DRN-4394161

The complaint

Mr B complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement as it didn't complete reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Mr B entered into the conditional sale agreement with Moneybarn on 27 July 2019 for a used car. The cash price of the car was £8,467. The total amount payable under the agreement was £15,371.79. Mr B was to pay 49 equal monthly repayments of £313.71.

Mr B is represented in his complaint. However, for ease of reading, I'll only refer to Mr B throughout this decision. Mr B complained to Moneybarn about its lending decision on 20 April 2023.

Moneybarn responded to the complaint on 23 June 2023. It said it had completed a full credit search to see current borrowing levels, repayment history, arrears and defaulted accounts. It said it also independently verified Mr B's income using credit reference agencies and it considered whether the stated salary was in line with Mr B's declared occupation. It said it gathered information from credit reference agencies to see non-discretionary spend. Overall, it said it had completed reasonable and proportionate checks and felt the lending decision had been a fair one.

Mr B remained unhappy and asked our service to investigate. On 19 April 2024 I issued a provisional decision. I said:

> *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.*
>
> <u>*Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the agreement in a sustainable way?*</u>
>
> *Moneybarn said it verified Mr B's income and expenditure with credit reference agencies. It said it verified his income as £1,400 and assessed whether this was in line with the occupation stated on application.*
>
> *Moneybarn said it carried out a full credit search. I understand it uses information from two credit reference agencies. It wasn't able to provide a copy of the original search, but it has provided a summary. I've also compared this to the credit file provided by Mr B, but I've noted there is information which only seems to have been*

recorded with a third credit reference agency. It was reasonable for Moneybarn to rely on information from two credit reference agencies, but it does mean there are some discrepancies between the information it says it had and the information provided by Mr B.

In respect of Mr B's credit history, Moneybarn said he had defaulted on some previous borrowing and the most recent was 10 months prior to his application. The original default balance information Moneybarn had was £3,900 and the total amount outstanding was £200. Moneybarn said this didn't affect its decision to lend because of the time which had passed. However, I'm of the view there was a relatively recent default, and Mr B was still making contributions towards the defaulted balance. The information also showed Mr B had seven defaults altogether which is a high number and demonstrates Mr B had difficulty managing his credit commitments.

I understand Moneybarn also estimated Mr B's expenditure. Moneybarn said it gathered this information through credit reference agencies but it's not clear from its explanation exactly how it obtained this or what it relied on. Moneybarn said it included a buffer and said his expenditure was around £700.90. This left a disposable income of £656.88, which it determined was sufficient to show the agreement was affordable.

In the circumstances, I think Moneybarn should have done more to determine Mr B's actual expenditure. This would have provided a fuller picture of Mr B's financial circumstances. This was necessary because of the adverse information Moneybarn had about how Mr B had managed his finances. Additionally, I've thought about the terms of the agreement. Mr B was required to repay a total of £15,371.79 over the course of around four years and the monthly repayments were also fairly significant, at over 20% of his monthly income. For these reasons, Moneybarn should have carried out more thorough checks particularly to understand Mr B's specific spend.

Would reasonable and proportionate checks have shown that Mr B 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. In order to consider this, I've reviewed bank statements from the three-month period leading up to the lending decision. For clarity, I'm not saying Moneybarn needed to obtain bank statements. However, the statements reveal what information Moneybarn were likely to have obtained had it completed reasonable and proportionate checks.

Over the three-month period, I can see Mr B had an average income of around £1,659. I would note at this point that Mr B had declared and Moneybarn had verified his income at £1,400. I'd also note Mr B's income did fluctuate over the three months. Although I have used the average here, I'm mindful it seems Mr B could expect to receive less in some months.

I've also considered Mr B's expenditure as shown on the statements. I've asked Mr B some further questions about what is shown on the statements including the transfers to his partner and the cash withdrawals. I also must weigh this up against what the information shows and what was likely to have been disclosed at the time given Mr B wanted the lending.

There are some costs missing from the statements which I'd expect to see. For example, utilities and council tax. However, Mr B says he did contribute towards the *household bills and I can see he made transfers to his partner. I understand from Mr B some of these transfers were for safe keeping of the funds. I've taken this into account when considering Mr B's expenditure and I've not included any sums which were transferred to his partner and subsequently transferred back.*

Mr B said he contributed up to around £800 per month for things like utilities, council tax, rent, food and petrol. I've compared this to the information I've seen on the statements. I can see some transactions for food and petrol, cash withdrawals (which Mr B has said were mainly for food and petrol) and rent payments, as well as transfers to and from Mr B's partner. So, it seems he did contribute around £800 based on the expenditure shown on the statements and Mr B's testimony. Overall, I'm satisfied this is a plausible amount for non-discretionary spend and contributions towards household commitments.

In addition to this, Mr B had some other regular commitments including phone bill, car tax and an insurance payment. This was for around £399. So, Mr B spent around £1,199 on his living expenses each month.

I've also thought about his other credit commitments. I can see from Mr B's credit file he took out a loan prior to entering this agreement. However, it doesn't show in Moneybarn's summary and there aren't any payments showing on the bank statements I've reviewed. The payments for this were to be £128 per month. But it doesn't seem likely this would have come to light through reasonable and proportionate checks.

I can see on the statements Mr B paid around £100 per month towards his debt and credit commitments. Whilst Mr B has told us his financial position was much worse and he was relying on credit, the evidence doesn't satisfy me this would have been uncovered through reasonable and proportionate checks and I don't think Moneybarn would have seen he was paying more than £100.

Therefore, Mr B's committed spend including living expenses and commitments was around £1,299. Taking this and the repayments of £313.71 from his average income, he would only have around £46 remaining. This isn't sufficient disposable income to show Mr B could sustainably afford the repayments.

Overall, I don't think Moneybarn completed reasonable and proportionate checks. Had it done so, it's likely the checks would have shown the agreement wasn't affordable for Mr B. As explained above, it seems Mr B didn't have sufficient disposable income to sustainably make the repayments.

I gave both parties the opportunity to respond to the decision, providing they did so by 6 May 2024. Mr B accepted the decision. Moneybarn also responded to let us know the agreement had been settled by Mr B's car insurance provider. As both parties have now had the opportunity to respond, I've proceeded with my final decision on the matter.

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 considered everything, I see no reason to depart from the findings I reached in my provisional decision.

Putting things right

Following my provisional decision, I was informed Mr B's car had been involved in an accident which meant his insurer settled the agreement. He also received some money from the insurer after the agreement settled.

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. But I also have to acknowledge that in receiving the insurance payment Mr B has benefitted from effective ownership of the vehicle. Mr B should therefore only have to pay the original cash price of the car, being £8,467.

Anything which has been paid towards the agreement in excess of that amount should be refunded as an overpayment. The amount paid towards the agreement includes the settlement payment made directly by the insurer.

To settle Mr B's complaint Moneybarn No.1 Limited should do the following:

- Refund to Mr B any payments made towards the agreement in excess of £8,467, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr B's credit file regarding the agreement.

*If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons outlined above, I'm upholding this complaint and Moneybarn No.1 Limited should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 July 2024.

Laura Dean
Ombudsman