mr S held a Barclays joint account with his wife. Mr S says he suggested that his wife should be a party to the loan but was told that that wasn't necessary. The bank says it considered the overall household income for Mr S's loan application as the income was available to both parties due to the nature of the account. Barclays has referred to a previous case in which we concluded that it was reasonable for it to take into account the borrower's access to the overall income in the joint account.

When deciding what's fair and reasonable, I have to take into account various factors, including relevant regulations and codes of practice. One of the relevant codes here is the Lending Code, as referenced by Mr S, which in 2016 said:

"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”.

Barclays’ evidence is that income was one of the factors taken into account when assessing Mr S’s loan application. The Lending Code guidance suggests to me that while there are circumstances in which a loan might be made to a sole applicant based on household income, that wouldn’t normally be appropriate. I haven’t seen anything that might suggest there were circumstances at play in this case that made it appropriate for the loan to be made to Mr S rather than jointly to Mr S and his wife.

Barclays’ budgeting tool shows that Mr S had a monthly income of £990 and no expenses. But he says that he had no income and that his wife’s income – and their benefits – were paid into the joint account. In February 2016, the month before the loan application was made, the payments into the joint account were income of £1,556.82, a tax credit of £799.39 and child benefit of £192.40. And at least once in each month between January 2015 and March 2016 the account was overdrawn.

Barclays says that the loan – for £17,000 – was taken for debt consolidation and that monthly payments for Mr and Mrs S’s debts added up to £366.58. The monthly loan repayment was £333.39 – in other words, £33.19 less each month. But that saving alone doesn’t show that the loan was affordable for Mr S. The joint account was overdrawn by more than £33.19 most months. And I’ve seen no evidence to show that Barclays conducted a proper assessment of Mr S and his wife’s income and expenditure to determine whether the loan was affordable for them. If it had done so, I consider that it should’ve concluded that a loan of £17,000 wasn’t affordable for Mr S. I note the joint account became overdrawn again within a couple of months of taking out the loan.

Barclays accepts that Mr S approached it for a loan of £15,000 but that the application was processed for £17,000. It hasn’t been able to provide a proper explanation as to why the loan was for £2,000 more than Mr S had asked for. Nor have I seen anything that suggests Mr and Mrs S were looking to consolidate debts of more than around £12,000 – the total payments made from the account immediately after the loan was credited were approximately this sum. The net result was that the loan increased Mr S’s overall indebtedness at a time where he was looking to consolidate debt to help with his difficulties. In the circumstances, I’m minded to say that this was an irresponsible action on Barclays’ part.

The loan agreement did include a 14-day cooling off period during which Mr S could withdraw from the loan. But when the loan was paid into the joint account three payments totalling £9,138.92 were made that day and 2 payments totalling £2,757.83 were made the following day. These appear to have been made to pay off debt owed by Mr and/or Mrs S. So even if Mr S had been able to exercise the cooling-off term, he wouldn’t have been in a position to repay the bulk of the money, as it had already been used. With this in mind, I don’t propose to make any direction in relation to Mr S’s concerns about the cooling-off period.

putting things right

I’m minded to find that Barclays did not undertake a proper or effective assessment of the loan request. I recognise that if it had done so, even if it had decided not to

lent to Mr S, he and his wife would still have owed the £12,000 that was consolidated into the new loan. As I understand it, that borrowing was interest-bearing, and at a higher rate than the Barclays loan. I therefore don't think it would be right to say Mr S has been disadvantaged by that aspect of the borrowing, though I appreciate strictly speaking he is now liable to repay money that was previously owed by Mrs S. Given what Mr S originally said, though, I believe that is a matter best dealt with between him and Mrs S, rather than through Barclays.

Where I do think Barclays needs to take action is in relation to the 'new' money it lent to Mr S – some £5,000. I don't doubt that Mr S (and his wife) have had the use of that money. But I must also take account of the duties and principles in both the Lending Code and the Financial Conduct Authority's Consumer Credit Sourcebook (CONC) with regard to creditworthiness and the borrower's ability to sustain repayments.

Based on the information available in Mr S's case, I think it's fair to say that Barclays should not have lent him quite as much money as it did. Equally, Mr S, knowing his reasons for seeking the loan, should not have borrowed that much. In that context, I've thought about what represents a fair and reasonable basis for settlement, taking into account the arguably greater duty that Barclays has to act responsibly and in its customers' best interests.

Having considered matters carefully, I'm currently minded to conclude that it would be fair and reasonable in these circumstances for Barclays to reduce Mr S's loan balance by £2,000 (representing the additional money it lent over and above the amount Mr S asked for). I also consider that the bank should waive all interest on the loan capital above the £12,000 identified as being used for debt consolidation purposes, backdated to the inception of the loan. And if Barclays has applied any charges for late or non-payment of the loan, it should refund these.

Going forward, it would be prudent for both parties to try to agree an affordable repayment arrangement for the remaining loan balance. Given the way the household finances appear to operate, this arrangement is likely to need to involve Mrs S, to enable an accurate picture of their total income and expenditure. Although I don't propose to make a direction in this respect, it seems to me that this would be consistent with the bank's obligations to deal fairly with customers in financial difficulty.

On a final point, Mr S has said that he doesn't want to receive further marketing information from Barclays about loans. Barclays should take note of this and amend Mr S's mailing preferences so that he doesn't receive such information".

Mr S said that Barclays had sold his debt to a third party so he's unable to access his loan information and is unsure how it would be able to implement my provisional findings. Barclays responded to my provisional decision in detail and I issued a second provisional decision on this complaint to Mr S and to Barclays on 31 March 2020. In my second provisional decision I said as follows:

"Barclays has provided information to explain why a loan of £17,000 was made to Mr S – rather than the £15,000 that he had initially requested. The lower interest rate that was available to him if he borrowed £17,000 meant that he would have to pay £1,292.60 less in interest than he would have paid if he'd borrowed £15,000. For that reason I no longer consider that it would be fair or reasonable for me to require

Barclays to reduce Mr S's loan balance by £2,000 as I suggested in my provisional decision.

But I'm still not persuaded that there's enough evidence to show that Barclays properly assessed the affordability of the loan for Mr S or that the loan was affordable for him. Nor am I persuaded that there were circumstances at play in this case that made it appropriate for the loan to be made to Mr S rather than jointly to Mr S and his wife (as the guidance said would normally be appropriate).

So I find that it would be fair and reasonable in these circumstances for Barclays to waive all interest on the loan capital above the £12,000 identified as being used for debt consolidation purposes, backdated to the inception of the loan, and that it should refund to Mr S any charges for late or non-payment of the loan that it has applied.

Mr S says that Barclays has sold his debt to a third party. If necessary to give effect to this decision, I would expect Barclays to arrange for the debt to be transferred back to it from the third party".

So subject to any further representations by Mr S or Barclays, my provisional decision was that I was minded to uphold this complaint and that I intended to order Barclays to waive all interest on the loan capital above the £12,000 identified as being used for debt consolidation purposes, backdated to the inception of the loan, and to refund any charges for late or non-payment of the loan that it has applied.

Neither Mr S nor Barclays has accepted that provisional decision. Mr S has responded in detail and says, in summary, that:

- he agrees that the loan agreement included a fourteen-day cooling off period but he wasn't able to use it as the person who sold him the loan used the funds to pay off some existing debt whilst he was still in the branch – so he didn't have the opportunity to discuss with his wife whether the loan was appropriate and the fourteen-day cooling off period was effectively taken away from him when he was still in the branch;
- he didn't approach Barclays for a loan but was offered a loan of up to £21,000 during an account review;
- he says that he didn't tell Barclays that his income was £990 each month but told it that he wasn't employed and didn't have an income – so he thinks that it was totally irresponsible for it to have lent to him and that it hasn't acted appropriately; and
- Barclays sold him the £17,000 loan to make money and that it will make more money from this loan than from a loan of £15,000 - and it continued to offer to increase the loan to £21,000.

Barclays has also responded in detail and says, in summary, that:

- Mr S told it that he earned £990 each month and that his wife was the main wage earner, which it validated from his joint account with his wife;
- it only used the validated sole income that he declared when assessing his affordability for this loan and it didn't consider his wife's income;

- Mr S said that he had no monthly expenditure but it calculated his contribution to be £540 which left him with monthly disposable income of about £450;
- the monthly loan repayment was £333.90 so there's no doubt that the loan was affordable to Mr S as a sole applicant - and loan repayments were maintained for a considerable period of time by him;
- it was only when the household income reduced that Mr S started to struggle with the loan repayments – which is purely down to a change in circumstances, not a result of an irresponsible lending decision;
- the provisions in the Lending Code about using joint income to assess a loan application aren't applicable in this case because it hasn't used the joint income to assess the affordability of Mr S's loan; and
- it strongly believes that Mr S's compliant has been the result of a change in circumstances and that, if it hadn't happened, Mr S would have continued to repay his loan as he had done for some time.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not persuaded that I should change my second provisional decision.

I have looked again at the bank statements for Mr S's joint account with his wife that Barclays has provided. It says that the joint account is the only bank account that Mr S has with it. The statements for the period from January to March 2016 (when the loan was made) show that there were three main payments into the account each month: Mr S's wife salary, tax credits (which are clearly identified as being paid to Mr S's wife) and child benefit. The statements also show that at the beginning of each of those months the account was overdrawn.

Mr S has consistently said that he didn't tell Barclays that his income was £990 and I consider that it ought reasonably to have been clear to Barclays that the tax credit was paid to his wife. I don't consider that it was reasonable in these circumstances for Barclays to conclude that Mr S's income was £990.

I consider that the affordability assessment conducted by Barclays included some of the household income and the Lending Code says that a loan should normally be provided on a joint and several basis in such circumstances. That didn't happen here and I'm still not persuaded that there's enough evidence to show that Barclays properly assessed the affordability of the loan for Mr S or that the loan was affordable for him. Nor am I persuaded that there were circumstances at play in this case that made it appropriate for the loan to be made to Mr S rather than jointly to Mr S and his wife (as the guidance said would normally be appropriate).

The loan agreement said: *"Please sign this agreement only if you want to be legally bound by its terms and to confirm that you accept the loan"*. It did include a cooling-off period but, as set out in my first provisional decision, payments were made from the loan account. I'm not persuaded that there's enough evidence to show that those payments weren't authorised by Mr S and I consider it to be more likely than not that he (and his wife) have benefitted from those payments. I don't consider that there's enough evidence to show that Barclays acted incorrectly in connection with the cooling-off period.

For these reasons, I find that the outcome proposed in my second provisional decision remains fair and reasonable in these circumstances. But other than the actions set out in this decision, I find that it wouldn't be fair or reasonable for me to require Barclays to take any other action in response to Mr S's complaint and I'm not persuaded that it would be fair or reasonable for me to require it to refund to Mr S the interest on the £12,000 of loan capital that was used for debt consolidation purposes or to write-off all or any part of the loan. If necessary to give effect to this decision, I would expect Barclays to arrange for the debt to be transferred back to it from any third party to which it's been sold.

my decision

My decision is that I uphold Mr S's complaint and I order Barclays Bank UK PLC to:

1. Waive all interest on the loan capital above the £12,000 identified as being used for debt consolidation purposes, backdated to the inception of the loan.
2. Refund any charges for late or non-payment of the loan that it has applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 October 2020.

Jarrod Hastings
ombudsman