DRN-3642927

The complaint

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

What happened

In October 2020, Mr D acquired a used car financed by a conditional sale agreement from Moneybarn. Mr D was required to make 59 monthly repayments of around £202. The total repayable under the agreement was around £11,916.

Mr D 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 full credit search and verifying Mr D's monthly income with the credit reference agency. It then used a third-party database to estimate the amount of Mr D's non-discretionary expenditure. It said Mr D signed the contract and explanation document confirming his income and expenditure amounts and it noted the agreement replaced a previous car finance agreement which had higher monthly repayments.

Our adjudicator recommended the complaint be upheld. She thought Moneybarn ought to have realised the agreement wasn't affordable to Mr D.

Moneybarn didn't agree and said as well as the monthly income of £2,017 recorded by our investigator Mr D was receiving regular payments from another source towards bills. It said this increased his monthly income to an average of £2,490 against expenditure of around £1,450 (excluding a previous motor finance payment that had been replaced by his Moneybarn agreement). It said this left Mr D with over £1,000 a month for food, fuel and his payments of £202 for the agreement.

The case has been passed to me for 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.

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.

Moneybarn has said that a credit check was carried out which showed no county court judgements and one historic default. Moneybarn hasn't provided a copy of the credit check it completed. I've therefore relied on a copy of the credit file supplied by Mr D. I think this gives a good indication of what Moneybarn would likely have seen. It shows that Mr D defaulted on several accounts between end 2017 and mid 2018 as well as defaulting on a mail order account in July 2019. While these were historic, I think the number of defaults should have raised concerns.

So, while Mr D's credit report didn't show issues with his active accounts at the time of application, given his previous issues managing his finances and noting the duration and size of the loan, I think it would have been proportionate for Moneybarn to have got a more thorough understanding of Mr D's financial circumstances before lending to ensure he could sustainably meet the repayments.

Moneybarn recorded Mr D's monthly income as £1,692 and said this was verified with a credit reference agency. I find this reasonable. It recorded Mr D's non-discretionary expenses as being around £965. This figure was calculated using statistical data from a third-party database. While this can be an appropriate approach in certain circumstances, given Mr D's credit report showed he had previously struggled financially and having noted the repayments needed to be maintained over 59 months, I think it would have been reasonable and proportionate to have understood Mr D's specific financial circumstances, rather than relying on an estimate.

I think it would have been proportionate for Moneybarn to have found out more about Mr D's committed expenditure, such as his living costs. I can't be sure exactly what Moneybarn would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr D's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. These show that Mr D was paying on average around £2,100 towards his committed living expenditure (including rent, utilities, several payments to debt collection companies, payday loans, insurance, food and fuel). This shows that the agreement wasn't affordable. I note that had further checks been carried out it is likely that Moneybarn would have identified that as well as his salary, Mr D was receiving around £324 a month in benefits. Taking this into account increases his monthly income to around £2,017 which still wouldn't have left him with enough disposable income to afford the repayments on the agreement.

I note Moneybarn's comments that Mr D was also receiving payments from a third party which it appeared to be for payment of bills. I appreciate that had further questions been asked Mr D may have said he received contributions towards bills. However, having looked through the statements these aren't regular amounts and it isn't clear they could be relied on. Even if these receipts were taken into account it would leave Mr D with minimal funds after the agreement repayments.

Given the term of the agreement over which the repayments needed to be maintained and noting Mr D's credit history, I think that had Moneybarn completed proportionate checks, it's likely it would have discovered the agreement wasn't sustainably affordable. It therefore didn't act fairly by approving the finance.

Putting things right

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr D should therefore only have to pay the original cash price of the car, being £6,360. Anything Mr D has paid in excess of that amount should be refunded as an overpayment.

To settle Mr D's complaint Moneybarn should do the following:

- Refund any payments Mr D has made in excess of £6,360, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr D’s credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct Moneybarn No. 1 Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 19 September 2022.

Jane Archer
Ombudsman