

## **The complaint**

Mr D complains that Moneybarn No.1 Limited (Moneybarn) irresponsibly granted him a conditional sale agreement that he couldn't afford to repay.

## **What happened**

My initial conclusions were set out in my provisional decision issued on 17 January 2024. In my provisional decision I explained how I intended to resolve the complaint. I said:

*In February 2017 Mr D acquired a vehicle financed by a conditional sale agreement from Moneybarn. Mr D was required to make 59 monthly repayments of £162.51. The total amount repayable under the agreement was £9,588.68. Mr D believes Moneybarn failed to complete adequate affordability checks. Mr D says that if it had it would've been clear the agreement wasn't affordable.*

*Moneybarn disagreed. It said it carried out an adequate assessment which included a full credit search, income and employment verification via payslips, and a calculation of the monthly repayment versus his total income. It said these searches showed Mr D's existing borrowing levels were within its lending criteria and that whilst he had defaults, the most recent was 38 months prior to the application. Moneybarn also confirmed that the searches showed Mr D had a County Court Judgment (CCJ) on his file from 16 months prior to his application. Moneybarn said the searches showed his maximum affordable monthly repayment was calculated as £419.08. It also highlighted that Mr D had signed confirming its affordability.*

*Our Investigator didn't recommend that the complaint should be upheld. They thought Moneybarn's checks were proportionate and that the information it had available at the time showed that the lending was fair.*

*Mr D didn't agree. He felt that adequate checks would have shown the agreement was not affordable. Our Investigator asked for a completed credit file and further bank statements to consider the matter further, but Mr D and his representative confirmed that they were unable to provide any further evidence. He asked for an Ombudsman to issue a final decision on the matter.*

## **What I've provisionally 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.*

*Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.*

*We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr D's complaint. Moneybarn needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit*

Sourcebook (CONC). In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr D before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr D's complaint. These two questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan without experiencing significant adverse consequences?
  - If so, did it make a fair lending decision?
  - If not, would those checks have shown that Mr D would've been able to do so?
2. Did Moneybarn act unfairly or unreasonably in some other way?

Did Moneybarn complete a reasonable and proportionate affordability check?

The Financial Conduct Authority (FCA) was the regulator when Mr D took out his agreement with Moneybarn. Its rules and guidance obliged Moneybarn to lend responsibly. Moneybarn needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. In making the creditworthiness assessment or the assessment required by CONC 5.2.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.
2. The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement.

When considering the rules and guidance in place in 2017, Moneybarn needed to carry out reasonable and proportionate checks to be able to assess the potential for the credit agreement to adversely impact Mr D's financial situation. It is from this standpoint and criteria that I've approached my decision.

Moneybarn says that Mr D's application underwent credit and underwriting checks, and

*these didn't raise any concerns. His income was verified against payslips, and Moneybarn also calculated his maximum monthly repayment as far higher than the actual repayment. It felt that these searches were reasonable and proportionate in this scenario.*

*I'm not satisfied that Moneybarn gathered a reasonable amount of information from Mr D about his expenditure prior to approving the finance. I understand Moneybarn made the decision to lend on the basis that it felt his accounts were being managed well and found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Mr D.*

*Moneybarn hasn't provided a copy of the credit check it completed. And Mr D has also been unable to provide a completed credit file. So, I've had to rely on the summary Moneybarn has provided about what the credit search showed at the time. At the time of the application Mr D had a CCJ issued only 16 months prior to the finance being approved and was still making payments towards his historically defaulted accounts. I do think this all ought to have indicated Mr D may have been struggling financially and so I would've expected Moneybarn to take further consideration of Mr D's specific financial situation before approving any lending. The checks completed at the time do not seem to have sought an understanding of Mr D's expenditure compared to his verified income.*

*I want to be clear that I've considered Moneybarn's position about the number and type of checks that it did complete. And I understand that its searches attempted to approximate what Mr D's maximum monthly repayment would be. However, considering the possibility of financial difficulties in his specific circumstance I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much he actually had left to spend after his existing commitments.*

*Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr D's credit file, I think it would have been proportionate for Moneybarn to have verified Mr D's expenditure – including costs such as food, petrol and housing. Without knowing what his regular committed expenditure was Moneybarn couldn't have got a reasonable understanding of whether the agreement was affordable for his circumstances.*

*As Moneybarn don't appear to have sought a reasonable understanding of Mr D's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. Moneybarn needed to do more in the circumstances before agreeing to lend. Without knowing what his regular committed expenditure was, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable for him. I'm satisfied Moneybarn didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.*

#### *Did Moneybarn make a fair lending decision?*

*I've considered what Moneybarn would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Mr D would have told Moneybarn had it asked about his regular expenditure. I don't think Moneybarn necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mr D's statements from December 2017 to February 2017 as an indication of what would most likely have been disclosed.*

*However, Mr D and his representative have only provided bank statements which appear to be for a secondary account. I say this because there are very few transactions present for the period, his wage does not appear to be paid into the account and there are a number of internal transfers coming from another account. From the information I can see I'm not satisfied that the statements reflect his primary account where the majority of his spending*

*took place. As Mr D has not provided his primary bank account statements or provided a full credit report (I've only been provided snippets in relation to the payment history for the account with Moneybarn) I'm unable to reasonably understand what Mr D's actual expenditure looked like at the point of sale. So, I'm unable to conclude that proportionate checks would have shown the agreement was unaffordable. I simply don't have enough evidence to suggest this.*

*I understand that Mr D's representative has said they'll be unable to provide any further evidence to support the investigation – but I'd reiterate that I'd require further evidence to make any further findings on this matter. So, in the absence of further evidence suggesting otherwise, it follows that my conclusion at this stage must be that I think Moneybarn made a fair lending decision.*

*Did Moneybarn act unfairly or unreasonably in some other way?*

*I'm not persuaded from the submissions made to date that Moneybarn acted unfairly or unreasonably in some other way.*

### **My provisional decision**

*For the reasons I've explained, I intend to not uphold this complaint.*

I asked for both parties to provide me with any further submissions they had before I issued my decision. Neither party provided further comments.

### **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.

As no further submissions have been made by either party, I see no reason to depart from the conclusion I reached in my provisional decision. For the reasons already outlined I don't uphold this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 March 2024.

Paul Clarke  
**Ombudsman**