DRN-4354692

The complaint

Miss E is complaining about Moneybarn No.1 Limited. She says they shouldn't have lent to her as the loan was unaffordable.

What happened

In November 2016, Miss E took out a conditional loan agreement with Moneybarn, to finance the purchase of a car. She paid a deposit of £400 and borrowed £5,850 to pay the cash price of £6,250. The agreement required her to make 59 monthly repayments of £240.50. Miss E first missed a payment in June 2017 and then continued to struggle to make repayments, with the agreement being terminated in September 2018 and the vehicle collected the following month.

In October 2020, Miss E complained to Moneybarn, saying they shouldn't have lent to her. She said Moneybarn hadn't taken sufficient steps to ensure affordability and that she was aware their practices were below the industry standard when it came to assessing income and expenditure. Miss E added that she'd had to borrow further to be able to make repayments against the agreement.

In response, Moneybarn said they'd done a full credit search with one of the credit reference agencies. They said this showed Miss E had some defaulted accounts but the most recent was eight months prior and the amounts didn't cause concern. They said the nature of their business means that their customers have usually previously experienced financial difficulties. They noted Miss E's other credit commitments were being successfully maintained. Moneybarn also said they'd checked Miss E's monthly income at the time by reviewing two months of bank statements. They'd calculated her average monthly income was around £3,500 and the monthly repayment amount was around 6% of this – on that basis it was considered affordable.

Miss E wasn't happy with Moneybarn's response so brought her complaint to our service and one of our investigators looked into it. His view was that Moneybarn hadn't carried out proportionate checks. If they had, our investigator said, they'd have realised Miss E wouldn't be able to make repayments against the agreement in a sustainable way. So he upheld the complaint. Moneybarn didn't respond to our investigator's view so the complaint's come to me for a 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.

Having done so, I'm upholding Miss E's complaint for broadly the same reasons as our investigator – I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Moneybarn carry out proportionate checks?

Moneybarn said they carried out the following checks:

- reviewed Miss E's credit file; and
- verified Miss E's income by looking at her bank statements.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Moneybarn found.

Moneybarn haven't kept a copy of the credit file they looked at but they've told us it showed Miss E had defaults and delinquent accounts, the most recent of which was eight months before the lending decision. Looking at Miss E's copy of her credit file, I can see one account defaulted in March 2016 with a balance of £39. She had a payday loan in July 2016 which she wasn't making payments on, and she'd missed a few of the monthly £279 repayments against another loan. The credit file also shows there was a County Court Judgment against Miss E in January 2016 for an amount of £565.

From the results of the credit check it's fair to say there were indications that at the time of the lending Miss E had very recently been in some financial difficulties. It would therefore have been proportionate for Moneybarn to gain an understanding of Miss E's expenditure as well as her income.

Finally, Moneybarn said they verified Miss E's income by looking at her bank statements. But when calculating her average income, Moneybarn included two salary payments from September 2016 without asking Miss E why she'd received two payments in September and just one in October 2016. I'm not satisfied this was a reasonable approach.

If Moneybarn had carried out proportionate checks, what would they have found?

Proportionate checks would have involved Moneybarn either checking Miss E's income with her or making a more reasonable assumption. And proportionate checks would have required Moneybarn to find out more about Miss E's expenditure to determine whether she'd be able to make the repayments in a sustainable way.

I've looked at the bank statements Miss E sent to Moneybarn and the statements for her other account for September, October and November 2016. I'm not saying Moneybarn needed to obtain and analyse these as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Miss E's income and expenditure at the time the lending decision was made.

Excluding the earnings received on 9 September 2016, I can see that on average across these two months, Miss E received around £2,478 per month in earnings and benefits. I'm satisfied it's more reasonable to exclude rather than include the 9 September receipt because the other receipts from Miss E's employer were on the last day of each month and for a similar amount, and there was no receipt at the end of August – so it's most likely the 9 September amount was delayed from 31 August.

When looking at Miss E's income, I've excluded the cash receipts which Miss E told us were loans from her father. And I've excluded other irregular receipts which appear to include a tax refund and loans from friends and family. I don't consider any of these to be regular or reliable sources of income. So I think it would have been reasonable for Moneybarn to use an income figure of £2,478 when assessing affordability.

Looking at Miss E's non-discretionary expenditure, I can see she was making monthly payments of around £700 on average for her rent, council tax, energy and bank charges. She was spending around £500 per month on groceries and fuel and made a regular payment of £300 per month to repay a loan from her mother. Miss E was also making repayments on another loan – she paid large lump sums sporadically but was supposed to be paying £279 per month. Miss E started making payments on another finance agreement on 1 November 2016 – these were around £60 per month. And she was paying another finance company around £60 per month for equipment rental. Finally, Miss E had expenditure of around £250 per month on phones, internet and TV services.

In total, all of this non-discretionary and committed expenditure adds up to around £2,150. Deducting this from Miss E's income of £2,478 left her with monthly disposable income of £328 from which to make the repayments to Moneybarn. Once these were made, she'd have had around £88 disposable income per month. But Miss E doesn't appear to have been paying for car insurance or road tax – both of which would be necessary if she took on the agreement. Once these costs were covered it's likely Miss E would have been left with no disposable income, or possible a very small amount. So she'd have had nothing to cover any emergencies or non-essentials.

In summary, if Moneybarn had done proportionate checks, I don't think they could have reasonably decided to lend to Miss E. Once the repayments were accounted for, her income only exceeded her non-discretionary expenditure by around £88 per month which doesn't seem enough to cover car insurance, road tax, and emergency spending.

Putting things right

As I don't think Moneybarn should have approved the lending, it's not fair for them to charge any interest or other charges under the agreement. But Miss E had use of the car for 23 months, so it's fair she pays for that use. There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the valuation of the car when Miss E entered into the agreement, the amount of interest that was charged under the agreement, the usage Miss E likely had of the car and what her costs to stay mobile might have been had she not entered into this agreement. In doing so, I think a fair amount Miss E should pay is £100 for every month she had use of the car.

To settle Miss E's complaint, Moneybarn need to do the following:

- End the agreement with nothing further to pay unless this has already been done.
- Refund all the payments Miss E has made (including the deposit), less £2,300 for fair usage.
    - If Miss E has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
    - If Miss E has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Moneybarn has received the fair usage amount, they should remove any adverse information recorded on Miss E's credit file regarding the agreement.

If Moneybarn consider tax should be deducted from the interest element of my award they should provide Miss E a certificate showing how much they've taken off so that Miss E can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained I'm upholding Miss E's complaint. Moneybarn No.1 Limited need to take the steps outlined above to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 8 November 2023.

Clare King
Ombudsman