DRN-4473664

The complaint

Miss W is complaining about Moneybarn No.1 Limited (Moneybarn). She says they shouldn't have lent to her as the loan was unaffordable. Miss M's complaint was brought to our service by a representative but for ease I've written as if we've dealt directly with her.

What happened

In November 2020, Miss W took out a conditional loan agreement with Moneybarn to finance the purchase of a car. She paid no deposit and borrowed £6,999, the cash price of the vehicle. The agreement required her to make 47 monthly repayments of £273.93. She missed her January 2021 payment and made it late but all other payments were on time.

Then, in September 2022, Miss W replaced this conditional loan agreement with a new one. On this occasion, Miss W paid no deposit and borrowed £8,995, the cash price of the vehicle. The agreement required her to make 47 monthly repayments of £266.64. In February and April 2023, Miss W's direct debits bounced but she made the payments by card instead and the account remained on track.

In November 2022, Miss W complained to Moneybarn, saying they shouldn't have lent to her because the loans were unaffordable. She said she'd had several missed or late payments in the three months before Moneybarn first lent to her, and then further late payments between the two lending decisions. She said she had a large number of credit accounts, reflecting her dependence on borrowing..

In their response, Moneybarn said that for the second loan they'd conducted a full credit search and also verified Miss W's monthly income using a current account analysis done by a Credit Reference Agency (CRA). Moneybarn added that they used data from the Office for National Statistics (ONS) to estimate Miss W's level of non-discretionary expenditure. They added that they'd considered the payment history and conduct of Miss W's previous loan. Overall they were satisfied they'd done enough checks and the agreement was affordable for Miss W. Moneybarn didn't explain in their response to Miss W what checks they'd done in relation to the first loan.

Miss W remained unhappy so brought her complaint to our service. At this stage Moneybarn told us they'd carried out the same checks before making the first loan. One of our investigators looked into the complaint but didn't uphold it, saying she thought Moneybarn had completed proportionate checks and made a fair lending decision based on the information available.

Miss W disagreed, saying she wasn't managing her credit commitments before taking out the first loan. She asked for a decision and the complaint came to me. I issued a provisional decision on 26 October 2023. In that 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.

Did Moneybarn carry out proportionate checks?

In relation to both loans, Moneybarn said they:

- *Checked Miss W's credit file;*
- *Used CRA data to verify her income; and*
- *Used ONS data to estimate her disposable income.*

When it came to the second loan, Moneybarn said they also looked at Miss W's payment history for the first loan.

Loan 1

Moneybarn haven't provided a copy of the credit file they looked at. They've told us they could see Miss W had total active credit balances of around £6,000. They said she had four outstanding defaults, with the most recent being in the last five months. But her default balance had reduced from £2,000 to £400. They used this information to determine that Miss W needed to spend £125 per month on credit commitments.

Looking at Miss W's copy of her credit file I can see similar figures to those given by Moneybarn – she had total active balances of around £8,670 but this included car finance of £2,672 which Miss W settled when she took out the Moneybarn agreement. There are only three defaults on the file, suggesting that the other one Moneybarn noted was from before November 2016. But the most recent default was in July 2020, just four months before Moneybarn decided to lend to Miss W. It's also clear from the credit file that Miss W used short term loans on several occasions, including in early 2020. And I can see she missed some payments in 2020, including four monthly payments of £150.

Miss W had told Moneybarn she was living with her parents, so they didn't include any housing expenditure when conducting an income and expenditure assessment. Overall this assessment suggested Miss W would have disposable income of nearly £700 (from monthly income of around £1,285). But the total amount of credit, and the recent defaults and missed payments suggest that might not be the case – they're indicators that someone might be in financial difficulties. I'm inclined to say these indicators mean that Moneybarn should have carried out further checks to ensure that the repayments would be sustainably affordable for Miss W.

Loan 2

By September 2022, Moneybarn had almost two years of Miss W's payment history to include in their assessment. The monthly repayments under the second loan were less than were required under the first loan, and Miss W had only missed one payments under the first loan, and appears to have made up the shortfall promptly. In addition, Miss W's stated salary had increased to £1,336 since their first assessment, and her living circumstances don't appear to have changed – Moneybarn again noted that Miss W was living with her parents.

Moneybarn noted from Miss W's credit file that she hadn't had any defaults since the last agreement and her outstanding default balance was now zero. But they said her total active credit balances had increased – to nearly £7,700. I'm not sure how Moneybarn calculated this number. From what I can see, Miss W had credit card balances totalling around £850, a telecoms balance of £126, a loan with a balance of £2,500, and the *existing Moneybarn loan with a balance of nearly £7,400. She also appears to have still had an outstanding balance on a defaulted account of £680.*

Overall, although Miss W's credit balance had increased by the time of the second loan, the majority of this was down to the Moneybarn agreement. Without that, Miss W had just two moderate credit cards, one loan, and a telecoms loan active. There was no evidence of recent defaults or missed payments and she'd been regularly paying Moneybarn around £274 per month – more than she needed to pay them under the second agreement.

Moneybarn checked Miss W's income using third party data, and used statistical data to estimate her expenditure. CONC allows a lender to do this unless they have reason to believe the statistical data wouldn't be appropriate. I've not seen anything to suggest that would be the case at the time of the second lending decision. On that basis I'm inclined to say Moneybarn's checks were proportionate.

<u>If Moneybarn had done proportionate checks in November 2020, what would they have found?</u>

A proportionate check would have involved Moneybarn finding out more about Miss W's income and expenditure to determine whether she'd be able to make the repayments in a sustainable way.

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

I'm not saying a business normally has to obtain bank statements during their affordability checks, but I think in Miss W's case it would have been very difficult to gain an understanding of her expenditure without looking at the statements. So I'm inclined to say that Moneybarn would have needed to look at her bank statements to carry out a proportionate affordability assessment.

If Moneybarn had looked at Miss W's statements, they'd have seen significant levels of spending on gambling. Whilst some of these transactions are clearer than others, it appears Miss W was spending on average around £1,000 per month, or 75% of her income on gambling during the three months prior to the lending decision. It seems clear the gambling was a significant contributor to the adverse state of Miss W's credit file and on that basis I'm inclined to say that if Moneybarn had carried out proportionate checks they'd have had to decide it would be irresponsible to lend to Miss W.

<u>Did Moneybarn make a fair lending decision in September 2022?</u>

Moneybarn used Miss W's monthly income figure of £1,336 and estimated her expenditure at around £990. That gave her around £346 of disposable income from which to make the repayments of £267 per month – leaving her with around £80 per month.

However, in their income and expenditure assessment, Moneybarn only included £13 per month for external credit. I would expect this figure to be much higher – Miss W needed to make loan repayments of £247 per month for a loan taken out in August 2022. And she was paying her telecoms provider £7 per month as well as needing to make payments on her credit cards which I'd estimate at around £40 per month. So instead of £13, Miss W's payments for external credit would actually be around £300. On that basis the loan wouldn't have been affordable for Miss W. I'm inclined to say Moneybarn shouldn't have made this loan either."

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.

Moneybarn accepted my provisional decision and Miss W said she had nothing to add - so my final decision is unchanged from my provisional findings.

Putting things right

As I don't think Moneybarn should have approved either loan, I don't think it's fair for them to charge any interest or other charges under the agreements. But Miss W has had the use of both vehicles – the first for 22 months, and the second for 13 months so far. I think it's fair she pays for that use. There isn't an exact formula for working out what fair usage should be. In deciding what's fair and reasonable, I've thought about the amount of interest that was charged, the usage Miss W likely had of the vehicles and what her costs to stay mobile might have been if she hadn't entered into the agreements.

Having done so, I think it's fair Miss W pays £150 for every month she had use of the first vehicle, and £190 for every month she had use of the second vehicle. So it would be fair and reasonable for Moneybarn to retain £5,770.

To settle Miss W's complaint, Moneybarn should do the following:

- End the second agreement with nothing further to pay unless this has already been done. Moneybarn will be entitled to collect the vehicle.
- Refund all the payments Miss W has made against both agreements, less £5,770 for fair usage.
  - If Miss W has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
  - If Miss W has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Moneybarn have received the fair usage amount, they should remove any adverse information recorded on Miss W's credit file regarding the agreement.

If Moneybarn consider tax should be deducted from the interest element of my award they should provide Miss W a certificate showing how much they've taken off so that Miss W can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained above, I'm upholding Miss W's complaint. Moneybarn No. 1 Limited need to take the steps outlined above to settle the matter. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 21 December 2023.

Clare King
Ombudsman