DRN-4481396

The complaint

Mrs K is complaining about Moneybarn No. 1 Limited. She says they shouldn't have lent to her because the repayments weren't affordable.

What happened

In November 2014, Mrs K took out a conditional sale agreement with Moneybarn to finance the purchase of a car. She borrowed £9,600 – the cash price of the vehicle. The agreement required Mrs K to make 59 monthly repayments of £294.40. Mrs K struggled to make the repayments almost immediately and Moneybarn issued a number of default notices. But Mrs K made up the missed payments and settled the agreement in August 2020.

Mrs K complained to Moneybarn in February 2023, saying Moneybarn had failed to conduct appropriate affordability checks before lending to her. She said she'd struggled financially in a number of areas and suffered distress when being chased by Moneybarn for the debt.

In response, Moneybarn said Mrs K had complained too late. However, when Mrs K brought the complaint to our service, we decided she had complained in time. So Moneybarn investigated and told us they had carried out reasonable and proportionate checks, including checking Mrs K's credit file and reviewing her payslips to verify her income.

Our investigator disagreed though. He said Mrs K's credit file contained several indicators that Mrs K might have been struggling financially so it would have been proportionate for Moneybarn to gain a more thorough understanding of Mrs K's financial circumstances before deciding to lend to her. But our investigator said if Moneybarn had carried out proportionate checks, they'd have seen the agreement was affordable for Mrs K at the time – so he didn't uphold Mrs K's complaint.

Mrs K rejected our investigator's view. She said her husband was suffering with ill health at the time and was only working intermittently. On top of that, she said, he had a gambling addiction, which meant he wasn't covering his share of the bills. So Mrs K said it wasn't reasonable to suggest her expenditure was only half of the household expenditure. In addition she said she was supporting her daughter at the time. And she was supposed to be making repayments on a secured loan against her house which had defaulted. Mrs K asked for a decision – and the matter came to me.

I issued a provisional decision on 30 October 2023, saying I was inclined to uphold Mrs K's complaint. 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.*

<u>Did Moneybarn carry out proportionate checks?</u>

Moneybarn said they'd noted Mrs K had caring responsibilities, and that she was employed full-time and a homeowner. They checked Mrs K's income to payslips and verified the amount as £1,815 per month.

Moneybarn said they'd also looked at Mrs K's credit file. They haven't kept a copy but they've told us this showed Mrs K had active credit balances totalling £1,251. They said it showed she'd had one cash advance in the preceding three months, a County Court Judgment which was over five years old, and three defaults. They said the total original default balance was £29,100, of which £25,000 was still outstanding at the agreement date. And they said the most recent default was ten months prior to the agreement.

Because of the size of the default balances, and the fact that one of them had only defaulted ten months prior to the agreement, I don't think these checks were proportionate. The agreement required Mrs K to make repayments of over 16% of her monthly income for five years, leaving her with around £1,500 of the £1,815 to cover her living expenses and credit commitments.

I haven't seen any evidence that Moneybarn made any assessment of Mrs K's expenditure. And without doing so I don't think it was fair to conclude that Mrs K would be able to make the repayments sustainably over the five years of the agreement.

<u>If Moneybarn had carried out proportionate checks, what would they have found?</u>

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

I've looked at statements for Mrs K's bank accounts for the three months leading up to her application to Moneybarn. I'm not saying Moneybarn needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Mrs K's income and expenditure at the time the lending decision was made.

The bank statements show that Mrs K's income from employment was regular and roughly the same amount each month. On average her net monthly income across August to October 2014 was £2,060. She had no other regular sources of income.

Looking at the monthly average of regular payments from Mrs K's bank statements, these amounted to around £320 on mortgage arrears, £363 repaying a secured loan, £265 on gas, electricity and water, £200 on phone, internet and TV services, £142 on insurances, and an average of £100 per month on debt repayments. She was also committed to £51 per month on gym memberships and was spending around £200 per month on food. On top of this, Mrs K was supporting her daughter who was a student at the time – on average she transferred around £300 per month to her. The total of this expenditure, all of which was either committed or non-discretionary, was £1,941.

Mrs K's told us her husband was only able to work intermittently at the time. She was in arrears on a loan secured on her house and also on her mortgage. And she was regularly in her overdraft on one account, had bounced direct debits on another account, and was using expensive short term loans. She's told us she was responsible for the household expenditure, and that's evident from her statements – I can't see any significant contributions into her bank account and she had very little money to spare.

Taking everything together, I'm inclined to say if Moneybarn had done proportionate checks, they'd have found that Mrs K's income only exceeded her committed and non-

discretionary expenditure by around £100 per month so she wouldn't be able to make repayments of nearly £300 per month without borrowing elsewhere or missing other priority payments. On that basis I don't think Moneybarn should have lent to Mrs K."

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.

Mrs K accepted my provisional decision, and Moneybarn didn't respond. So I've nothing further to add – my findings are unchanged from those set out above.

Putting things right

As I don't think Moneybarn should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreements. But Mrs K has had the use of the vehicle, for the term of the agreement and beyond. I think it's fair Moneybarn retain an amount for that use, and I'm satisfied that amount should be the cash price of the car, being £9,600.
To settle Mrs K's complaint therefore, Moneybarn should do the following:

- End the agreement with nothing further to pay unless, as it seems, this has already been done.
- Refund all the payments Mrs K has made, less £9,600 for fair usage.
    - If Mrs K 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 Mrs K 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 Mrs K's credit file regarding the agreement.

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

My final decision

As I've explained above, I'm upholding Mrs K'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 Mrs K to accept or reject my decision before 26 December 2023.

Clare King
Ombudsman