DRN-4538296

The complaint

Mrs H is complaining about Moneybarn No.1 Limited (Moneybarn). She says they were irresponsible in lending to her as the loan was unaffordable. Mrs H'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 February 2019, Mrs H took out a conditional sale agreement with Moneybarn to finance the purchase of a car. She paid no deposit and borrowed £7,295 - the cash price of the vehicle. The agreement required her to make 59 monthly repayments of £245.96 – the total amount payable was over £14,500. Mrs H made her first three repayments on time but her fourth direct debit bounced, and her payments have been sporadic ever since. Moneybarn issued a default notice in October 2022 but Mrs H still has the car.

In January 2023, Mrs H complained about Moneybarn, saying they shouldn't have lent to her because the loan was unaffordable. She said she was experiencing financial difficulties at the time of entering into the credit agreement and Moneybarn would have discovered this if they'd done proper checks. Mrs H said at the time of her application she'd recently taken out a second mortgage of £50,000 to clear some of her and her partner's debts. She also commented that she'd been struggling with her mental health at the time of the application.

In their response, Moneybarn said they had carried out checks before deciding to lend to Mrs H. They said they'd checked her credit report and used the payslips Mrs H provided to verify her monthly income of just over £1,600. They added that they'd calculated Mrs H's non-discretionary expenditure as around £652. Using those figures they'd determined the agreement was affordable for Mrs H. Moneybarn said Mrs H hadn't told them of her mental health difficulties at the time of applying. And they said since the start of the agreement Mrs H had given a number of reasons for struggling with her repayments – including moving house and changing employment, as well as changes in personal circumstances. They said these weren't foreseeable and that they'd allowed Mrs H multiple payment plans through those changes.

One of our investigators then looked into the complaint but didn't uphold it, saying that although she thought Moneybarn hadn't completed proportionate checks, she hadn't seen enough evidence of Mrs H's financial circumstances at the time of the application to say that the agreement was unaffordable for her.

Mrs H provided some additional information and said she didn't have access to anything further. She asked for a decision and the complaint came to me. I issued a provisional decision on 7 December 2023, saying:

> *"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?

Moneybarn told Mrs H they'd conducted a full credit search and checked her income using her payslips. When providing information to us they also said they'd used Office for National Statistics (ONS) data to estimate Mrs H's expenditure but it's not clear how they've arrived at the figures they used.

Whether or not these checks were proportionate depends on various factors, including the term of the loan, cost of credit, and overall amount repayable – as well as what Moneybarn found during their checks. Given the loan was for five years, at a high interest rate, and Mrs H would need to pay back over £14,500 over that time, the checks needed to be thorough.

Moneybarn haven't sent us a copy of the credit report they used. But they've told us it showed Mrs H had a CCJ registered 22 months before her application and multiple defaults with the most recent being 3 months before her application. To get a clearer picture of Mrs H's credit history at the time I've looked at the credit report she sent us.

This shows that Mrs H had three defaults registered against her within the 16 months prior to her application – one in December 2018 for £1,450, one in March 2018 for £77 and one in January 2018 for £321. And it shows she had an unsecured loan and a secured loan with monthly repayments across both totalling £517. Finally, it shows she had revolving debt with balances totalling around £1,140.

The recent defaults suggest that Mrs H might have been experiencing some financial difficulties before Moneybarn lent to her. They're indicators that Mrs H's expenditure might not be in line with what the ONS data said. And taking this together with the term of the loan and its total cost, I'm not satisfied that it was proportionate for Moneybarn to rely solely on this data – I think they should have done more to find out about Mrs H's expenditure.

Looking at Mrs H's payslips, her income varied significantly, being £1,175 in January 2019 and £2,041 in February 2019. Her payslips in both months included some overtime but her basic pay also seems to have varied significantly. Moneybarn appear to have taken an average of the two months' net pay. I'm not persuaded this was appropriate given the wide variation – I'm inclined to say Moneybarn should have done more to understand Mrs H's regular income.

If Moneybarn had done proportionate checks, what would they have found?

Proportionate checks would have involved Moneybarn finding out more about Mrs H's income and expenditure to determine whether she'd be able to make the repayments in a sustainable way.

I asked Mrs H about the discrepancy in her income and she explained she increased her hours in early 2019. She said February 2019 also included a lot of overtime and her basic take home pay at the time was £1,529 per month. Mrs H sent evidence of her income for March and April 2019 – and the average of these two was around £1,700 net pay. Having considered all this, I think if Moneybarn had done proportionate checks they'd have still used a regular income figure for Mrs H of around £1,600 per month.

Looking at Mrs H's expenditure is more complicated. Her wages were paid into her partner's account at the time and she's told us most of the bills were paid from that account. But the main mortgage was from her partner's account, and some other non-

discretionary expenditure, for example groceries, was from her account. She's said the intention was that bills were split 50:50. Mrs H and her partner are now separated and she has limited access to bank statements from the time. But she's been able to provide statements for January 2019 for her account and for the account her salary went into. And she's provided evidence of the mortgage payments that were going out of her partner's account but which she was contributing towards.

Taking all of this evidence together, I can see Mrs H and her partner at the time were paying £543 per month for their primary mortgage and £748 for two second charge mortgages. Halving this, Mrs H's share was £645 per month towards loans secured on her home. She had another, unsecured loan, for which the monthly repayments were £292, but I've also halved this because it seems all of the finances were shared. So I've assumed Mrs H was covering £146 towards repayments of that loan. Similarly, 50% of all the other payments to creditors was around £120 per month. So in total, Mrs H's share of payments to creditors was around £911 per month.

On top of this were payments for utilities, TV and phone, insurance, food and fuel, childcare and road tax. Looking at the January 2019 bank statements and considering what Mrs H might have told Moneybarn at the time, I think it's likely they'd have estimated Mrs H's contribution to these costs at around £535 per month if they'd done proportionate checks. I note this figure is very close to the total of the ONS data Moneybarn had for bills and basic living costs, which I'm inclined to say supports my analysis.

So in total, Mrs H's share of the household non-discretionary expenditure in January 2019 was around £1,446 per month. I think this was representative of her recurring expenditure. And her recurring income was around £1,600 per month. So this would have left Mrs H with monthly net disposable income of around £150 – not enough to cover payments of £246 per month.

In summary I think if Moneybarn had done proportionate checks, they'd have found Mrs H's non-discretionary expenditure was much higher than they'd estimated and the loan repayments wouldn't be affordable for her."

Both parties accepted my provisional decision.

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.

Both parties accepted my provisional decision. So I've nothing further to add – my findings are unchanged from those set out above and the redress I've set out below is the same as was described in my provisional decision.

Putting things right

As Moneybarn shouldn't have approved the loan, it's not fair for them to charge any interest or other charges under the agreement. But Mrs H has had use of the car for around 59 months, and it's fair she pays for that use. Mrs H has already paid more than the cash price of the vehicle at the time she took out the agreement. So to settle her complaint, Moneybarn should do the following:

- End the agreement with nothing further to pay and transfer ownership of the vehicle to Mrs H.

- Refund all the payments Mrs H has made in excess of £7,295, representing the original cash price of the car. Moneybarn should add 8% simple interest per year from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mrs H's credit file regarding the agreement.

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

My final decision

As I've explained above, I'm upholding Mrs H's complaint. Moneybarn should take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 February 2024.

Clare King
Ombudsman