The complaint

Mr S is complaining about Moneybarn No.1 Limited. He says they shouldn't have lent to him as the loan was unaffordable.

What happened

In July 2020, Mr S took out a conditional sale agreement with Moneybarn, to finance the purchase of a car. He paid no deposit and borrowed £7,500 - the cash price of the vehicle. The agreement required him to make 39 monthly repayments of £313.45. Mr S's payments were sporadic almost from the start of the agreement – most of his direct debits bounced and he hasn't paid anything against the agreement since November 2020. Moneybarn terminated the agreement in June 2022.

In November 2021, Mr S complained to Moneybarn, saying they hadn't done proper checks before lending to him and had therefore acted irresponsibly. He wanted them to refund all interest and charges. Mr S also complained about how Moneybarn had handled his account. Including the repossession of the car.

In response to Mr S's complaint, Moneybarn said they'd done a full credit search with one of the credit reference agencies (CRAs). They said this showed Mr S had a previous County Court Judgment (CCJ) and defaults but that both of these were more than 12 months prior to his application. They added that it showed Mr S had moderate existing borrowing levels.

Moneybarn added that they'd checked Mr S's income using one of the CRA tools. This check uses information from a customer's current account to confirm regular income. They said they verified Mr S's stated monthly income of £2,500 and determined that this was in line with his stated employment.

Moneybarn said they checked Mr S's credit commitments using the CRA and calculated his non-discretionary expenditure using Office for National Statistics (ONS) data. On that basis they decided he had disposable income of around £640 each month and so the agreement was affordable.

Mr S wasn't happy with Moneybarn's response so brought his complaint to our service. One of our investigators looked into the complaint. His view was that Moneybarn's checks hadn't been proportionate – but if they had, Moneybarn would have been able to fairly decide that the repayment was affordable and that it was reasonable to lend to Mr S.

Mr S rejected our investigator's view, saying our investigator had underestimated his expenditure and providing his own estimates. He asked for an ombudsman to review the matter – and it came to me. I issued a provisional decision on 6 February 2024 in which 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 carry out proportionate checks?</u>

Moneybarn said they carried out the following checks:

- *reviewed Mr S's credit file;*
- *verified his income of £2,500 using a CRA tool; and*
- *estimated his monthly non-discretionary expenditure at £1,218 using ONS data and his monthly borrowing commitments at £580 using CRA data.*

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Moneybarn found.

Moneybarn haven't kept a copy of the credit file they looked at, but they said it showed Mr S had defaults and a CCJ but both were a year old. Because Moneybarn's copy of Mr S's credit report isn't available, I've looked at the credit report Mr S provided to see what else Moneybarn might have been aware of.

Mr S's credit report shows three CCJs registered in January to June 2019. The total value of these was around £1,300. It also shows five defaults, dated between February 2018 and July 2019. The total value of these was just under £3,000. And the credit report shows that Mr S had missed payments of £252 per month against an existing hire purchase agreement since December 2019.

Moneybarn have provided no information about the CRA tool they say they used to check Mr S's income. And I can't see that they made any other efforts to understand what Mr S's income would be. CONC 5.2A.15R requires a firm to take reasonable steps to determine the amount or make an estimate of the customer's current income (unless they can demonstrate that it's obvious that the customer is able to make repayments). Moneybarn haven't demonstrated that it was obvious that Mr S would be able to make repayments. And they haven't demonstrated that they took reasonable steps to determine the amount of Mr S's income.

As well as checking Mr S's credit file and using the CRA tool to verify his income, Moneybarn say they used ONS data to estimate his expenditure. CONC allows the use of statistical data, unless there is reasonable cause to suspect that a customer's non-discretionary expenditure is higher than that described in the data. At the time of the lending decision, Mr S's most recent CCJ and defaults were around a year ago. Although I appreciate this was historical, he also had more recent missed payments against a hire purchase agreement and taken together these were all indicators that Mr S might have been in some financial difficulties and that his income and expenditure might not be in line with the statistical data Moneybarn had gathered.

Mr S's loan required him to make significant repayments against relatively high-cost credit for over three years, so the checks needed to be thorough. On balance, I've not seen enough evidence to be satisfied Moneybarn carried out proportionate checks when assessing Mr S's application for finance.

<u>What would Moneybarn have found if they had done proportionate checks?</u>

A proportionate check would have involved Moneybarn finding out more about Mr S's income and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

I've looked at statements for Mr S's two main bank accounts for the three months leading up to his application to Moneybarn. I'm not saying Moneybarn needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Mr S's income and expenditure at the time the lending decision was made.

The bank statements show Mr S's income was much lower than he'd stated – he was receiving around £1,000 per month from his employer and around £370 a month from the Department for Work and Pensions – so a total of around £1,370 per month. Mr S has told us he was on furlough at the time which may explain why his income was so much lower than he'd told Moneybarn.

In bringing his complaint to us Mr S has estimated his expenditure was around £1,600 per month. He's given us a couple of different breakdowns but broadly said this comprised £500 for rent and rates, £520 for living expenses (food and other essentials), £280 for an existing car finance agreement, £80 for insurance and £220 for other bills and incidentals. But on investigating his bank statements and expenses further, I've noted the following:

- *Moneybarn said Mr S's monthly credit commitments at the time were around £580. Looking at Mr S's credit report, two of the three agreements were due to end around the time of this agreement. One of them was settled in full. The other, a car finance agreement with payments of £252 per month, was not – Mr S was in a dispute with the lender about this one and wasn't making payments. But there was a balance of around £1,600 which Mr S would have been liable for so I think the remaining payments should have been factored in to an income and expenditure assessment. The remaining active credit agreement was for car insurance and required payments of around £70 per month – which Mr S was paying. So I'm satisfied Moneybarn could reasonably have reassessed Mr S's payments to creditors at £330 per month. This doesn't include any payments against his defaulted debts.*

- *Mr S has told us he was in arrears on his rent and rates. And it's clear from his bank statements he was making sporadic payments. Mr S's recollection is that he was on housing benefit at the time and this was covering a significant proportion of his current rent and rates. But across the three months from April to June 2020 he paid an average of £375 per month for rent and rates. I'm inclined to suggest Moneybarn should have included this figure in an income and expenditure assessment.*

- *Mr S was spending around £470 per month on food, fuel and other essentials, around £50 on energy, and around £80 on communications.*

So the total of Mr S's non-discretionary and committed expenditure was around £1,305 per month. On that basis it would have been clear to Moneybarn that repayments of £313 per month weren't affordable for Mr S and I'm inclined to say they shouldn't have lent to him.

Did Moneybarn act unfairly in any other way?

Mr S has complained about Moneybarn's treatment of him once he fell into arrears, and about the way the repossession of the vehicle was handled. I've been through Moneybarn's notes and I can see they made efforts to treat Mr S with forbearance and due consideration, including offering him a payment holiday. Mr S's account was on hold for extended periods because he raised a number of complaints with Moneybarn – so it's difficult to say they should have acted differently during those times. And I can't say they shouldn't have repossessed the car in late 2022 – by this stage, Mr S's arrears were significant and there was no suggestion he would make any payments towards them – the agreement had already been terminated. I appreciate Mr S didn't want to relinquish the car so it was upsetting for him, but I haven't seen any evidence that Moneybarn acted unfairly in this respect."

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 my final decision is unchanged from the thoughts I've set out above.

Putting things right

As Moneybarn shouldn't have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr S had use of the vehicle for around 28 months so it's fair he pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Mr S's case I've thought about the amount of interest charged on the agreement, Mr S's overall usage of the car, and what his costs to stay mobile would have likely been if he didn't have this car. In doing so, I think a fair amount Mr S should pay is £180 for each month he had use of the car, so a total of £5,040. To settle Mr S's complaint, Moneybarn should do the following:

- Refund all the payments Mr S has made in excess of £5,040, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- If, as it seems, Mr S has paid less than £5,040, Moneybarn should deduct the total payments he has made from £5,040 and arrange an affordable and sustainable repayment plan for the remaining balance.
- Once Moneybarn have received all outstanding amounts, they should remove any adverse information recorded on Mr S's credit file regarding the agreement.

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

My final decision

I'm upholding Mr S's complaint. Moneybarn No. 1 Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 April 2024.

Clare King
Ombudsman