DRN-2693402

The complaint

Mr M has complained about a loan granted to him by Moneybarn No. 1 Limited ("Moneybarn"). He says that the loan was unaffordable for him and Moneybarn would have known this had it carried out adequate checks beforehand.

What happened

Moneybarn agreed credit for Mr M on 27 May 2019 via an intermediary in order for him to acquire a car. The cash price of the car, as per the agreement, was £10,970. I understand that Mr M didn't pay a deposit or an advance payment. The total amount owing under the agreement, including £9,646 interest and charges, came to £20,616. This was to be repaid by 59 instalments of £349 (all figures rounded).

The credit was granted under a conditional sale agreement meaning Mr M would own the car when the credit had been repaid. Moneybarn was the owner until that point and Mr M was, in essence, paying for the use of it.

I can see from the account history that Mr M made his first eleven payments on time. Moneybarn agreed a payment holiday for him in mid-2020 for a few months, and again in November, after which Mr M resumed his payments. I understand these payment breaks were in response to Mr M losing income during the pandemic.

Mr M says that Moneybarn should not have agreed to lend to him because he couldn't afford to meet the repayments. He says that he was dependent on credit at that time and Moneybarn wouldn't have agreed to lend to him if it had carried out further checks, given his perilous financial situation. Moneybarn says that it undertook suitable checks to ensure the loan was affordable for Mr M and that it wasn't irresponsible to have agreed it.

Our investigator looked into what happened when Mr M's loan was agreed and found that Moneybarn had been irresponsible to enter into an agreement with him. They recommended that Mr M's complaint be upheld and proposed that Moneybarn end the agreement, take back the car and pay him some compensation.

While Mr M agreed with the assessment he didn't agree with our investigator's proposals for putting things right for him. Mr M would like to retain the car and reduce the amount he owes under the agreement to the capital borrowed, in other words the cash price of the car. This would mean a new arrangement with Moneybarn to repay the capital balance outstanding. Mr M says that he cannot be without the car but he is sinking further into debt trying to meet his repayments. He asked for the complaint to come to an ombudsman to review and resolve and so it has come to me.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time and, having considered everything carefully, I'm upholding Mr M's complaint for broadly the same reasons as our investigator. I appreciate this will be very disappointing for Moneybarn and I hope my explanation below makes it clear why I have come to this conclusion.

Moneybarn needed to check that Mr M could afford to meet his repayments without difficulty before agreeing credit for him. In other words, it needed to check he could repay the credit out of his usual income without having to borrow further, while meeting his existing obligations and without the payments having a significant adverse impact on his financial situation. The checks needed to be proportionate to the nature of the credit and Mr M's circumstances, and Moneybarn needed to take proper account of the information it gathered. The overarching requirement for Moneybarn is that it needed to pay due regard to Mr M's interests and treat him fairly.

With this in mind, my main considerations are did Moneybarn complete reasonable and proportionate checks when assessing Mr M's application to satisfy itself that he would be able to make his repayments wihout experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown?

Moneybarn says that its creditworthiness assessment requires a consumer to provide either recent payslips or recent bank statements spanning a two-month period to evidence their income. It says that, alternatively, it uses an income valiation tool provided by a Credit Reference Agency (CRA) which I understand happened in this case. Moneybarn says that it checked Mr M's credit file for indebtedness and existing financial commitments, though it wasn't able to provide either the results or a summary of them. And it relied on statistical datasets to estimate Mr M's expenses. Moneybarn says that after reviewing the information it concluded that the credit would be affordable for Mr M.

Let me start by saying that this approach might constitute a proportionate check in some circumstances. In this case, I'm afraid I don't consider it did. While I appreciate that Moneybarn may have used a CRA report to cross-check Mr M's income level, I can't see that it took steps to verify that he was in receipt of such an income each month. I've reviewed a copy of Mr M's credit file which shows he was repaying a large loan from a high cost credit company at £400 a month. He had defaulted on seven running accounts in the previous six months which ought to have alerted Moneybarn to the possibility that Mr M was having problems managing his existing debts. And, altogether, I'm not sure statistical data was likely to have been representative of Mr M's circumstances. Given the level of repayment required over five years, I think Moneybarn needed to do more here to adequately assess the risk to Mr M of not being able to meet his repayments over the term.

Mr M has provided statements for his joint bank account, a sole bank account and a savings account and, as mentioned, his credit file. Our investigator reviewed these and concluded that he would not be able to afford this credit without getting into difficulty. Moneybarn had also looked at Mr M's joint account statements in response to his complaint and said that it was reasonable to assume that some of his expenses were his wife's and it noted transfers to and from other accounts.

I've reviewed Mr M's bank statements for his joint account. His income was approximately £2,000 a month, his wife's income was less than this and they received child benefit allowance. It seems to me the transfers between accounts were a way of managing money and I haven't seen indications of any other income. Taking into account all of the expenses (except Mr M's sole debts) and assuming these were split evenly between the couple, I can see that it wasn't likely Mr M would have enough money to meet repayments on this new agreement each month without running into problems. As mentioned, I think the number of recent defaults Mr M had indicted wider financial problems. I don't think Moneybarn would have agreed credit for him at this point, had it carried out a proportionate check, and so I've found that it was irresponsible to have entered into this agreement with him.

I appreciate that Mr M managed to meet his payments for almost a year before raising concerns about being able to pay during the pandemic. However, in this case I don't think it's reasonable to conclude that successfully meeting repayments meant that Mr M was able to do so without undue difficulty and having returned to his normal monthly payments, Mr M's difficulties have continued. Mr M says *"I am struggling to make repayments every month and I am getting further in debt with the fear if I lose the car I will lose my job as I cannot get to work without it. I am so stressed by all of this I cannot sleep at night with worry."*

In summary, I've found that Moneybarn was irresponsible when it entered into this agreement with Mr M and it needs to take steps to put things right for him.

Putting things right

The credit agreement has been running for over two years and I understand from Mr M that he's kept up his payments, apart from the payment holidays I mentioned. Mr M says that he's paid over £7,000 so far.

Mr M has explained that he is struggling to meet his repayments but that he needs to have a car for work and wishes to retain this one, due to its reliability. As mentioned, he would like to repay the capital amount only and hold on to the car. I can understand Mr M's wishes and let me say at this point that I am sorry he's having such a difficult time. My decision deals with what's gone wrong regarding the current agreement so I've set out below what I think needs to happen to put this right. Mr M doesn't have to accept this decision and it would then be up to him and Moneybarn to come to a mutually agreeable resolution.

In order to redress Moneybarn's error and put Mr M back into the position he would have been in prior to the agreement, Moneybarn first needs to cancel it. Moneybarn remains the owner of the vehicle, but because I don't think the agreement should have been set up it needs to refund the payments Mr M made under it. I think it's fair that Moneybarn retains a portion of Mr M's payments because he has had the use of the car for about 27 months and it's likely he would have incurred costs to stay mobile.

There isn't an exact formula for working out what a fair proportion of Mr M's payment might reflect his usage of the car. I've noted that there haven't been any problems with the car which might have impaired Mr M's use of it. I've considered the cash price of the car, the amount of interest charged on the agreement, how the agreement was structured and the likelihood of the car having decreased in value since the agreement's inception.

Our investigator recommended a fair usage charge of £150 per month, which amounts to just over £4,000 for 27 months usage. Mr M feels this amount should be £100 at most to reflect what he considers to be the true depreciation of the car considering current prices for comparable vehicles. However, as I've explained above this isn't the only thing I've taken into account when considering what a fair usage charge would be. Having carefully thought about everything, I think £150 per month is a fair and reasonable proportion of Mr M's payments for Moneybarn to retain.

In summary, to put things right for Mr M Moneybarn should:

a) End the agreement with nothing further for Mr M to pay; and
b) Refund any payments Mr M has made minus a fair usage charge of £150 a month for the months Mr M's had the use of the car; and
c) Remove all adverse information about this finance agreement from Mr M's credit file.

* HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr M a certificate showing how much tax it's taken off if he asks for one.

This is my final decision on this complaint. It will be legally binding on both parties if Mr M chooses to accept it.

My final decision

For the reasons set out above, I uphold Mr M's complaint about Moneybarn No. 1 Limited and require it to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 October 2021.

Michelle Boundy
Ombudsman