DRN-4345308

The complaint

Mr G complains about a conditional sale agreement which he took out with Moneybarn No. 1 Limited, to get a used car.

What happened

In November 2017, Mr G took out a conditional sale agreement with Moneybarn, to get a used car. At the time of the sale, the car was eight years old and had travelled around 80,000 miles.

Over the next few years, Mr G consistently made the repayments due under the agreement. But, in late 2020 Mr G needed help from Moneybarn and they allowed him several repayment holidays, to help with his financial circumstances.

Around the same time, the car was involved in an accident and his insurer deemed it beyond economical repair. Mr G received a payment from his insurer, which he used towards the balance he owed to Moneybarn. However, despite reducing the outstanding balance, the lump sum repayment didn't cover the amount he owed. So, Moneybarn held Mr G responsible for the remaining amount.

Mr G entered into a repayment plan with Moneybarn, to gradually pay off the balance owed under the agreement. But, in January 2022, Mr G complained to Moneybarn and said they should not have lent funds to him in 2017, as he was in financial difficulties when he entered into the conditional sale agreement. He said Moneybarn didn't carry out enough checks to make sure he could meet all of his commitments.

Moneybarn replied to Mr G's complaint and said they had checked his payslips and borrowing history in 2017. They said they did this to verify Mr G's income and to see if he had missed any payments on other borrowing previously.

Additionally, Moneybarn said they considered Mr G's expenditure and found that he had enough disposable income to afford the monthly repayments. Mr G didn't accept Moneybarn's response and brought his complaint to us.

One of our investigators looked into Mr G's case and found that Moneybarn had treated him fairly. She said Moneybarn had considered Mr G's income and what he was able to afford. The investigator concluded that Mr G's borrowing history didn't show any missed payments in 2017, so it was fair that they entered into the conditional sale agreement with him.

Mr G didn't agree. He said Moneybarn should have seen that his current account was continually at its overdraft limit and that he was using payday loans to pay for everyday living costs.

The investigator didn't change her conclusions and now Mr G's complaint has been passed to me to make a final decision.

I sent Mr G and Moneybarn my provisional decision on this case, on 3 August 2023. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

This case is about a conditional sale agreement in Mr G's name taken out with Moneybarn, which is a regulated financial product. As such, we are able to consider complaints about it.

The affordability of the agreement

We've set out our general approach to complaints about unaffordable or irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr G's complaint. Having carefully thought about everything, I think the key questions to ask here are:

Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Mr G would be able to make repayments due under the agreement in a sustainable way?

- *If so, did they make a fair lending decision?*

- *If not, would those checks have shown that Mr G would've been able to do so?*

Moneybarn provided this agreement under the authorisation and regulation of the Financial Conduct Authority ("FCA"). The rules and regulations in place required Moneybarn to carry out a reasonable and proportionate assessment of Mr G's ability to make the repayments under this agreement.

This assessment is sometimes referred to as an "affordability assessment" or "affordability check". The checks had to be "borrower" focused – so Moneybarn had to think about whether making repayments sustainably would cause difficulties or adverse consequences for Mr G.

In practice this meant that Moneybarn had to ensure that making the payments under the agreement wouldn't cause Mr G undue difficulty or adverse consequences. In other words, it wasn't enough for Moneybarn to simply think about the likelihood of getting their money back, they had to consider the impact of the repayments on Mr G.

Checks also had to be "proportionate" to the specific circumstances of the application for the agreement. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they are seeking.

Even for the same customer, a proportionate check could look different for different applications. In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough when:

- *the lower a customer's income (reflecting that it could be more difficult to make any repayment amount from a lower level of income);*

- *the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and*

- *the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).*

There may also be other factors which could influence how detailed a proportionate check should've been for a conditional sale agreement application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. So, I've carefully thought about all of the relevant factors in this case.

The checks carried out by Moneybarn

The conditional sale agreement provided to Mr G meant he was required to make monthly payments of £162.02 over five years. Including interest, Mr G agreed to pay a total of £9,665.08 to Moneybarn.

Before they agreed to lend funds to Mr G, Moneybarn say they looked at his payslips for the two months prior to starting the agreement, to support what Mr G had told them about his employment status. Moneybarn also say they performed a credit reference agency check and were satisfied with Mr G's borrowing history. Additionally, Moneybarn have told us that they found the proposed repayments acceptable, when comparing it to Mr G's monthly income and his likely expenditure.

I've looked at Mr G's current account statements from July to December 2017. Having done so, I can see that Moneybarn used the correct monthly income amount, when they gathered information from Mr G.

I've also looked at Mr G credit report, to consider what details Moneybarn would have discovered about Mr G's borrowing history. Moneybarn say they didn't find any missed payments or county court judgements and were satisfied that Mr G had a strong ability to meet his credit commitments.

However, I can see that Mr G's credit report from November 2017, shows that he had at least 15 existing creditors, some of whom were short term, or 'payday' lenders. I can also see that on four occasions in 2017, a payment was missed to one of Mr G's creditors.

Furthermore, the combined monthly repayment to the lenders showing on the credit file is around £900, which was nearly half of Mr G's monthly income. And I cannot see that Mr G was paying a mortgage at the time. So, the monthly payment amounts showing on the credit file do not include one of Mr G's most significant, regular outgoings.

Overall, I don't think Mr G's borrowing history from November 2017 and the monthly amount he needed to pay to his creditors compared to his income, showed a strong ability for him to meet his credit commitments. Having thought about the checks carried out by Moneybarn, I don't think they were proportional when looking at the size and term of the loan and from the information Moneybarn had received about Mr G's credit report.

So, I think the information on Mr G's credit report ought to have prompted Moneybarn to seek further details from Mr G, before going ahead with the conditional sale agreement. I think the most helpful details to have looked at, would have been Mr G's monthly expenditure.

In light of my conclusions here, I've gone on to think about Mr G's financial circumstances in November 2017, to consider what further checks would have led Moneybarn to discover.

Mr G's financial circumstances in November 2017

Mr G has provided us with statements from his current account, covering a period from July to December 2017. Having looked at the bank statements, I can see that Mr G made monthly payments to his creditors, equal to the monthly financial commitment listed on his *credit report. I can also see that Mr G relied on additional payments coming into his account from various payday lenders.*

The statements also show where Mr G made payments of £400 for rent and regularly withdrew cash. Mr G says the cash withdrawals were to pay for utilities on a pre-payment basis. Additionally, Mr G has told us that he lived with his two children in 2017, so had dependents to support.

Aside from Mr G's regular expenditure, I can see from the bank account statements where the account was near to, or exceeded its overdraft limit frequently on the months leading up to the application with Moneybarn. Because of this, Mr G's current account regularly incurred fees and debit interest.

Having looked at all the evidence, I think further checks on Mr G's expenditure in November 2017, would have shown that he was experiencing very difficult financial circumstances. I say this after considering the repayments he was required to make to his existing creditors, his living costs and his income at the time.

I'm aware that Mr G maintained payments for a significant period of time to the agreement with Moneybarn. But, from looking at what has happened since November 2017, I can see this came as a detriment to some of the other borrowing Mr G had. I must also keep in mind that Mr G is likely to have maintained the repayments towards the agreement as a priority, to ensure he had continued use of a car.

In all the circumstances, I don't think Moneybarn carried out reasonable and proportionate checks to satisfy themselves that Mr G would be able to make repayments due under the agreement in a sustainable way. On balance, I think Mr G's bank statements show that any additional credit commitments may have caused Mr G undue difficulty and adverse consequences.

It then follows that I think Moneybarn were is a position to see that the repayments towards the conditional sale agreement would have had caused more strain on Mr G's already difficult financial position. I think reasonable and proportionate checks would more likely than not have alerted Moneybarn to the fact that they shouldn't have provided the conditional sale agreement to Mr G.

So, I don't think Moneybarn treated Mr G fairly. This means I need to consider what Moneybarn should now do to put things right.

The settlement to this complaint

The car at the centre of Mr G's complaint was deemed as not being economical to repair, after it was involved in an accident. The value given to Mr G by the insurer for the car, has been used to reduce the outstanding balance owed to Moneybarn.

I've found that Moneybarn didn't treat Mr G fairly when they agreed lend to him. So, I think it's fair for Moneybarn to refund all the charges and interest they've applied to the conditional sale agreement since it started.

This refund and adjustment may create a credit balance, which should be paid to Mr G. If that happens, I think it's fair that Moneybarn adds interest at 8% per year simple, to any overpayments made by Mr G. I say this because Mr G hasn't been able to make use of those funds.

I've seen that Mr G entered into a repayment plan with Moneybarn and this information has *been passed to credit reference agencies. In light of my conclusions, I don't think it would be fair to ask Moneybarn to remove all the information about it.*

But, I don't think it's fair for Mr G to suffer any negative impact as a result of missing or not be able to make the full repayments due under the agreement. So, I think it's fair and reasonable for Moneybarn to remove any adverse information that's been recorded with credit reference agencies.

I've also considered how Moneybarn treated Mr G when he told them about his further financial difficulties in 2020. I can see that Moneybarn put several repayment holidays into place and came to a repayment plan with Mr G in April 20221. So, I think Moneybarn have treated Mr G fairly, when he has asked them for help.

However, Moneybarn still has an ongoing responsibility to Mr G, to treat his financial circumstances with due consideration and forbearance. And I remind them of this if Mr G still requires help to repay any remaining balance, after this settlement has been put into place.

Mr G responded to the provisional decision and accepted it. Moneybarn responded to the provisional decision and along with their calculations of the settlement, in summary, they said:

- Mr G should pay for the usage of the car he got under the conditional sale agreement; and
- they should retain 39 monthly repayments.

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.

Within my findings, I concluded that it's fair for Moneybarn to refund all the interest and fees applied to the balance of the conditional loan agreement. I also think it's fair for Mr G to pay for the usage he's had from the car. In other words I think it's fair for Mr G to pay for the cash price of the car only.

Mr G has made monthly repayments towards the car, along with a larger ad-hoc payment in July 2019 and the funds he received from his insurer. So, any further refunds made towards the account, may mean the conditional sale agreement enters into a credit balance.

Having thought carefully about what Moneybarn has said, I think it's for them to now put that settlement into place with Mr G.

In all the circumstances, I still think it's fair that along with the refund of charges and interest, Moneybarn adds interest at a rate of 8% a year simple, to any overpayment which may be due to Mr G. I also still think it's fair that Moneybarn removes any adverse information from the details held about the agreement with credit reference agencies.

Putting things right

For these reasons, Moneybarn No. 1 Limited should:

1. refund all interest and fees applied to the balance of the conditional sale agreement from the inception of the agreement, to the date of settlement of this complaint;

2. add interest at a rate of 8% a year simple to any credit balance created after part one of this settlement has been carried out, calculated from when the credit balance would have been created, to the date of settlement of this complaint;

3. after the adjustments, pay any credit balance created by the refund to Mr G; and

4. remove any adverse information recorded with credit reference agencies about the conditional sale agreement in Mr G's name.

Moneybarn must pay these amounts within 28 days of the date on which we tell them Mr G accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Moneybarn deducts tax from any interest they pay to Mr G, they should provide Mr G with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Moneybarn No. 1 Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 October 2023.

Sam Wedderburn
Ombudsman