

The complaint

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

What happened

In July 2019 Mr L acquired a used vehicle financed by a conditional sale agreement from Moneybarn. Mr L was required to make 59 monthly repayments of £490.99. The total amount repayable under the agreement was £33,213.41. Mr L and his representative for the complaint believe Moneybarn failed to complete adequate affordability checks. Mr L says that if it had it would've been clear that the agreement wasn't affordable.

Moneybarn disagreed. It said it carried out an adequate assessment which included a full credit search and further verification of Mr L's income using personal and business current account statements. It said these showed he had no outstanding repayments on his file, and whilst he'd previously defaulted on other borrowing this was 52 months prior to his application and he'd been maintaining contributions towards repaying the debts. It also showed that Mr L had a County Court Judgement on his file, but that this was from 59 months prior to the sale, and Mr L had been previously discharged from the Insolvency Register. It calculated his net disposable income as around £2,388.

Our Investigator didn't recommend that the complaint should be upheld. They thought Moneybarn's checks were proportionate and that it didn't act unfairly or unreasonably by approving the finance.

Mr L and his representative didn't agree and said Moneybarn incorrectly relied on his business account statements to verify his personal income. They stated that his real income that year was between £11,000 to £12,000 and asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr L's complaint. Moneybarn needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr L before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr L's complaint. These two questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay his loan without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr L would've been able to do so?
2. Did Moneybarn act unfairly or unreasonably in some other way?

Did Moneybarn complete a reasonable and proportionate affordability check?

Moneybarn was required to ensure it carried out adequate checks on Mr L's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement and the consumer's specific circumstances (CONC 5.2A.20 R).

I'm satisfied that Moneybarn gathered a reasonable amount of information from Mr L about his income prior to approving the finance. I say this because apart from a full credit check it also obtained two months of current account statements for Mr L's business and personal accounts. I note that it hasn't provided a copy of the credit check it relied on – so instead I've relied on a copy of the credit file supplied by Mr L to investigate the complaint.

I'm satisfied that this copy broadly reflects what Moneybarn would've likely seen when it completed its own checks and is consistent with the information it disclosed in its responses to date. Due to the time that has passed the copy available no longer shows the previous default, county court judgement or discharge from the insolvency register, however neither Mr L nor his representative have disputed that these were present at the time.

So, at the time of the application I'm satisfied that Mr L had an account which had defaulted 52 months prior and had ongoing repayments towards the amounts owed. I do think this ought to have indicated Mr L may have been struggling financially and so I would've expected Moneybarn to take further consideration of Mr L's financial situation before approving any lending. I'm satisfied that this is exactly what it did – it has provided me with the bank statements it used to separately verify Mr L's income and expenditure.

Overall, I'm satisfied that Moneybarn gathered a reasonable and proportionate amount of evidence and information to be able to adequately assess whether the agreement was affordable and sustainable for Mr L. However, this doesn't automatically mean it made a fair a lending decision.

Did Moneybarn make a fair lending decision?

I've considered the statements obtained at the time, which consist of two months of use of both his business and current account. I appreciate Mr L's representative feels Moneybarn relied too heavily on his business account statements, which they feel were not a true reflection of his personal income and expenditure. I've thought about this point carefully and looked closely at his personal current account statements, and I'm satisfied that it is these statements which Moneybarn primarily used to verify his income and expenditure.

These statements show that the total monthly income into his personal account averaged over the two months was around £4,567 after a deduction of 20% tax. His regular committed

monthly expenditure at the time was around £2,173. In calculating this amount I've included any applicable payments for his credit commitments, housing costs, utilities, food, fuel and other ongoing costs such as a regular transfer to his partner. Altogether Mr L's income and expenditure at the time satisfies me that the agreement did not appear to be unaffordable – as it amounted to roughly 20% of his disposable income.

I'm satisfied from the information provided that it was likely that Mr L had more than sufficient disposable income to meet the monthly repayments and have money left over each month for emergency or unexpected costs. Whilst the credit check did show Mr L had some prior adverse information relating to other credit commitments, I'm not satisfied that there was anything available to demonstrate that he was struggling to maintain the payment arrangements he had in place at the time.

Moneybarn was entitled to lend to Mr L even if he had a previous poor history of repaying credit, but if it did so it needed to ensure it was affordable and sustainable. It seems Mr L still had sufficient disposable income each month to make reasonable repayments towards his debts, his other credit commitments and the new finance agreement in a sustainable way. From everything I've seen I can't reasonably say Moneybarn acted unfairly when approving Mr L's finance agreement.

Did Moneybarn act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Moneybarn acted unfairly or unreasonably in some other way.

Mr L has an outstanding balance owed under his agreement. I'd remind Moneybarn of its obligation to treat Mr L with forbearance and due consideration if he is currently in financial difficulty.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 August 2023.

Paul Clarke
Ombudsman