complaint

Mr and Mrs D complain that a loan given to them by Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') is unaffordable.

background

Mr and Mrs D took out a loan for £25,000 in 2009 to fund a purchase of timeshare weeks. The loaned amount and interest were repayable over 120 monthly payments of around £310.

Mr and Mrs D were given a £2,700 upfront rebate from the supplier of the timeshare at the time of purchase.

Mr and Mrs D say that they have used all of their savings to pay back the loan but the balance remaining is still high (around £17,500). They say the loan was unaffordable and should never have been sold to them. BPF disagrees and says that it carried out its usual credit checks as part of the approval process.

Our adjudicator recommended this complaint be upheld. He noted that when the loan was sold the total monthly payments for the timeshare including maintenance fees came to around £350 a month and represented almost half of Mr and Mrs D's pension income. He was not satisfied that this left them with enough money to cover their essential household bills and concluded that the loan was unaffordable at the point of sale. He said that although the couple had some savings these have been used up and the loan still has a high remaining balance. He also noted that these savings were Mr and Mrs D's life savings including money to be used in emergencies over the course of their retirement.

BPF disagrees with the adjudicator's assessment. It says it has not acted irresponsibly in approving the loan. In summary it says:

- the income and expenditure information provided during this complaint does not allow it to carry out a thorough affordability assessment – BPF would require supporting documentation, such as bank statements and savings information, to carry out a fair evaluation;
- the figures Mr and Mrs D have given to a debt charity for some of their essential expenditure appear to be excessive;
- the loan is affordable in any event due to Mr and Mrs D's savings;
- it questions why Mr and Mrs D waited for several years before complaining the loan was unaffordable.

my findings

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

Mr and Mrs D have raised the issue of affordability. This service will not generally interfere with the commercial lending decision of a finance company, or substitute that decision for its own. For me to consider that the loan was unaffordable at the time of sale I would need to be satisfied the decision to lend was one which no reasonable lender would have made.

I note that at the time the loan was sold Mr and Mrs D were both retired and living from a fixed pension income. They filled in documentation at the time that stated they were receiving payments as a couple of £165 a month and £160 a week from pension income. Based on their bank statements from around that time I am satisfied this was the case.

I consider that at the time the loan was sold the monthly loan repayments and timeshare maintenance fees of around £350 represented approximately 45% of Mr and Mrs D's modest pension income.

The industry guidance on responsible lending from the Finance and Leasing Association states lenders should consider those spending more than 25% of gross income on consumer credit as a higher risk of experiencing financial difficulty. Although this is only guidance I find it clear that, in these particular circumstances, the repayment commitment does not leave Mr and Mrs D with enough money to cover their essential monthly living costs - including food, council tax and utilities. Nor do I consider that the figures Mr and Mrs D have provided for their essential household expenditure to be unreasonable. Overall, based on this information, and considering that Mr and Mrs D's income was clearly unlikely to increase, the lending decision would appear to be irresponsible.

I have considered the submission made by Barclays that it checked and approved the loan according with its own lending requirements. Based on this it was satisfied that the loan was affordable at the time of sale. However, in response to this service BPF has indicated that it does not have enough information available for it to make a fair evaluation of affordability and has requested further documentation – overall, this indicates to me that BPF failed to obtain sufficient information to assess affordability at the time the loan was sold.

I understand that Mr and Mrs D have been making loan payments for some time, which BPF has said show the loan was affordable at the time of sale. However, these payments appear to have been out of the funds given to them upfront by the timeshare supplier and their life savings, which have now been depleted. I also believe that this reasonably explains why Mr and Mrs D took some time to raise their complaint about the affordability of the loan.

BPF has indicated that Mr and Mrs D's savings make the loan affordable. While I accept that savings can be taken into account as part of a lending decision I am not satisfied (from the information available to me) that BPF took these into account when the loan was sold. If BPF had asked Mr and Mrs D about their savings I am satisfied they would have made it clear that this fund was their sole source of money for emergencies and unexpected expenditure during the course of their retirement. This in my view makes it unreasonable for BPF to now consider that 100% of these savings should be taken into account against the loan commitment.

Furthermore, the Office of Fair Trading's Irresponsible Lending Guidance states that when a lending decision is made that lending decision should be based on the ability of the borrower to repay in a sustainable manner over the life of the credit agreement. The total cost of the borrowing alone is around £37,000. This is before adding the timeshare maintenance fees which Mr and Mrs D took on at the same time. Although Mr and Mrs D may have been able to keep up loan payments for some time out of their savings, it should have been clear to BPF that once these savings were depleted Mr and Mrs D would have been left with a substantial remaining balance and monthly repayments which they were unable to afford (after their essential household expenditure) out of a fixed pension income.

I have considered Mr and Mrs D's wider personal circumstances, their income and expenditure information and their record of payments shortly after their savings were depleted. Based on all this information I am not persuaded that the loan was affordable at the time of sale and I am satisfied that the lending decision was one which no reasonable lender would have made. Therefore, I find that Mr and Mrs D should be put back in the position they were in before the loan was sold to them.

As Mr and Mrs D were given £2,700 by the timeshare supplier this should be deducted from the total refund due to them. Furthermore, I understand that Mr and Mrs D no longer have the timeshare and have not benefited from its disposal. However, any timeshare interest which they might still have, including any liability for on-going maintenance fees, should be taken over by BPF as part of the settlement.

my final decision

My final decision is to direct Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') to:

- cancel the loan agreement and remove any related adverse entries from Mr and Mrs D's credit file;
- refund all payments made to the loan adding interest at 8% on these payments from the date of each payment to the date of settlement;
- refund all maintenance fees paid so far;
- deduct from the above amount the £2,700 that Mr and Mrs D received from the timeshare supplier;
- if applicable, take over the timeshare and any liability for on-going maintenance fees.

BPF should deduct basic rate tax from the interest element of my award and provide Mr and Mrs D with a certificate of tax deduction so they can claim a refund, if appropriate.

Mark Lancod
ombudsman