DRN-4617852

The complaint

Mr M complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement because it didn't carry out reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Mr M entered into a conditional sale agreement with Moneybarn in June 2020 for a used car. The cash price of the car was £7,590 and Mr M made an advance payment of £240. The total amount payable was £14,456.64 and the term of the agreement was 60 months. Mr M was to pay 59 equal monthly payments of £240.96.

Mr M complained to Moneybarn in May 2023 about irresponsible lending. Mr M wasn't happy with Moneybarn's response so referred the complaint to our service to be investigated.

On 17 January 2024 I issued a provisional decision. 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 complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the agreement in a sustainable way?*</u>
>
> *Moneybarn said it independently verified Mr M's monthly income as £1,550 using credit reference agency information. It said Mr M confirmed he was in full time employment. It said Mr M signed the contract on 17 June 2020 citing he understood the terms and conditions.*
>
> *Moneybarn said it reviewed Mr M's credit commitments from information provided by credit reference agencies and recorded his monthly credit commitments as £395. It hasn't provided a copy of the search as this is no longer available, but it has provided a summary of the results. Moneybarn's summary said Mr M had eight defaulted accounts, and the most recent was 27 months ago. It said the outstanding balance was £5,200.*
>
> *Moneybarn also confirmed it used data from the Office of National Statistics (ONS) to estimate Mr M's non-discretionary expenditure. I don't think this was sufficient in the circumstances. This is in light of the information Moneybarn had about Mr M's previous financial difficulties (including the number of defaulted accounts and the outstanding default balance), as well as the proportion of Mr M's income which would*

be going towards repaying credit commitments. I also note housing costs aren't included in the estimate. In the circumstances, I think further information should have been requested about Mr M's specific financial circumstances.

Overall, I'm not satisfied Moneybarn completed reasonable and proportionate checks here. I've taken into account that the loan was for five years, at a high interest rate and Mr M would need to pay back around £14,456. I think it ought to have done more to understand Mr M's expenditure, so it had an accurate picture of his non-discretionary spend. I don't think it was reasonable to rely on ONS data in these circumstances. Whilst the previous default was some time ago, I think the number of defaults and the outstanding defaulted balance should have indicated to Moneybarn to check further.

<u>Would reasonable and proportionate checks have shown that Mr M would have been able to repay the agreement in a sustainable way?</u>

As I'm not satisfied Moneybarn completed reasonable and proportionate checks, I need to decide whether such checks were likely to have shown the agreement was affordable. To do this, I've reviewed the bank statements Mr M has been able to provide for the three-month period leading up to the lending decision. There are a couple of pages missing from the statement information Mr M has provided and he has confirmed he is unable to provide this now. But I've reviewed what I do have in order to reach a decision.

For clarity, I'm not saying Moneybarn needed to obtain bank statements in order to complete reasonable and proportionate checks. However, the statements do show what information Moneybarn was likely to have gathered had it done so.

I've reviewed the statements and can see salary income in May 2020 and April 2020. This averaged around £1,447. From what I've seen, I have no reason to suspect this was largely different in March 2020. Moneybarn also verified Mr M's income at around £1,550.

When our Investigator reviewed Mr M's income, they included payments Mr M received from his mother and girlfriend. It is sensible to consider whether it's likely this would have been considered as part of Mr M's regular income at the time the lending decision was made. The payments may have come to light through further checks, and I note income doesn't always have to be from a consumer's wages.

Here there were a number of incoming transactions which totalled around £3,266 across the three months leading up to the lending decision. However, I'm mindful this also included what Mr M has described as a one-off payment from Mr M's mother of £1,200 which he says she sent to him when he was struggling.

Having reviewed the transactions and the particular circumstances of this case, I don't think it would be reasonable to rely on this as income for the purposes of assessing Mr M's affordability. Although he couldn't explain every transaction, he said some of them were to cover payments he made for eating out or cash he'd handed to them. He also said he needed to ask for money from his mother and girlfriend in order to meet his credit commitments.

Additionally, there also doesn't appear to be any sort of agreement between the parties for regular payments to be made (for example an allowance). It doesn't seem he was making any payments towards things like food or bills on behalf of the household and he didn't have many living costs himself outside of his credit *commitments. Mr M and his girlfriend paid Mr M's mother directly and separately for the household costs. Also, it wouldn't be clear how sustainable such payments were for Mr M's girlfriend and mother.*

For these reasons, I'm unable to conclude the payments were regular and sustainable income which Mr M could expect to rely on throughout the duration of the agreement. Therefore, I don't think it would have been reasonable for Moneybarn to include these as income – so I'm inclined to say if they'd done proportionate checks, they could have reasonably used an income figure of around £1,447.

In respect of his expenditure, I've seen in May 2020 Mr M paid around £723 towards his credit commitments. This included a guarantor loan for £395.25 and payments towards debt recovery agencies. I don't have a full picture of the payments he made in the other months because of the missing pages. Nevertheless, I can see similar corresponding payments from the other months, and I can see some were set up as direct debits.

I've also seen he spent around £463 on other living costs. This includes contributions he paid to his mother for rent and utilities. So, his non-discretionary expenditure seemed to be around £1,186 based on the information I have seen. Taking his income into account, this meant he was left with disposable income of around £261. This isn't a sufficient disposable income to ensure the payments of £240.96 were affordable. I'd also note Mr M did make some petrol payments but there would also be other car costs including tax and insurance which would also need to be covered from the disposable income.

Therefore, I don't think Moneybarn completed reasonable and proportionate checks in order to satisfy itself this agreement was affordable for Mr M. And I think had it done so, those checks were likely to show the agreement wasn't affordable because he didn't have sufficient disposable income to meet his commitments.

I gave both parties the opportunity to provide any more comments and evidence providing they did so by 13 February 2024. Both parties have confirmed they accept the 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.

Having done so, I see no reason to depart from the conclusion I reached in my provisional decision. So, for the reasons outlined above, I remain of the view that had Moneybarn carried out reasonable and proportionate checks its likely they would have shown the agreement wasn't affordable.

Putting things right

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr M should therefore only have to pay the original cash price of the car, being £7,590. Anything Mr M has paid in excess of that amount should be refunded as an overpayment.

To settle Mr M's complaint Moneybarn No.1 Limited should do the following:

- Refund any payments Mr M has made in excess of £7,590, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr M's credit file regarding this agreement.

*If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons outlined above, I'm upholding this complaint and Moneybarn No.1 Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 March 2024.

Laura Dean
Ombudsman