

Complaint

Mr S complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance ("Barclays PF")) unfairly entered into a conditional sale agreement with him. He's said that he entered into this agreement at the time that he was suffering from a gambling addiction and had many other debts.

Background

In July 2018, Barclays PF provided Mr S with finance for a used car. The amount lent was £11,974.26 and the loan had interest, fees and total charges of £2,785.74. So the total amount to be repaid of £14,760.00 was due to be repaid in 60 monthly instalments of £246.

In August 2023, shortly after settling the finance, Mr S complained that the agreement was unaffordable and so should never have been provided to him. Barclays PF didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr S' complaint was considered by one of our investigators. He thought that Barclays PF hadn't completed reasonable and proportionate checks before entering into this agreement with Mr S and if it had completed such checks it would have seen that it shouldn't have lent to him. So he recommended that Mr S' complaint should be upheld.

Barclays PF disagreed and asked for an ombudsman's review.

My provisional decision of 19 February 2024

I issued a provisional decision – on 19 February 2024 - setting out why I was not intending to uphold Mr S' complaint.

In summary, I wasn't intending to uphold Mr S' complaint because I was satisfied that even though Barclays PF ought to have found out more about Mr S' regular living costs doing so would more likely than not have led it to conclude that the monthly payments to this agreement were affordable for Mr T. So further checks wouldn't have prevented Barclays PF from lending to Mr S.

Barclays PF's response to my provisional decision

Barclays PF confirmed that it accepted my provisional decision and that it didn't have anything further for me to consider.

Mr S' responses to my provisional decision

Mr S responded on a number of emails to confirm that he disagreed with the provisional decision. I have read and considered all of Mr S' emails. And I have summarised his reasons for disagreeing as:

- He took out his agreement in July 2018 not July 2019 and so settled his agreement late rather than early;
- His credit profile at the time would have flagged up a number of payday loans, regular loans and credit cards;
- This should have been investigated further at the time and bank statements would have shown his levels of gambling and his debt.
- The investigator concluded that Mr S' average salary was £1,900.00 and even then this was based on overtime which wasn't guaranteed.

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 carefully considered everything, including the responses to my provisional decision, I've decided not to uphold Mr S' complaint. I'll explain why in a little more detail.

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 Mr S' complaint.

Barclays PF needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Barclays PF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S 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.

Before I go any further, I wish to confirm while my provisional decision referred to the agreement commencing in July 2019, this was a typing error. And my provisional decision should have stated that the agreement was entered into in July 2018. I wish to apologise for this and any confusion caused as well as also confirm that the content of my provisional decision was based on the information provided from the time the application was made in 2018 and not 2019.

Furthermore, while Mr S has said that his agreement was settled late rather than early, Mr S' statement of account for this agreement does show that overpayments were made to clear the balance prior to August 2023. I know that, in his response to my provisional decision, Mr S has referred to having had to make a chargeback claim to recover funds as Barclays PF collected double his normal monthly payment.

It is possible that this payment being collected in this way is what led to the statement of account showing a zero balance prior to August 2023. And Mr S' subsequent chargeback claim might have led to a delay in the finance not being completely settled until October 2023 as Mr S says. But, in any event, whether the finance was settled slightly early, on time, or slightly late, the date the agreement was settled has not been a factor that I've relied on in either my provisional decision or this final decision.

I now turn to the substance of Mr S' complaint. As previously explained, Barclays PF says it agreed to this application after Mr S provided details of his monthly income. It says it also carried out credit searches on Mr S which showed some existing debts but there were no significant issues in relation to them.

On the other hand, Mr S says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them. In particular, Mr S has referred to having a substantial amount of existing credit and has provided his credit report and bank statements to show at least some of these additional commitments.

I've thought about what Mr S and Barclays PF have said.

I've looked at the output of Barclays PF's credit checks. I've considered this information as it essentially forms the basis of what it relied on. Having done so, I can see that only two of Mr S' credit cards and his existing hire-purchase agreement with another lender, which was going to be settled immediately as this agreement was taken, were the only agreements showing as active at the time the credit check was carried out.

So Barclays PF wasn't aware of much of the credit which Mr S has referred to. I don't know why this is. Although there has been some suggestion that as Mr S' finance agreement was proposed by his motor dealer in June 2018 this is when the credit check was completed and Mr S took out a number of loans in between this and his sale completing, which wouldn't have shown. In any event, the crucial thing is that I'm satisfied Barclays PF didn't know about most of the credit Mr S has referred to. And this is supported by Mr S receiving an APR, 8.9%, which is not consistent with that which would be offered where a lender is aware of over indebtedness, or significant payday or high-cost lending.

As this is the case, while I appreciate that this might not be reflective of Mr S' true position (and his statements and full credit file showed he owed more than this), Barclays PF was nonetheless entitled to rely on the information it obtained. That said, I do think that for the checks Barclays PF carried out to have gone far enough, given how long the agreement was due to run for I would have expected it to have find out more about Mr S' regular living costs and used this information to supplement what it found out as a result of the credit checks.

As Barclays PF didn't do this, I've gone on to decide what I think Barclays PF is more likely than not to have seen had it obtained further information from Mr S about his living expenses. The information Mr S has provided does appear to show that when his committed regular living expenses are combined with what Barclays PF knew about his existing credit commitments from its credit checks and deducted from his monthly income, Barclays PF is more likely than not to have conclude that he would have had the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Mr S continues to dispute this. Mr S says he was unable to make the payments to this agreement because of his mounting credit commitments and his gambling. But it remains the case that what I need to think about here is what did Barclays PF need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr S' actual regular living expenses given this was a first agreement and Mr S was being provided with a car rather than cash.

So I simply need to add Mr S' actual living costs to the information Barclays PF already had and relied on (this would not include all of the credit commitments that Mr S has referred to as I've explained that Barclays PF was entitled to rely on what it had seen as a result of its checks on Mr S' credit commitments). And when this is done, I don't think that Barclays PF would have had cause to question Mr S' ability to afford the loan.

I accept that it is possible - but by no means certain - that Barclays PF might have reached a different conclusion had it considered the content of Mr S' bank statements. However, checking bank statements wasn't the only way for Barclays PF to have found out more about Mr S' actual living costs – it could have obtained copies of bills or other evidence of payment etc. So I don't think that proportionate checks would have extended into obtaining the bank statements Mr S has now provided us with. And I don't think that Barclays PF did know or that it could reasonably be expected to have known about the true extent of Mr S' spending.

I accept that Mr S' actual circumstances at the time were worse than what I've set out. For example, I've already referred to his gambling and I note what Mr S has said about his income being dependent on overtime which wasn't guaranteed. I can also see that Mr S went on to take out a significant amount of additional borrowing elsewhere – presumably because of this and other mounting debts - after this agreement.

But it remains the case that Barclays PF didn't know that Mr S was reliant on overtime as this wasn't declared and as I've explained it didn't know about all of the debts Mr S has referred to, or Mr S' gambling either. So I don't think that it can reasonably be expected to have factored any of this into its decision on whether to lend to Mr S.

Overall and having carefully considered everything, I don't think that Barclays PF's checks before entering into this conditional sale agreement with Mr S did go far enough. However, I'm satisfied that Barclays PF supplementing the information it was entitled to rely on by carrying out reasonable and proportionate checks into Mr S' regular living expenses won't have stopped it from providing these funds, or entering into this agreement with Mr S.

So I'm satisfied that Barclays PF didn't act unfairly towards Mr S when it agreed to provide the funds. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr S – particularly as the investigator has recommended his complaint should be upheld. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 19 February 2024, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 April 2024.

Jeshen Narayanan
Ombudsman