

The complaint

Miss J complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) shouldn’t have, in 2012, lent to her under a fixed sum loan agreement (“agreement”) because that agreement was unaffordable.

What happened

In May 2012 Miss J entered into an agreement with BPF for the purchase of a used car. Under the terms of the agreement, everything else being equal, Miss J undertook to pay a deposit of £500 followed by 59 monthly payments of £166.70 and 1 monthly payment of £265.70, making a total repayable of £10,601 at an APR of 13%.

After one of my fellow ombudsman concluded that Miss J had made this complaint in time, one of our investigators concluded that it should be upheld. In summary, he came to the view that BPF failed to undertake proportionate checks and had it done so it would have, or should have, concluded the agreement was unaffordable for Miss J. He then went on to explain what BPF needed to do to fairly and reasonably compensate her.

Miss J accepted the investigator’s view but BPF didn’t. And because of the latter Miss J’s complaint was passed to me for review and decision.

In early February 2024 I issued a provisional decision on this case. In summary I said:

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss J’s complaint.

BPF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that BPF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Miss J before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower’s ability to repay.

BPF says it agreed to this application after Miss J confirmed:

- *her annual gross income to be £55,000*
- *she had been employed with the same employer for over 30 years*

- she was a homeowner
- she had been residing at her declared address for over 20 years
- she had been with her bank for over 10 years
- she held one credit card

and after it had carried out a credit check.

It also says that Miss J's application was "system accepted" and no "manual underwriting" was required.

Given the passage of time BPF has been unable to provide a copy of its credit check, meaning I can't say for certain what its check 'uncovered'. But even if I was to assume that this check didn't uncover any county court judgements, defaults or missed payments it's my understanding it would have uncovered, amongst other things, that Miss J had a current account overdraft of £10,000 (and for the first four months of 2012 she was continuously overdrawn and often by more than £9,000), that she had a joint mortgage costing £1,950 a month and a joint loan costing £446 a month.

Now in my view the above should have caused BPF to undertake further checks and enquiries into Miss J's personal and financial circumstances, in particular further checks and enquiries into her actual non-discretionary expenditure before agreeing to lend to her. But unlike the investigator I'm not persuaded that further and proportionate checks by BPF would have, or should have, caused it not to lend to Miss J.

There are a number of ways for a lender to find out about a consumer's non-discretionary expenditure including, but not restricted to, completing an income and expenditure statement or requesting bank statements – although for the avoidance of doubt I'm not saying BPF should have done either.

Now in this case Miss J has provided our service with bank statements, into which her salary was paid, covering the months of February, March and April 2012.

Having reviewed these statements, the investigator came to the view that the loan wasn't affordable for Miss J. But like BPF I'm not persuaded that these statements give a full or complete picture of Miss J's financial circumstances in May 2012. I say this because in 2012 Miss J wasn't 'living off' just her own income, but her partner's income too, a partner who was also making non-discretionary payments for which she was solely or jointly liable for.

I would also add that Miss J appears to have made every payment required of her under the agreement subject of this complaint and every payment required of her under a number of other agreements taken out with BPF after May 2012. And in my view this, although not conclusive, doesn't support Miss J's submission that BPF's decision to lend to her in May 2012 was irresponsible.

So as it stands, I can't reasonably conclude that further and proportionate checks would have, or should have, caused BPF not to lend to Miss J in 2012 or that its lending decision was unfair.

Miss J responded to say that she didn't agree with my provisional decision. In summary she said:

- her £500 deposit (for the car) was by way of a part exchange, not cash
- she had been employed by the same employer for 24 years, not over 30

- she had been residing at her declared address for 11 years not over 20
- we upheld an irresponsible lending complaint she had made to us in respect of her credit card
- although she hadn't missed any loan repayments, this isn't grounds in itself to not uphold her complaint
- at the relevant time she was constantly overdrawn on her current account and substantially so
- the joint loan of £20,000 – at a monthly cost of £446 – was taken out to clear debts in her partner's name
- we upheld an irresponsible lending complaint she and her partner had made to us in respect of the above loan
- we upheld an irresponsible lending complaint her partner had made to us in respect of a credit card
- I was wrong to take into account her partner's income, in provisionally deciding her complaint, without taking into account her partner's expenditure, a position supported by FCA rules and guidance

After providing the above response Miss J provided, at my request, her partner's bank statements covering the months of February, March and April 2012 and one or more of his tax returns.

BPF responded to say that it didn't believe its "lending decision was incorrect".

In late February 2024 I issued a (second) provisional decision on this case. In summary I said:

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 can confirm that I'm satisfied that BPF did nothing wrong in agreeing to lend to Miss J in 2012.

Miss J says that she funded her deposit by way of a part exchange. But I can't see how this is material to my consideration of this complaint.

Miss J disputes the information recorded by BPF in respect of how long she had been at her declared address and how long she had been employed by the same employer. But I can't see how this is material to my consideration of this complaint especially given the substantial time Miss J says she had been at her declared address and how long she had been employed by the same employer in 2012 (over 10 years and 20 years respectively).

I think Miss J appreciates this, but for the avoidance of doubt I'm not bound by what my fellow ombudsmen might have decided in the past, including on cases brought by Miss J and/or her partner. Rather what I'm tasked with is deciding this complaint on its own facts and merits.

It appears that Miss J may have misunderstood what I found in my (first) provisional decision. What I found was that based on what Miss J had said and provided in respect of her financial circumstances in 2012, and what she had said about the financial relationship she had with her partner in 2012, there was simply insufficient evidence for me to be able to conclude that further and proportionate checks by BPF would have or should have caused it not to lend to her.

I certainly didn't conclude that the lending was affordable having taken into account her partner's income and not his expenditure.

In respect of the other points made by Miss J I would like to thank her for clarifying the purpose of the £20,000 joint loan and to say that I've always been aware of her overdraft usage and I didn't say that the lack of missed payments was reason, at least in itself, to not uphold her complaint.

As I say above Miss J has now provided current account statements for her partner covering the months of February, March and April 2012.

Again, and for the avoidance of doubt, I'm not saying BPF should have requested bank statements from Miss J and her partner and reviewed them as part of further and proportionate checks, but I'm satisfied that a review of them now by me gives a very good indication of what further and proportionate checks by BPF might have uncovered.

Having reviewed both sets of statements I can see that Miss J had an average monthly income of approximately £3,400 and her partner had an average monthly income of approximately £3,200. In turn Miss J – in respect of a mortgage, utilities, phones, insurance and other debt – had an average monthly expenditure of approximately £2,700 and her partner – in respect of the same – had an average monthly expenditure of approximately £1,200.

This means that for the period in question Miss J and her partner had an average monthly surplus income of approximately £2,700 for other expenditure including but not restricted to food, car running costs, income tax, national insurance and BPF's loan payment.

So in my view had BPF asked for and reviewed the bank statements reviewed by me now it wouldn't have, nor should it have, concluded it shouldn't lend to Miss J.

I appreciate Miss J will be disappointed but I remain of the view, albeit now for different reasons, that further and proportionate checks by BPF wouldn't have, nor should it have, caused it not to lend to Miss J in 2012 (on the grounds of affordability) and its lending decision wasn't unfair.

BPF responded to my provisional findings to say that it had nothing further to add.

Miss J responded to my provisional findings to say she disagreed with them. In summary she said:

- her net monthly income was approximately £3,300 not £3,400
- her partner's net monthly income was approximately £1,150 not £3,200

- taking the above income of £4,450 into account rather than £6,600 would have meant that after the expenses calculated by me of £3,900 she and her partner would have had only £550 for other expenses making the agreement subject to this complaint clearly unaffordable

Miss J, in support of her view that I had come to an incorrect finding, also referred me to a number of decisions published by our service on our website and one or more of BPF's regulatory obligations.

What I've decided – and why

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

First, I want to point out that I'm not going to respond to every single point made by Miss J. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Secondly, in considering what is fair and reasonable, I can confirm that I've had regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time and this includes regard to the various rules and regulations Miss J, in her submissions to our service, has made reference to.

In her response to my provisional findings Miss J, in support of her view that her complaint should be upheld, has made reference to a number of decisions published on our website. But as I've already alluded to I'm not bound by what my fellow ombudsmen might have decided in the past. Rather what I'm tasked with is deciding this complaint on its own facts and merits.

Miss J, in response to my provisional findings, has provided a very detailed analysis of her (and her partner's) personal and financial circumstances in 2012 and reasons as to why such an analysis, had it been undertaken by BPF in 2012, would and should have caused it to conclude that it shouldn't lend to her.

Now I don't dispute that had BPF undertaken (in 2012) the sort of detailed analysis undertaken by Miss J now, it might have decided, on the grounds of affordability, not to lend to her. But I'm not persuaded that such an analysis by BPF was required.

In my view had BPF, as part of further and proportionate checks, requested from Miss J her and her partner's bank statements for the months of February, March and April 2012 and reviewed these, it would have been entirely fair and reasonable for it to conclude (for the reasons given by me earlier in this decision) that its proposed lending was affordable and that further enquires of Miss J were simply not needed or proportionate, and that's regardless of what these further checks might have uncovered.

I appreciate Miss J will be disappointed. But taking everything into account I'm simply not persuaded that further and proportionate checks by BPF would have caused it, or should have caused it, not to lend to her.

My final decision

My final decision, for the reasons given above, is I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 10 April 2024.

Peter Cook
Ombudsman