

The complaint

Mr F complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a Conditional Sale Agreement because it didn't carry out reasonable and proportionate checks to ensure it was affordable for him.

What happened

Mr F entered into a Conditional Sale Agreement with Moneybarn on 4 September 2019. The cash price of the car was £5,198 and Mr F paid a deposit of £400. The total credit amount was £4,798 and the total amount payable under the agreement was £11,622.98. The APR was 49.7%. The total term of the agreement was 60 months and Mr F was to make 59 equal monthly repayments of £190.22.

Mr F said he had very little, or no money left over after paying his bills and debts each month. Therefore, his representatives complained to Moneybarn on his behalf concerned about the checks Moneybarn had carried out and stating it had entered into the agreement irresponsibly.

Moneybarn responded to the complaint on 1 June 2023. It said it had carried out reasonable and proportionate checks. This included a full credit search which showed Mr F's current borrowing levels, repayment history, arrears and past defaulted accounts. Also, it said it independently verified Mr F's income with credit reference agencies and assessed whether Mr F's stated income level was in line with his occupation. It said it confirmed non-discretionary expenditure using information from the credit reference agency. Based on the information gathered, Moneybarn felt the agreement was affordable.

Mr F remained unhappy, and his representatives contacted our service to ask us to investigate. Our Investigator issued a view explaining why they felt the affordability checks hadn't been reasonable or proportionate. Nevertheless, our Investigator felt had reasonable and proportionate checks been carried out then such checks likely would have shown the agreement was affordable.

Mr F's representatives confirmed the view was not accepted. They said there was three outstanding county court judgments (CCJs) with a total outstanding balance of £6,800. It also noted an outstanding balance of £19,700 from eight defaulted accounts. The Investigator responded to this explaining that the disposable income remained the same and so remained of the view that the agreement was affordable.

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.

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 Mr F 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 Mr F 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 Mr F would be able to repay the borrowing?

Before granting credit, Moneybarn were required to carry out a reasonable and proportionate assessment of Mr F's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower focused. This means it needed to be concerned with whether Mr F could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he 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 haven't been able to provide a copy of the credit search it obtained at the time of entering the agreement. However, it has provided a summary of the information the search showed. It noted Mr F had three outstanding CCJs with a total outstanding balance of £6,800. It also noted eight defaults with an outstanding balance of £19,700 with the latest default being 31 months before entering into the agreement.

Mr F has provided a copy of his credit file, but it was issued a few years after the agreement so some of the information is no longer present. Nevertheless, the information I can see seems broadly in line with what Moneybarn said it had at the time. I think this was enough to alert Moneybarn to the financial difficulties Mr F had experienced.

Moneybarn has said Mr F's stated income was £1,873 and it verified this with data from a credit reference agency. Moneybarn have said it used information from the Office of National Statistics (ONS) to calculate Mr F's non-discretionary expenditure. From the credit search, it also identified Mr F had non-revolving credit of £302. It said based on this information it calculated Mr F's disposable income as £760.08. Therefore, it felt he had sufficient disposable income in order to affordably repay the monthly payments.

Having considered the evidence, I'm not satisfied Moneybarn carried out reasonable or proportionate checks to ensure it could assess Mr F's ability to sustainably repay the agreement. It had evidence that Mr F had previously been in financial difficulty, and this should have prompted it to do more to understand Mr F's specific income and expenditure.

In the circumstances, it wasn't reasonable to rely on ONS data for an accurate picture of Mr F's expenditure.

Would reasonable and proportionate checks have shown that Mr F would be able to repay the agreement in a sustainable way?

As reasonable and proportionate checks weren't carried out for this agreement, I need to decide what a reasonable and proportionate check would likely have shown. Such additional checks might have included asking Mr F about his 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 bank statements from the three-month period leading up to the lending agreement. I note these were from Mr F's joint account which he held with his wife. So, I've considered the regular income into that account, as well as the non-discretionary spending. I want to be clear that I'm not suggesting Moneybarn needed to check Mr F'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 his financial circumstances had it completed reasonable and proportionate affordability checks.

I understand Mr F told Moneybarn he had an income of £1,873. I can see Mr F received a salary payment of £1,353 because the council tax and rent were deducted before Mr F received it. There were also other income payments being paid into the account including child tax credits and benefits, as well as a child maintenance payment. The income therefore did change over the three-month period, but on average I've seen there was around £3,793 per month paid into the account.

I've also thought about the non-discretionary outgoings on the account. This includes (but is not limited to) things like car insurance, car tax, food, petrol and water. Having considered this, I'm satisfied the identifiable non-discretionary expenditure was around £1,557. This meant there was around £2,236 disposable income each month. This was sufficient to meet the repayments under the agreement of £190.22.

In reviewing Mr F's complaint, I've also thought about his credit history. I note this was something highlighted in response to the view. As mentioned, the credit report was generated in August 2023, so it does not show all of the information Moneybarn would have seen at the time of the agreement. But I've also taken into account the information Moneybarn said it received. I appreciate Mr F had experienced financial difficulty. I can see he had three CCJs with a balance of around £6,800. The latest was recorded in January 2019. Moneybarn and Mr F also said he had eight defaulted accounts. Moneybarn said the outstanding balance was around £19,700.

Moneybarn have said the last default was recorded 31 months prior to the agreement. I can no longer see these entries on Mr F's credit file, so I've no reason to think this isn't the case. The statements I've seen leading up to the agreement don't show Mr F was making contributions towards the outstanding balance. Mr F has provided a later statement from October 2019 (after the agreement) which shows two separate contributions of £50 towards the debt during this month. I understand he has recently settled one of the CCJs but is still paying off the others. Taking everything into consideration, it seems there was sufficient disposable income to cover the repayments under the agreement and make payments towards the outstanding balance.

Having considered everything, I'm satisfied that had reasonable and proportionate checks been carried out it's likely they would've shown the agreement was affordable. So, I won't be asking Moneybarn to do anything further here.

Did Moneybarn act unfairly in some other way?

Mr F has described the difficult personal circumstances he has faced. I won't repeat the circumstances in detail here because they are personal to him. However, I want to assure him I've thought about this carefully. Having said this, the evidence doesn't demonstrate Moneybarn acted unfairly in some other way when entering 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 Mr F to accept or reject my decision before 15 December 2023.

Laura Dean
Ombudsman