

The complaint

Miss M is complaining about Moneybarn No.1 Limited (Moneybarn). She says they were irresponsible in lending to her as the loan was unaffordable.

What happened

In July 2019, Miss M took out a conditional sale agreement with Moneybarn to finance the purchase of a car. She paid no deposit and borrowed £7,995 - the cash price of the vehicle. The agreement required her to make 59 monthly repayments of £269.56. After her second direct debit bounced she made this up with a card payment and her payments were then on time until April 2020 when Miss M was granted a payment holiday for three months. She resumed making payments but they became more sporadic from August 2021 onwards. Moneybarn issued Miss M a termination notice in January 2023 and later took her to court to try to repossess the vehicle. The court issued a suspended return of goods order in August 2023.

In January 2023, Miss M complained about Moneybarn, saying they shouldn't have lent to her because the loan was unaffordable and they'd charged her roughly twice the cost of the car. She was upset that Moneybarn were seeking to repossess the car when she's already paid more than the cash price and complained that they hadn't given her enough warnings.

In their response, Moneybarn said that they'd sent a default notice to Miss M in early December 2022. They said this explained the actions they might take. Moneybarn also said that before sending the default notice they'd repeatedly asked Miss M to contact them. So they said they'd given Miss M enough notice for her to prevent the termination of the agreement. In relation to the cost of the agreement, they said the interest rate and total cost is clearly set out in the documents before a customer signs up to the agreement. Miss M signed this agreement so they were happy she had this information before choosing to commit to it.

Turning to the affordability of the agreement, they said they had carried out checks before deciding to lend to Miss M. They said they'd checked her credit report and used a credit reference agency (CRA) to verify Miss M's stated monthly income of £1,563. They added that they'd used Office for National Statistics (ONS) data to estimate Miss M's non-discretionary expenditure and therefore her net disposable income. Using those figures they'd determined the agreement was affordable for Miss M.

One of our investigators then looked into the complaint but didn't uphold it, saying that although he thought Moneybarn hadn't completed proportionate checks, they'd have likely decided the agreement was affordable for Miss M if they had. In relation to her other complaint points, he said the interest rate and overall cost of the agreement was clearly disclosed and he didn't think Moneybarn had acted unfairly in terminating the loan – he thought they'd given enough notice.

Miss M disagreed. She said if Moneybarn hadn't done enough checks that was enough to say they'd acted irresponsibly in lending to her. And she said the investigator's view seemed to have been based on what she might have told Moneybarn at the time of lending about her

expenditure if Moneybarn had asked. She asked for a decision and the complaint came to me. I issued a provisional decision on 21 November 2023. 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.

Did Moneybarn carry out proportionate checks?

Moneybarn said they conducted a full credit search and checked Miss M’s income using a CRA. They also said they’d used ONS data to estimate Miss M’s expenditure. Moneybarn noted Miss M was self-employed, and Miss M’s told us that this is what she told Moneybarn at the time – although she’s also said she overstated her earnings when applying for the loan.

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 Miss M would need to pay back almost £16,000 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 Miss M had a CCJ registered just nine months before her application. And they said it showed several historical defaults. Moneybarn’s summary also said Miss M had active debts totalling around £6,000, as well as balances on the CCJ and defaults totalling over £11,000. To get a clearer picture of Miss M’s credit history at the time I’ve looked at the credit report she sent us.

This shows that in addition to what Moneybarn told us, Miss M had two defaults registered against her within the 18 months prior to her application – one in March 2018 for £298 and one in February 2018 for £2,813.

The high levels of debt together with the CCJ and two defaults suggest that Miss M might have been experiencing some financial difficulties before Moneybarn lent to her. They’re indicators that either Miss M’s income or her expenditure might not be in line with what the CRA and ONS data said. And given 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 Miss M’s income and expenditure.

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

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

I’ve looked at statements for Miss M’s bank accounts for the three months leading up to her application to Moneybarn. And I’ve taken into consideration what Miss M’s told us about her income and expenditure. In the absence of any other information, bank statements provide a good indication of Miss M’s income and expenditure at the time the lending decision was made.

Having done so, I can see Miss M had regular income from benefits which totalled around £610 per month. She also received money from a previous partner but the amount of this varied from month to month – between around £250 and £450 in the months I looked at. Miss M told us other friends and family members helped her out by lending to her from time to time and I've seen several transfers to and from other individuals in her bank statements. In May 2019, Miss M received a large amount, but this was a loan rather than income – and I've not seen any evidence Miss M was receiving any other regular income.

In addition, Miss M was withdrawing significant amounts of cash from her bank account – which suggests she wasn't earning much in cash payments either. This is consistent with what she's told us – which is that she didn't start working regularly until around September 2019.

So if Moneybarn had asked Miss M for some third-party documentation to verify her income it's likely they'd have seen it was well under £1,000 per month. Given the ONS data suggested her non-discretionary expenditure would be over £740, Moneybarn would then have had to decide the loan was unaffordable – because adding on the repayments would take her total non-discretionary expenditure above the amount of her income.

If, however, Moneybarn had also decided to look into Miss M's expenditure and looked at her bank statements, they might have seen that her non-discretionary expenditure wasn't as high as the ONS data suggested. But they'd also have seen she gambled repeatedly and significantly. In June 2019 for example, she spent over £1,800 on gambling sites. This is an indicator that her gambling was likely compulsive and suggests it wouldn't have been responsible to lend to Miss M even if the repayments were affordable.

In summary, I'm inclined to say Moneybarn shouldn't have lent to Miss M – the evidence available from the time suggests she wouldn't be able to make the repayments in a sustainable way. I'll set out what I think they need to do to put things right after I've covered Miss M's other complaint points.

Have Moneybarn acted unfairly in any other way?

Miss M also complained about the cost of the agreement. Although I appreciate the interest charge was high, and the total amount repayable was around twice the cash price of her car, I can't say Moneybarn have acted unfairly in this respect. They have the freedom to set their interest rates as high as they want, as long as the charges are clearly disclosed to a customer. The agreement Miss M signed clearly sets out both the interest rate and the amounts repayable – it specifically says the total amount payable would be £15,904.04.

Miss M also said Moneybarn didn't give her enough notice before terminating the agreement. Again, I disagree. They emailed Miss M on 24 November 2022 explaining that she needed to get in touch and that if she didn't a default notice and termination may follow. Moneybarn sent Miss M a text message on the same day to draw her attention to the email and to ask her to call them. When Miss M didn't contact Moneybarn, they sent her a default notice, on 5 December 2022. Again, this would have warned of termination of the agreement. On 13 December, Moneybarn again asked Miss M to make payment or to contact them, and on 5 January 2023 they sent both an email and a text message asking her to call them. I've seen no evidence that Miss M tried to contact Moneybarn. I'm inclined to say Moneybarn gave her enough notice and opportunity to discuss the situation before they then issued the termination notice on 11 January 2023. So I don't think they acted unfairly in this respect."

Miss M accepted my provisional decision, but Moneybarn did not. They forwarded the court judgement and asked me to review my findings.

I explained to Moneybarn (and Miss M) why I still felt our service could consider the complaint. And I amended my proposed redress to take into account the court directions. Moneybarn didn't dispute this but proposed an alternative option to settle the complaint. Miss M didn't accept Moneybarn's proposed settlement so it's fallen to me to make a final decision on the matter.

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.

Neither party commented on my findings on the merits of the complaint – so my decision is unchanged from my thoughts outlined above, and I'm upholding Miss M's complaint.

Moneybarn's proposed alternative settlement didn't change my thoughts on how the complaint should be settled – so what I've set out below is the same as the redress I suggested to both parties in an email earlier this month.

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 Miss M has had use of the car, so it's fair she pays for that use. Miss M has already paid more than the cash price of the vehicle, which was £7,995. I can't tell Moneybarn to immediately transfer ownership of the vehicle to Miss M – because this would be contradictory to the court order. Instead, Moneybarn should:

- pay £327.42 to Miss M each month in time for her to make the monthly payment due. Once the outstanding balance on the agreement has been paid, Moneybarn should transfer ownership of the vehicle to Miss M and can stop paying Miss M;
- refund all the payments Miss M has made (or makes) in excess of £7,995, up until the date of settlement. Moneybarn should add 8% simple interest per year from the date of each overpayment to the date of settlement; and
- remove any late payment and default markers recorded on Miss M's credit file regarding the agreement.

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

My final decision

As I've explained above, I'm upholding Miss M's complaint. Moneybarn No. 1 Limited need to take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 March 2024.

Clare King
Ombudsman