

Complaint

Mr L complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He's said that it was unaffordable and proper affordability checks weren't carried out.

Background

In October 2020, Moneybarn provided Mr L with finance for a used car. The purchase price of the vehicle was £12,299.00. Mr L paid a deposit of £4,099.00 and took out a conditional sale agreement with Moneybarn for the remaining £8,200.00. The loan had interest and charges of £6,240.28 and a 48-month term. This meant that the total amount to be repaid of £14,440.28 (not including Mr L's deposit) was due to be repaid in 47 monthly instalments of £307.24.

Mr L complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr L's complaint was considered by one of our investigators. He didn't think that Moneybarn had done anything wrong or treated Mr L unfairly. So he didn't recommend that Mr L's complaint should be upheld. Mr L disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr L's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr L's complaint. I'd like to explain why in a little more detail.

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr L before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn says it agreed to this application after Mr L provided details of his monthly income and it also carried out credit searches on Mr L, which had shown Mr L had previously defaulted on credit accounts with the most recent of these being 10 months prior to this application.

The credit search also showed that Mr L had no county court judgments ("CCJ") recorded against him. In Moneybarn's view, notwithstanding Mr L's previous difficulties, when the amount he already owed plus a reasonable amount for Mr L's living expenses were deducted from his monthly income the monthly payments for this agreement were still affordable.

On the other hand, Mr L says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr L and Moneybarn have said.

The first thing for me to say is that I'm not persuaded that the checks Moneybarn carried out did go far enough. For example, I'm not persuaded that it was reasonable to rely on an estimate of Mr L's living costs given what Moneybarn saw on its credit checks. And I think that this ought to have led Moneybarn to do more to verify Mr L's actual regular living costs. That said, I don't think that obtaining further information on Mr L'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 L has provided about his finances at the time appears to show that when his visible committed regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

In reaching this agreement I've considered that the real reason for Mr L's inability to make his payments to this agreement wasn't due to his existing credit commitments or his living expenses. And that this is readily apparent when Mr L's bank statements are considered. I'm sorry to hear of Mr L's difficulties and that making his payments were difficult as a result of this. However, the question I need to determine is whether Moneybarn knew or ought to have known about this - not just whether this was the case.

And to decide this question, I need to keep in mind what Moneybarn needed to do in order to answer the questions its initial checks left unanswered. In other words, Moneybarn needed to work out what Mr L's actual regular living expenses were (bearing in mind his credit commitments were already validated by the credit search carried out). In these circumstances, it isn't the case that a full financial review needed to be carried out.

Checking bank statements wasn't the only way for Moneybarn to have found out more about Mr L's actual living costs. This is extremely important for me to emphasise here because it doesn't automatically follow that bank statements will be reviewed when a lender's checks aren't sufficient.

For example, a lender could instead obtain copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr L has now provided us with. I think that this is particularly the case given this was a first agreement and Mr L was being provided with a car rather than cash.

So I don't think that Moneybarn could reasonably be expected to have known about the nature and extent of Mr L's additional spending. And, in these circumstances, I don't think that it is fair and reasonable for these to now be taken into account.

Overall and having carefully considered everything, while I'm not persuaded that Moneybarn's checks before entering into this conditional sale agreement with Mr L 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 is the case, I don't think that Moneybarn acted unfairly or unreasonably towards Mr L. So I'm not upholding this complaint. I appreciate that this will be disappointing for Mr L. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding Mr L's complaint, I would remind Moneybarn of its obligation to exercise forbearance and due consideration (bearing in mind what it is now aware of) in the event that it intends to collect the remaining payments on the agreement and Mr L is experiencing financial difficulty.

My final decision

My final decision is that I'm not upholding Mr L's complaint.

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

Jeshen Narayanan
Ombudsman