

The complaint

Mr H complains that Moneybarn No 1 Limited trading as Moneybarn acted unfairly in agreeing to lend to him as he said he couldn't afford the loan.

What happened

In January 2019, Mr H entered into a Conditional Sale agreement with Moneybarn for a car with the cash price of £16,771. Mr H didn't pay a deposit and after the addition of interest and charges the total amount repayable was £32,439.97, repayable in monthly instalments of £549.83 over 60 months.

Mr H said he was pressured into the agreement and was already struggling financially. He said Moneybarn didn't check sufficiently to see if he could afford the lending. And he voluntarily terminated the agreement in June 2022, leaving him with a balance still outstanding of over £1,000. He complained to Moneybarn.

Moneybarn said they'd carried out reasonable and proportionate checks. They said they'd verified Mr H's income as being £2,400, his expenditure using the Office for National Statistics (ONS) data and had checked Mr H's credit file to determine his outgoings and financial situation. Moneybarn said this showed Mr H had a net disposable monthly income of around £1200. As the monthly instalment was £549.83, they said this showed he'd be able to sustain the repayments.

Mr H wasn't happy with Moneybarn's response and referred his complaint to us.

While our investigator said Moneybarn should have done further checks to determine Mr H's financial situation. He found that these checks would have confirmed to Moneybarn that the lending was affordable for Mr H.

Mr H didn't agree he said his income over the three months prior to the loan was inflated because of reimbursement of work expenses. And that he'd been pressurised at the point he acquired the car to finance it through Moneybarn. He 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 Mr H will be disappointed by my decision but having done so I don't uphold his 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 Mr H 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 Mr H 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 Mr H required them to carry out a reasonable assessment of whether he 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 Mr H. 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 Mr H himself.

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 Mr H had been thorough in the checks they made. And whether they’ve taken all these factors into account in deciding to lend to him.

Moneybarn said they’d based their lending decision on statistical data and credit reference agencies’ information. And on checking Mr H’s credit history they’d found evidence of previous financial difficulty. So, I agree with our investigator it wasn’t reasonable to rely on an estimate of Mr H’s living costs given the increased indebtedness, monthly payments, and the time the agreement was due to run for. I think this should have led Moneybarn to do more to verify Mr H’s actual financial situation.

This doesn’t automatically mean Moneybarn shouldn’t have lent to Mr H as I need to consider whether these checks would have shown that the repayments were unaffordable for him – or in other words that he 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 Mr H’s bank statements.

Having reviewed Mr H’s bank statements I don’t think that obtaining further information on Mr H’s actual living costs would have made a difference to Moneybarn’s decision to lend in this instance.

I say this because the information Mr H has provided about his finances at the time appears to show that he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. I accept it’s possible that Mr H’s actual circumstances at the time might have been worse than what the information he’s provided shows. But the key here is that it’s only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don’t think that Moneybarn could possibly be expected to have known that the payments to this agreement were unaffordable, bearing in mind that the information provided now doesn’t show that this would have been the case.

I can see that our investigator in considering Mr H's income didn't consider a regular monthly payment which Mr H said was to assist him in paying his bills, that ranged from £400 to £590. And I can also see that our investigator continued to include a monthly outgoing of around £255 in calculating Mr H's disposable income. But this amount was for Mr H's previous car finance agreement which ended on him entering into the agreement with Moneybarn.

So overall and having carefully considered everything, while I'm not persuaded that Moneybarn's checks before entering into this Conditional Sale agreement with Mr H did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Moneybarn from providing these funds or entering into this agreement with him. As this information showed that Mr H should have had sufficient disposable income to sustain the repayments.

Mr H has said he was pressured into the agreement with Moneybarn but I can't know what was said or happened at the point he acquired the car, so I can't comment further about this. But I can see that Mr H was provided with a "Welcome Pack" and "Explanation document" at the time, and that the agreement says *"You have the right to withdraw from this Agreement without giving any reason before the end of 14 days beginning with the day after the day you are informed by us in writing that this Agreement has been signed by Us."*

As this is the case, I don't think that Moneybarn acted unfairly or unreasonably towards Mr H. So I'm not upholding this complaint. I appreciate that this will be disappointing for him. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 February 2024.

Anne Scarr
Ombudsman