

## **complaint**

This complaint is about a secured loan of £100,000 Mr and Mrs L took out with Barclays Bank plc in 2006. This was a second charge loan – that is, an additional loan ranking second in priority behind the main mortgage which was with a different lender – used to consolidate a range of existing consumer credit liabilities on more affordable terms. Mr and Mrs L say the loan was mis-sold, and they're unhappy that Barclays is pursuing them for it so long after the event.

## **background**

Mr and Mrs L fell behind with the repayments on the secured loan in 2007. But they were also in difficulties with their main mortgage, and their mortgage lender subsequently took possession of their home and sold it to recoup what they owed it. There wasn't enough money from the house sale to repay the Barclays debt as well. In 2013, Barclays sought to recover the shortfall, using the services of a third party recovery agent, which I shall call C.

Mrs and Mrs L have made several complaints, including one about the payment protection insurance (PPI) policy sold with the loan. Barclays has made an offer to settle that complaint. If Mr and Mrs L accept the offer, the settlement amount will be used to reduce the shortfall amount it's pursuing Mr and Mrs L for. I mention that merely as background, however. This complaint is solely about the sale of the loan, and Barclays' pursuit of the shortfall arising from it.

Our adjudicator wasn't persuaded the loan was mis-sold in 2006. Mr and Mrs L had a large amount of consumer debt at the time. Barclays agreed the loan in anticipation of it being used to consolidate a substantial majority of that debt onto a lower interest rate, with a lower monthly repayment. The adjudicator didn't agree that Barclays was obliged to suggest Mr and Mrs L seek debt advice instead, and she concluded that the loan became unaffordable due to changes in their circumstances after it had been taken out.

The adjudicator thought Barclays was allowed, through its agent C, to pursue Mr and Mrs L for the shortfall. It had contacted them within permitted time limits, and the debt was legitimate. There was some confusion over the exact amount owed. This was partly because Barclays sometime referred to the frozen capital debt alone, other times it included the accrued interest as well. Also, there was the PPI refund offer which would, if Mr and Mrs L accepted it, be applied in reduction of the shortfall.

Overall, the adjudicator didn't think Barclays had done anything wrong. Mr and Mrs L remain unhappy, so the case comes to me to review and determine.

## **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've come to broadly the same conclusions as the adjudicator, and for much the same reasons.

There isn't a great deal of material still available from the sale in 2006, but what there is points to the loan being affordable when granted. It was designed to reduce Mr and Mrs L's outgoings substantially, thus freeing up a large amount of disposable income for them. I take their point that the wider financial climate deteriorated soon afterwards, but that doesn't impact on Barclays' assessment of affordability at the point of sale.

I know Mr and Mrs L feel very strongly that instead of agreeing the loan, Barclays should instead have recommended they get advice on managing their finances better. I agree Barclays *could* have done that, but it didn't have to. It was perfectly entitled to give Mr and Mrs L what they were asking it for; that is, a loan that didn't create new debt but made what they already owed more manageable.

That brings me to the bank's current attempt to pursue Mr and Mrs L for the shortfall. As a starting point, Barclays is entitled to do that, either directly or via an agent acting on its behalf. With that in mind, I do urge Mr and Mrs L to engage pro-actively with Barclays, or its agent, to see if an agreement can be reached. Barclays has a duty to treat consumers in financial hardship fairly, and any agreement it attempts to negotiate with Mr and Mrs L must reflect their current circumstances.

The bank should also, as part of any dialogue, remove any confusion or ambiguity about how much it expects Mr and Mrs L to pay, taking into account the PPI settlement (assuming Mr and Mrs L were to accept that), and the accrued interest. If Mr and Mrs L subsequently felt Barclays wasn't treating them fairly in such negotiations, they could make a new complaint, to the bank first and then to us if need be. But I very much hope that won't be necessary.

#### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs L to accept or reject my decision before 9 July 2015.

Jeff Parrington  
**ombudsman**