

The complaint

Miss L complains that Moneybarn No 1 Limited trading as Moneybarn agreed to lending that she couldn't afford.

Miss L is represented by a third party in bringing her complaint but for ease of reading I will only refer to Miss L in my decision.

What happened

In 2020 Miss L entered into a Conditional Sale agreement with Moneybarn for a car with a cash price of £8,295. Miss L paid a deposit of £295, with added interest the total amount repayable was £13,686.71, by instalments of £284.93 over 48 months.

Miss L said she had to have a car for work and family commitments, but after entering into the loan she'd struggled to meet her credit commitments. She said she had to borrow on her credit cards, overdraft and other personal loans to meet them. And she now had a debt management plan to help her manage her finances. Miss L complained to Moneybarn as she said they hadn't done enough to determine she could afford the lending.

Moneybarn said they'd assessed the affordability of the lending for Miss L. They'd checked her credit history, verified her income, and used statistical data to estimate Miss L's non-discretionary expenditure. They said this showed Miss L's borrowing levels were moderate, there hadn't been any missed payments, while there had been a default noted shortly before the application for lending this had been for a small amount. They said there weren't any county court judgements. Taking all of this account, Moneybarn said they estimated Miss L had a disposable income each month of £594.68, so the repayment of £284.73 was affordable for her.

Miss L wasn't happy with Moneybarn's response and referred her complaint to us. Our investigator said the adverse information on Miss L's credit file should have led Moneybarn to do further checks. But having checked Miss L's bank statements to assess her actual income and expenditure, they said the lending was affordable as Miss L had sufficient disposable income to maintain her monthly instalment of £284.73.

Miss L didn't agree and asked for an ombudsman 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 appreciate Miss L will be disappointed by my decision but having done so I don't uphold her complaint. I'll explain why.

I've considered the relevant rules, guidance, and good industry practice when someone

complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider deciding what's fair and reasonable in all the circumstances of the complaint. These are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Miss L would be able to repay the credit in a sustainable way?
 - a. if so, did Moneybarn make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Miss L could sustainably repay the borrowing?
2. Did Moneybarn act unfairly or unreasonably in some other way?

Regulations in place at the time Moneybarn lent to Miss L required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning Moneybarn need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss L. In other words, it wasn't enough for Moneybarn to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss L herself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

So, I've considered whether Moneybarn in lending to Miss L had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to her.

Moneybarn said they checked Miss L's credit history but haven't provided us with the actual check but a summary of what they found. And have said they saw Miss L had defaulted on previous borrowing, the most recent being shortly before the lending application. Relevant guidance, the Consumer Credit sourcebook (CONC) covers the subject matter of the creditworthiness assessment. CONC 5.2A.11 says:

".....there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the creditworthiness assessment."

And as Miss L had recently defaulted on an account, and the amount of the default was low should have I think caused Moneybarn to look at Miss L's actual financial circumstances rather than a reliance on statistical data.

This doesn't automatically mean Moneybarn shouldn't have lent to Miss L, as I need to consider whether these checks would have shown that the repayments were unaffordable for her – or in other words that she lost out because of Moneybarn's failure to complete proportionate checks. I can't be sure exactly what Moneybarn would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Miss L's bank statements

I've reviewed bank statements covering a period of three months leading up to Miss L applying for and being granted the finance. These show that Miss L's income, including her benefit payments and a regular income of £500 averaged around £2937 a month. More than the £2,100 used by Moneybarn in their assessment.

I can see several transactions in Miss L's account from what appear to be family members. But over the three months I can see Miss L paid more out to them than what was paid into her account. So, to reflect this I've averaged over each month an average for the difference - £87 and considered this to be a regular expense.

In reviewing Miss L's bank statements her non-discretionary expenditure (for example food, rent, utilities, telecoms, TV), including the £87 equates to an average each month of £2,220. I consider this to have been inflated by the increase in Miss L's spending on food in June 2020 as this exceeded £1,000. And a monthly average of £110 spent on clothing and sportswear.

I also included some discretionary spending, which included a catalogue payment, monthly savings, a digital entertainment subscription and some gambling transactions. In considering Miss L's gambling transactions, I can see that these were sporadic and had reduced significantly over the three months.

With taking these into account Miss L's regular outgoings equated to an average of £2,496. This means I think Miss L would have had £441 disposable income, and after taking the repayment for the loan, £284.73, she would have had around £156 disposable income still available to her.

I did notice that Miss L was making regular use of her overdraft each month, and that there were very few occasions when her account wasn't using the overdraft facility. This meant Miss L incurred daily overdraft fees which I've included in her regular expenditure above. But I have noted that over the three months Miss L had reduced how much of her overdraft she was using.

Given the level of overdraft used wasn't escalating over time, I can't say that Miss L's financial situation was getting significantly worse to the extent that Moneybarn granting her the finance would have been unfair.

And I can see Miss L was also spending money on non-essentials which I haven't included in the income and expenditure assessment, as non-essential spending is at the discretion of Miss L to make or not. This spending I can see ranged from around £250 to £700 each month.

From the evidence Miss L has provided I'm satisfied Miss L had sufficient funds to cover the repayment of her credit commitment with Moneybarn. And I can see that she has maintained her monthly repayments which supports this outcome. So, while I realise it'll be disappointing for Miss L, I can't say Moneybarn has acted irresponsibly by agreeing to lend to her.

I don't know what Miss L's current circumstances are other than she has sought debt advice and is in a debt management plan. So, I would remind Moneybarn of their obligations to treat Miss L fairly and with due consideration and forbearance in the event she is in financial difficulties.

My final decision

I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 22 November 2023.

Anne Scarr
Ombudsman