DRN-3641415

The complaint

Mr D believes Moneybarn No.1 Limited acted irresponsibly by approving a conditional sale agreement he'd applied for. He's also unhappy with the quality of the car supplied to him under this agreement.

What happened

On 20 May 2019, Mr D was supplied with a used car through a conditional sale agreement with Moneybarn. He paid a deposit of £200 and the agreement was for £21,398 over 60 months; with monthly repayments of £701.52. At the time the car was four years old and had done 69,381 miles.

Mr D complained that Moneybarn acted irresponsibly when providing this lending. He said that, at the time of application, he had several defaults, and was in a debt repayment plan. Which meant that he struggled to maintain payments to Moneybarn and missed payments to priority bills as a result. Mr D was also unhappy that, in December 2019, there was an issue with the fuel injectors, and he had to pay for this to be repaired

Moneybarn didn't uphold Mr D's complaint, so he brought it to us for investigation.

Our investigator didn't think Moneybarn carried out reasonable and proportionate checks when they assessed Mr D's application, as they failed to verify his income or expenditure at the time. And he thought they should've given the defaults more consideration. However, the investigator said that if Moneybarn had carried out these checks, then they would've found the agreement was affordable for Mr D. So, he didn't think they'd acted irresponsibly.

The investigator also said that the fault with the car was likely to be a wear and tear issue, given the age and mileage, and that the car hadn't been serviced in line with manufacturer guidelines. So, he didn't think the fault made the car of an unsatisfactory quality when supplied, and Moneybarn didn't need to take any further action.

Mr D didn't agree. He said he was in arrears with his mortgages and had another loan of £659 a month at the time, which hadn't been taken into consideration, and this made the finance through Moneybarn unaffordable. And he's referred to the evidence that's been provided which he says confirms this. He's also said that some of his income was repayment of expenses, and wasn't his salary, so shouldn't have been included.

Mr D also said that the car had been serviced in 2016, 2017, and 2018, so it wasn't correct to say that it hadn't been. Because Mr D didn't agree with the investigator, this matter has been passed to me to make a final decision.

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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the credit in a sustainable way?

    a. if so, did Moneybarn make a fair lending decision?
    b. if not, would reasonable and proportionate checks have shown that Mr D could sustainably repay the borrowing?

2. Did Moneybarn act unfairly or unreasonably in some other way?

And, if I determine that Moneybarn didn't act fairly and reasonably when considering Mr D's application, I'll also consider what I think is a fair way to put things right.

Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

Moneybarn have confirmed that, when they considered Mr D's application, they reviewed his credit file. And, while there were defaults and arrears showing, they considered these when making their overall lending decision. Just because there are defaults and arrears, this doesn't mean that Moneybarn should've declined the application. But I would expect them to take these into account as part of the approval process, and Moneybarn have confirmed that they did this.

Moneybarn have also said that Mr D had an average monthly income of £5,000, and his expenditure was calculated based on the information on the credit report and information obtained from the Office of National Statistics (ONS). And they calculated that Mr D's monthly non-discretionary expenditure was £1,909.24. Which gave Mr D sufficient disposable income to maintain their payments over the term of the agreement. Finally, Moneybarn have said that Mr D signed to say that the payments were affordable for him.

While the use of ONS data to calculate expenditure is common in these circumstances, and I don't think that Moneybarn did anything wrong by using this, I don't consider it reasonable to rely on an affordability declaration made by the customer. Instead, I would expect Moneybarn to carry out their own checks to show whether the finance is affordable or not,

Moneybarn have confirmed that they don't hold copies of the credit check they did when approving Mr D's application, but have provided the credit reference agency reference number which shows that the check had been done. They've also provided a Statement of Account which shows Mr D made the payments by direct debit until November 2020.

They've also said that Mr D asked for a payment holiday in November 2020, due to a change in his wife's income. An assessment of Mr D's income and expenditure was done in November 2020, which showed that he had a disposable income of £720 a month. Because of this, the payment holiday was refused, and Mr D has made manual payments from November 2020 onwards.

Because Moneybarn are unable to provide evidence of the checks they've done, I can't reasonably say that these were reasonable and proportionate.

Would reasonable and proportionate checks have shown that Mr D could sustainably repay the borrowing?

Because Moneybarn can't evidence they've carried out reasonable and proportionate checks, I've gone on to consider what they would've seen if these checks had been carried out. Mr D had provided a copy of his credit file from December 2020 (albeit from a different provider than Moneybarn have shown they used). And I've considered the pre-May 2019 data showing in this report.

The credit file shows that Mr D had six defaults totalling £18,843, all dating from 2018. And, where payments to these were recorded, they were showing as £1 a month. The credit file also showed that Mr D had three mortgages (two of which were in arrears), as well as two loans and a credit card. Finally, it showed that Mr D had used Payday lenders in the past (2015/16), but he was no longer reliant upon these.

Mr D has also provided copies of his bank statements for 4 February to 29 May 2019 – the period immediately before the finance was taken out. While I wouldn't have expected Moneybarn to have asked Mr D for copies of his bank statements, I'm satisfied that these statements, along with a copy of Mr D's credit file, give a good indication of what Moneybarn would likely have taken into consideration.

Mr D has provided a payslip to show that his annual salary in April 2019 was £90,270. The bank statements show his average income to be £4,858 a month for March to May 2019, although his February salary is in excess of £26,000. Given the nature of Mr D's work, it's highly likely this included a bonus. He also received a rental income payment of £611 a month and an additional payment from his employers, which Mr D says was an expenses payment, so hasn't been included in my calculations. This means that Mr D had an average monthly income of £5,469 (excluding bonus and expenses).

Mr D paid £2,560 a month for his mortgages and service charge (the payments on the bank statements compared to the credit search, show that Mr D was also paying towards the arrears, which he's confirmed was the case); £371 for council tax and utilities; £266 for insurances; £86 for TV and broadband; £768 for loans and credit cards; and £11 towards his defaults through a debt charity – a total of £4,062. This left Mr D with £1,406 a month for the payment to Moneybarn, food, clothing, and discretionary expenditure.

I'm aware that the bank statements show that Mr D had a large amount of discretionary spending, which resulted in some returned items. While I wouldn't expect Mr D to have not spent any of his disposable income, the nature of this type of spending is such that it's not for regular and/or priority bills, or for things such as food etc. As such, by taking on an additional commitment, it's reasonable to expect Mr D to have altered his discretionary spending habits accordingly.

Given the above, as well as Mr D's substantial bonus, had Moneybarn checked Mr D's bank statements, they would have found that the finance was affordable for him. As such, I'm satisfied they made a fair lending decision.

Did Moneybarn act unfairly or unreasonably in some other way?

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must confirm to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr D to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

I've seen an invoice dated 31 December 2019, where Mr D had a repair to the fuel injectors and a brake fluid service at the cost of £1,555. At this point the car had done 75,039 miles – 5,658 more than when it had been supplied to Mr D more than seven months earlier. The fuel injectors aren't a part that's expected to last the lifetime of the car and would need to be replaced through wear and tear. And the servicing is part of regular maintenance on the car.

There's nothing on the invoice that says the fuel injector issue was because of a fault that was present or developing when the car was supplied. And I haven't seen anything else, for example an independent engineer's report, that confirms this was the case. As Mr D had the car repaired and didn't raise this matter with Moneybarn until almost a year later, it's no longer possible for the car to be independently inspected to try and determine when the fault may have occurred.

I've also considered the servicing that had taken place on the car before Mr D had been supplied with it. The advert for the car said it had been serviced three times, and Mr D has pointed out that it was serviced in June 2016, June 2017, and June 2018. Because of this, he believes this shows that car has a full service history.

However, the manufacturer guidelines for servicing are that services should take place at a maximum of 18,600 miles, or two years, whichever is sooner. The car was first registered in May 2015 and the service that took place in June 2016 was at 28,306 miles – around 10,000 miles after it should've taken place. The June 2017 service was at 50,003 miles – 21,697 miles after the last service, and around 3,000 miles later than it should've been done.

Finally, the June 2018 service was at 69,687 miles – 19,684 miles after the last service, and around 1,000 miles late. And, if the car should've been serviced every 18,600 miles, the fourth service should've taken place at 74,400 miles, but there's no evidence that Mr D had this service done. Given this, I can't agree the car was serviced within manufacturer guidelines. And the lack of regular servicing could be a factor in some parts failing earlier than they otherwise would've done.

Mr D has also provided an invoice for further work done on the fuel injectors, and an oil change, in May 2022, at the cost of £702.56. As with the December 2019 invoice, there's nothing to indicate this related to an issue with the car that was present or developing when it was supplied to Mr D.

As such, given all the above, I’m not satisfied that there was a fault with the car that was present or developing when it was supplied to Mr D. And I won’t be asking Moneybarn to reimburse him for the cost of any repairs he’s had done.

My final decision

For the reasons explained above I don’t uphold Mr D’s complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 3 November 2022.

Andrew Burford
Ombudsman