

Complaint

Mrs M complains that Moneybarn No.1 Ltd (“Moneybarn”) unfairly entered into a conditional-sale agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it.

Background

In May 2019, Moneybarn provided Mrs M with finance for a used car. The cash price of the vehicle was £4,680.00. Mrs M didn’t paid a deposit of £500 and entered into a conditional sale agreement with Moneybarn for the remaining £4,180.00 The loan had interest, fees and total charges of £4,134.87 and the total amount to be repaid of £8,314.62 (excluding Mrs M’s deposit) was due to be repaid in 59 monthly instalments of £140.93.

Mrs M’s complaint was considered by one of our investigators. He didn’t think that Moneybarn had done anything wrong or treated Mrs M unfairly. So he didn’t recommend that Mrs M’s complaint should be upheld. Mrs M disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mrs M’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mrs M’s complaint. I’d like to explain why in a little more detail.

Moneybarn needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether Mrs M could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneybarn carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower’s ability to repay.

Moneybarn says it agreed to this application after it completed an income and expenditure assessment on Mrs M. During this assessment, Mrs M provided details of her monthly

income. Moneybarn says it also carried out credit searches on Mrs M which showed some low outstanding balances on existing credit and some adverse information.

But when the amount Mrs M already owed plus a reasonable amount for Mrs M's living expenses, based on statistical data, were deducted from her monthly income the monthly payments were still affordable. On the other hand, Mrs M says she was already struggling at the time, was on a low income and that these payments were unaffordable.

I've thought about what Mrs M and Moneybarn have said.

The first thing for me to say is that I don't think that the checks Moneybarn carried out did go far enough. In my view, bearing in mind it will have seen defaults and a county court judgement ("CCJ") registered against Mrs M as a result of its credit search. I'm satisfied that Moneybarn needed to take further steps to verify Mrs M's actual living costs, rather than rely on statistical data, in order for its checks to have been proportionate.

As Moneybarn didn't carry out sufficient checks, I've gone on to decide what I think Moneybarn is more likely than not to have seen had it obtained further information from Mrs M. Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Mrs M's regular living expenses as well as her income and existing credit commitments.

I've considered the information Mrs M has provided us with – including her bank statements. And having done so, this information does appear to show that when Mrs M's committed regular living expenses, existing credit commitments and a reasonable amount for her defaulted accounts and CCJs are deducted from the income going into her account at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that Mrs M feels it is unfair to take into account all of the funds going into her account as income. But the account was her sole account so it wouldn't be unreasonable to conclude that she had access to all of the funds being credited. In any event, even if some of the credits were for Mrs M's partner as Mrs M was being provided with a household asset rather than cash funds, I don't think that it would have been unreasonable to conclude that some of these funds would have been available to help make the payments to this agreement if necessary.

It might also help to explain that what I'm required to think about here in order to determine whether Moneybarn acted fairly and reasonably towards Mrs M, is whether Mrs M had sufficient disposable income to enable her to make the monthly payments to this agreement. And having considered everything, I'm satisfied that the available information indicates that there were sufficient funds left over in Mrs M's account for the monthly payments to be made in a sustainable manner.

So overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this hire purchase agreement with Mrs M did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Moneybarn from providing these funds, or entering into this agreement with her.

I've also thought about what Mrs M has said about the interest on her agreement. I know that Mrs M says that the interest wasn't clear. However, the interest is set out on Mrs M's conditional sale agreement. And while I note that Mrs M told Moneybarn that she doesn't recall signing the agreement, I find it unlikely that Mrs M would have been given her vehicle without signing the agreement as it was a condition of her motor dealer being paid.

So I think that Mrs M did sign her agreement albeit she might not longer recall doing so. And as Mrs M went through with the transaction, I can only reasonably conclude that she was, at the time at least, happy with the amount she'd have to pay.

Overall I'm therefore satisfied that Moneybarn didn't act unfairly towards Mrs M when it lent to her and I'm not upholding Mrs M's complaint. I appreciate that this will be very disappointing for Mrs M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 7 November 2023.

Jeshen Narayanan
Ombudsman