

The complaint

Miss L complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered a Conditional Sale Agreement because they didn't complete adequate checks to ensure the agreement was affordable for her.

What happened

Miss L took out a Conditional Sale Agreement with Moneybarn on 20 February 2019 for a used car. The cash price of the car was £5,896. She didn't pay a deposit under the agreement, and she was to make 59 monthly repayments of £180.93. The APR was 30.4% and the total amount repayable was £10,674.87.

Miss L's representative contacted Moneybarn to complain in December 2022. Miss L said she had little, or no money left over after paying her bills and credit commitments each month. Also, that she had been overdrawn for a significant period of time and she was using this to meet her credit commitments. She said her income had changed after she entered into the agreement, but Moneybarn didn't check this. She said she became dependent on further borrowing to pay off existing borrowing and she had problems meeting all of her commitments. Therefore, the representative said Moneybarn lent to Miss L irresponsibly.

Moneybarn responded to the complaint in February 2023. It set out the checks it had completed which included a full credit search, independent verification of income and statistical data to estimate non-discretionary expenditure. It said the information received from these checks suggested the agreement was affordable. Therefore, it felt it had lent to Miss L responsibly.

Miss L remained unhappy, and her representative asked our service to investigate. Our Investigator felt the checks carried out by Moneybarn weren't proportionate in light of the knowledge it had of Miss L's previous financial difficulties. However, our Investigator felt that had proportionate and reasonable checks been carried out it's likely it would have concluded the lending was affordable.

Miss L's representative didn't accept the decision. The representative said the bank statements showed a number of returned direct debits which demonstrate Miss L was struggling to maintain her finances.

Therefore, the complaint has been passed to me to decide.

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.

Having done so, I have reached the same conclusion as our Investigator and for similar reasons. I would note Miss L has provided some additional information since the view was issued including an additional bank statement and her credit file. This was requested so I could ensure I had an accurate picture of Miss L's financial circumstances at the time. But

I'm satisfied this information hasn't significantly changed the overall circumstances as outlined in our Investigator's view, so I've proceeded with a decision on the matter.

I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook. I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all the circumstances of this complaint. These questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Miss L would be able to repay the borrowing?
 - a) If so, did it make a fair lending decision?
 - b) If not, would reasonable and proportionate checks have shown that Miss L could sustainably repay the borrowing?
2. Did Moneybarn act unfairly or unreasonably in some other way?

Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Miss L would be able to repay the agreement?

Before granting credit, Moneybarn were required to carry out a reasonable and proportionate assessment of Miss L's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower focussed. This means it needed to be concerned with whether Miss L could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay. The latter is the risk posed to Moneybarn as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer's individual circumstances.

Moneybarn said it completed a full credit search showing Miss L's current level of borrowing, repayment history and past defaulted accounts. It hasn't provided a copy of the search but said in its final response that the existing level of borrowing was within its lending criteria. It also said Miss L had defaulted on some previous borrowing, the most recent of which had been entered 21 months prior to the application. Also, that there was no insolvency information recorded on the file.

I've had a look at the credit report provided by Miss L. This report was generated in September 2023 so I'm mindful it won't show all of the information Moneybarn would have seen at the time or the balances on accounts. But it does show some of the information it would have seen. It shows Miss L had a current account open, and it also shows 14 missed payments towards a telecommunications agreement. Considering this and the information Moneybarn said it had at the time, I'm satisfied it could understand Miss L previously had some difficulty with managing her finances.

Moneybarn said it independently verified Miss L's stated monthly income of £1,260 with the credit reference agency and whether the income level was in line with stated occupation. It

also said it used statistical data from the Office of National Statistics (ONS) to estimate the level of non-discretionary expenditure (including housing, council tax, utilities and vehicle costs). It assessed Miss L's net disposable income as being around £559 and meant she had an estimated £700 for non-discretionary expenditure which was sufficient to cover the £180.93 monthly repayments.

However, I'm not satisfied these checks alone were reasonable and proportionate. Miss L had a low amount of income and previous history of financial difficulties. Moneybarn could understand this from the information it had gathered. This should have prompted it to do more checks to verify income and expenditure. This would have given Moneybarn a more accurate picture of Miss L's specific financial circumstances and allowed them to make a reasonable assessment about whether she would be able to sustainably repay the agreement.

Would reasonable and proportionate checks have shown Miss L would be able to repay the agreement in a sustainable way?

As reasonable and proportionate checks weren't carried out on this agreement, I need to decide what a reasonable and proportionate check would have shown. Such additional checks might have included asking Miss L about her committed expenditure and depending on what was said, verifying this by obtaining further information.

To understand what information Moneybarn were likely to have received, I've reviewed four bank statements which show Miss L's income and expenditure in the months leading up to the agreement. I want to be clear that I'm not suggesting Moneybarn needed to check Miss L's bank statements specifically, but I'm satisfied that these give me a good indication of what information it would likely have found out about her financial circumstances had it completed reasonable and proportionate affordability checks.

I understand Miss L told Moneybarn she had an income of around £1,260. I've reviewed the bank statements from the months leading up to the agreement. I can see Miss L's income was on average around £1,250. However, I am mindful the lowest monthly income she received was £973.51. It's also worth noting she received a regular monthly payment of £180 from what seems to be a friend or family account. I've not included this in the average amount I've calculated because it's not clear what this payment was for, and it doesn't change the outcome of this decision.

I've also considered her monthly outgoings. This includes (but is not limited to) payments towards phone contracts, food, petrol, rent and car insurance. I can also see she was paying £81 per month towards a loan. I've noted what Miss L has said about her credit commitments. But the statements don't generally demonstrate Miss L was paying a significant sum towards credit commitments. Having reviewed all this, I can see her non-discretionary expenditure was about £850. This left a disposable income of around £400 which was sufficient to cover the monthly repayments of £180.93 under the agreement.

The statements also do show Miss L had a number of direct debits returned. However, the income she received entered into her account throughout the month and under separate payments. It seems the timing of the direct debits sometimes meant there weren't sufficient funds in the account at those particular times. But then she would receive an income payment increasing the balance of her account. So, I don't think this meant the agreement was unaffordable.

As mentioned, the credit file doesn't show all the information Moneybarn would have seen at the time. However, it seems Miss L had a previous default recorded 21 months prior to the agreement. She also had 14 missed payments on a telecommunications agreement.

Nevertheless, she seemed to be managing her finances in the period leading up to the agreement. Therefore, these entries wouldn't be sufficient for me to conclude Moneybarn shouldn't have lent to Miss L, particularly where it seemed she had sufficient disposable income.

Having carefully considered all the information, I'm satisfied had Moneybarn completed reasonable and proportionate checks, it would have found the agreement was affordable and Miss L had sufficient disposable income to cover the monthly repayments.

Did Moneybarn act unfairly in some other way?

I appreciate Miss L has described the difficult personal circumstances she has experienced. I won't describe them in detail here because it is personal to her. But I do want to assure Miss L that I've thought carefully about what she's said. Nevertheless, I'm not satisfied the circumstances as described meant Moneybarn acted unfairly when entering into the agreement.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 27 October 2023.

Laura Dean
Ombudsman