DRN-4607576

The complaint

Mr R, via a third party, complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable.

What happened

In August 2020 Mr R entered into a conditional sale agreement with Moneybarn for a used car costing £19,500. Under the terms of the agreement, everything else being equal, Mr R undertook to make an advance payment of £1,200 followed by 59 monthly repayments of £599.95 making a total repayable of £36,597.05 at an APR of 34.9%.

Mr R complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn didn't uphold the complaint. It said that the finance provided was assessed fairly and the amount offered was affordable.

Mr R's complaint was considered by one of our investigators. They came to the view that Moneybarn hadn't made an unfair lending decision. In other words, they didn't uphold Mr R's complaint.

Mr R disagreed with our investigator and so his complaint has been passed to me for review and 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.

In this decision I've focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument (including those submitted by Mr R in response to the investigator's view) to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add I've not carried out a form of compliance check or sought to enforce the regulator's rules. What I've done is looked at everything provided and decided whether Mr R has lost out due to Moneybarn failing to act fairly and reasonably in its dealings with him.

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 R's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr R'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 Mr R could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Moneybarn carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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 R provided details of his monthly income, which it verified with a credit reference agency. It also says that it carried out a credit search on Mr R which showed that he had no defaults, delinquencies, court judgments or insolvency information recorded against him and his existing borrowing (which didn't include any short term or high cost credit) and his monthly credit commitments appeared affordable.

In Moneybarn's view, taking everything into account, the monthly payments for this agreement were affordable.

On the other hand, Mr R says the agreement was unaffordable from the outset and this could and should have been apparent to Moneybarn.

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

The first thing for me to say is that like the investigator I'm not persuaded that the checks Moneybarn carried out did go far enough. Given what the credit search carried out showed, the monthly payments, the term of the agreement and the total cost of the loan I think Moneybarn should have carried out further checks into Mr R's actual financial circumstances.

In these circumstances, I think that Moneybarn ought to have done more to ascertain Mr R's actual regular non-discretionary expenditure. That said, I don't think that Moneybarn obtaining further information on Mr R's actual regular non-discretionary expenditure would have made a difference to its decision to lend in this instance.

I say this because having reviewed what Mr R has said and his bank statements for the months of June, July and August 2020, which I'm satisfied I can rely on to get a good understanding of Mr R's financial circumstances in August 2020, I'm satisfied that it's reasonable to conclude that:

- his net monthly income was £2,835
- he was receiving another regular credit of £55 a month
- he had existing credit commitments of approximately £950 a month
- he had other commitments (in respect of utilities, insurance, phone and tv) of approximately £420 a month
- he had a commitment (for storage) of approximately £125 a month

- he had commitments (for an existing car including tax, insurance and fuel) of approximately £160 a month
- based on running costs of the car purchased by Mr R being £160 a month, identical to what he was paying for an existing car, he had a monthly surplus income of approximately £1,395 for food, discretionary costs and this agreement
- discounting the monthly credit of £55 a month and allowing for further non-discretionary costs of £200 a month, Mr R had a monthly surplus income of approximately £1,140 for food, discretionary costs and this agreement
- his account was only overdrawn for one day (£33) between June and August 2020 suggesting he wasn't reliant on an overdraft for 'day to day living'

Furthermore, whilst this isn't always indicative that a loan was affordable at the outset, I can see that Mr R never missed any of the monthly agreement payments required of him before he took the decision to voluntary terminate the agreement in July 2023. And this isn't normally consistent with a borrower being unable to afford the monthly repayments.

So I think that Moneybarn obtaining further information is likely to have led it to conclude that when Mr R's regular non-discretionary 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.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 May 2024.

Peter Cook
Ombudsman