DRN-4403208

The complaint

Mr H is complaining about Secure Trust Bank Plc trading as Moneyway. He says they were irresponsible in lending to him. Mr H's complaint was brought to our service by a representative but for ease I've written as if we've dealt directly with him.

What happened

In May 2021, Mr H took out a hire purchase agreement with Moneyway to finance the purchase of a car. He paid a deposit of £2,000 and borrowed £14,698 - the cash price of the vehicle was £16,698. The agreement required Mr H to make 59 monthly repayments of £361.32 and a final instalment of £371.32 – so the total amount payable was £23,689.20. Mr H made payments sporadically and then decided to surrender the vehicle, in December 2022.

In January 2023, Mr H complained to Moneyway, saying that it had been too easy for him to get a loan for a car which he clearly couldn't sustain repayments for. He said he'd had to hand the car back but still owed Moneyway, he'd ended up having to enter another Individual Voluntary Arrangement (IVA), and had now gone back to driving a much older car which he could afford.

Moneyway didn't uphold Mr H's complaint. They said Mr H had told them his monthly income was £1,193. They'd used his credit file to assess the amount he paid towards debts and revolving credit, and used statistical data from the Office for National Statistics (ONS) to estimate his cost of living including rent. This was based on Mr H being a married tenant – which is what he'd told Moneyway.

When they added up Mr H's estimated expenditure, including the proposed repayments under this agreement, the total was around £1,088 per month. As this was less than Mr H's income, they concluded that the finance was affordable for Mr H. When the complaint came to us, Moneyway also said they'd used one of the credit reference agency (CRA) tools to check that Mr H's income was higher than his expenditure.

Mr H was unhappy with Moneyway's response so brought his complaint to our service. One of our investigators looked into it but didn't uphold it. He said from the evidence he'd seen, he thought Moneyway hadn't conducted proportionate checks. But when he looked at Mr H's bank statements from the time of lending, he thought these showed the agreement was affordable for Mr H.

Mr H replied, saying our investigator shouldn't have included income from his pension in assessing his income and expenditure – he said he was using that in the short-term to help cover his bills but would have preferred to have kept his pension for retirement. Because Mr H disagreed with our investigator, the complaint was referred for a decision – and it's come to me.

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, and recognising it'll be disappointing for Mr H, I'm not upholding his complaint. My reasons are broadly the same as our investigator's – 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 Moneyway carry out proportionate checks?

Moneyway said they carried out the following checks:

- reviewed Mr H's credit file;
- used ONS data to estimate Mr H's expenditure; and
- used one of the CRA tools to check that Mr H's income exceeded his expenditure.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and the cost of credit. Mr H was largely dependent on benefits, and the repayments on the hire purchase agreement were over 30% of his stated income. So the checks needed to be thorough.

Moneyway said Mr H's credit file didn't give them any cause for concern. But I've looked at the credit report Moneyway used and I can see Mr H had defaulted on one of the utilities accounts, missed payments on another utility account, defaulted on a loan, and defaulted on a communications contract. So although his total credit balance was low, at around £430, these defaults were fairly recent – and indicative that Mr H might be struggling financially.

CONC allows firms to use statistical data in their affordability assessments unless they have reason to suspect that a customer's non-discretionary expenditure is significantly higher than that described in the data. Mr H's recent missed payments and defaults were a good reason to suspect that his expenditure might be higher – so I don't think it was appropriate for Moneyway to rely on ONS data when estimating Mr H's expenditure.

CONC also says that firms shouldn't rely solely on a statement from a customer to verify a customer's income. Moneyway said they used a CRA tool to check that Mr H's income exceeded his expenditure but it's not clear whether they used the CRA tool to verify the amount of his income or simply used the income figure Mr H had given them. That makes it difficult for me to say Moneyway did proportionate checks – I can't see that they verified his income and I think proportionate checks needed to include this step.

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

As I've explained above, I think Moneyway should have independently verified Mr H's income using some third-party information. And I think proportionate checks would have involved finding out more about Mr H's expenditure.

I've looked at statements for Mr H's main bank account for the three months leading up to his application to Moneyway. In the absence of any other information, bank statements provide a good indication of Mr H's income and expenditure at the time the lending decision was made.

Having done so, I can see Mr H's income averaged around £2,015 per month. This takes into account his benefits and his pension income of £800 per month. I appreciate Mr H has disputed our inclusion of this pension income in our assessment. But he was receiving these payments regularly and had stopped working. I'm satisfied that they formed part of his regular income at the time and that it would have been reasonable for Moneyway to take this income into account when assessing the affordability of the loan.

Turning to Mr H's expenditure, he was making payments totalling around £815 per month for rent, council tax, water and energy. His TV, internet and phone services cost him around £150 per month. He was also spending £200 per month on storage, and around £350 on food, fuel, and other financial commitments. So his regular committed and non-discretionary expenditure totalled around £1,510 per month. Once the repayments for this new loan agreement were added on, Mr H's total regular expenditure would be expected to be around £1,870 per month. With income of around £2,015 per month, this left around £145 for emergencies and discretionary spend, as well as any increase in costs arising from changing vehicle. Although this isn't a large amount, I'm satisfied it would have been enough for Moneyway to decide the repayments under the hire purchase agreement would be affordable for Mr H.

In conclusion, although on balance I'm not satisfied Moneyway did proportionate checks, I'm satisfied that if they had, they could have fairly lent to Mr H.

My final decision

As I've explained above, I'm not upholding Mr H's complaint about Secure Trust Bank PLC trading as Moneyway.

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

Clare King
Ombudsman