DRN-3500334

The complaint

Mr S complains that Moneybarn No. 1 Limited irresponsibly granted him a conditional sale agreement he couldn't afford to repay.

What happened

In January 2018, Mr S acquired a used car financed by a conditional sale agreement from Moneybarn. Mr S was required to make 59 monthly repayments of £400. The total repayable under the agreement was £23,607.

Mr S says that Moneybarn didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Moneybarn didn't agree. It said that it carried out a thorough assessment which included a credit check and reviewing Mr S' bank statements. It says Mr S' was self-employed and so it reduced his income to reflect this tax obligations and this left a monthly income of around £3,275. It says it also considered Mr S' expenditure and this didn't raise concerns. It noted there was adverse information on Mr S' credit file but this was historic. Moneybarn didn't think it acted irresponsibly by providing the finance.

Our adjudicator didn't recommend the complaint be upheld. He thought Moneybarn didn't act unfairly or unreasonably by approving the finance agreement.

Mr S didn't agree and said that when he visited the showroom he was initially told he wouldn't get finance for the car he was considering. He looked at another car but was then told that finance would be provided for the first car even though he said he would struggle to make the repayments. He said that out of his income he had to pay other people around £500 a week therefore the agreement wasn't affordable.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- Before granting the finance, I thought Moneybarn gathered a reasonable amount of evidence and information from Mr S about his ability to repay. I say this because it carried out a credit check and received copies of Mr S' bank statements which showed both his income and expenditure. However, just because I thought it carried out proportionate checks, I said this didn't automatically mean it made a fair lending decision. So, I thought about what the evidence and information showed.

- Mr S is self-employed and his income and expenses from his work go through is personal accounts. I looked through the bank statements in the months leading up to the agreement and these showed Mr S receiving income from various different parties as well as weekly working tax credits. Moneybarn explained that it considered Mr S' income and then applied a deduction to account for his tax obligations. I didn't find this unreasonable and having looked through the information I thought the monthly income figure of around £3,275 was reasonable. However, given the nature of Mr S' income and that the agreement was for five years I thought the variability of income needed to be considered as part of the assessment and potentially a larger buffer allowed to reflect this.

- Given the size of the monthly repayments and the nature of Mr S' income I thought a full review of his expenditure should have taken place to ensure the lending was affordable.

- Mr S' personal account was used for his business and so he had several expenses recorded and due to the nature of his work the amounts varied. However, in the months leading up to the agreement, Mr S' business expenses (excluding cash payments) averaged at around £2,000.

- Mr S also made several cash withdrawals which he said were to make payments to labourers or suppliers. These were much lower in December but in November 2017 and January 2018 were over £2,000. Taking the average gave around £1,856 and this supported Mr S' comment that he was paying cash of around £500 a week for work related costs.

- Based on the evidence provided, Mr S' average total of work related costs was around £3,850. This was higher than the amount Moneybarn had suggested was used for his income figure.

- Even taking a higher number for Mr S' income of around £5,450 (that is without deducting anything for his tax payments), this would have left him with around £1,600 once his busines expenses had been deducted. Mr S then had his personal expenses (including rent, fuel, food and other bills) and these totalled around £1,400. Therefore, after taking this into account he would not have had enough money to make the monthly repayments of £400.

- I also noted that there were returned direct debit payments recorded in Mr S' statements in November 2017 and January 2018.

Based on the reasons set out above, I didn't think that the agreement was affordable, and I didn't think Moneybarn acted fairly when approving the finance application.

Mr S accepted my provisional decision. Moneybarn confirmed it had nothing further to add in response to it.

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.

Moneybarn will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

As I set out in my provisional decision, I think the checks carried out were reasonable however I think that had the information gathered been properly assessed Moneybarn would have realised that the agreement wasn't affordable for Mr S. As no new information was provided in response to my provisional decision, my conclusions haven't changed, and I am upholding this complaint.

Putting things right

As I don't think Moneybarn ought to have approved the lending, it should therefore refund all the payments Mr S has made, including any deposit. However, Mr S did have use of the car for around 18 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of around £400 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr S' likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr S should pay is £225 for each month he had use of the car. This means Moneybarn can only ask him to repay a total of £4,050. Anything Mr S has paid in excess of this amount should be treated as an overpayment.

Mr S' agreement was terminated, and the car sold. I also understand that the debt was sold and so to settle this complaint, Moneybarn should either buy back the debt or ensure the following actions take place.

To settle Mr S' complaint Moneybarn should do the following:

- Refund all the payments Mr S has made, less £4,050 for fair usage.
    - If Mr S has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
    - If Mr S has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.

- Once Moneybarn has received the fair usage amount, it should remove any adverse information recorded on Mr S' credit file regarding the agreement.

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

My final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 June 2022.

Jane Archer
Ombudsman