

The complaint

Mrs I 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 for her.

What happened

Mrs I entered into a conditional sale agreement with Moneybarn on 29 July 2021 for a used car. The cash price of the car was £8,550. Mrs I didn't pay any deposit and the total amount repayable under the agreement was £16,810.74. The term of the agreement was 55 months and Mrs I was to pay 54 monthly payments of £311.31.

Mrs I complained to Moneybarn in April 2023, and it responded to the complaint in June 2023. It felt it had carried out reasonable and proportionate checks. It said it had carried out a full credit search including repayment history, arrears and past defaulted accounts. It said it also verified Mrs I's income with information from credit reference agencies and understood Mrs I was in full time employment. Based on the information it had gathered, it felt it had made a fair lending decision.

Mrs I remained unhappy and asked our service to investigate. She said she had been severely financially affected and it had impacted her mental health. She feels she cannot get on top of her debt and she was already behind on priority bills when she entered the agreement.

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.

Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mrs I would be able to repay the agreement in a sustainable way?

Moneybarn said Mrs I confirmed she was in full time employment and received a net monthly income of £1,750. It said it verified this information with credit reference agency data.

Moneybarn have said the credit information showed Mrs I had 9 defaulted accounts. The most recent default being 12 months prior to the agreement. The total outstanding balance was £8,200. It said she had an active credit balance of £1,296 and total monthly commitments of £593.

It used ONS data to calculate living expenses and bureau information for housing costs. In doing so, it estimated Mrs I's disposable income as £336.43.

Having thought about everything which has been said about the checks, I don't agree the checks were proportionate. I've taken into account the length of the agreement, the size of the monthly repayments and the total amount payable of £16,810.74. In addition to this, I think Mrs I's credit history should have prompted Moneybarn to carry out more checks and get an understanding of her specific committed expenditure. Although some of the defaults were more historic, her most recent one was only 12 months before the lending and her overall outstanding balance was £8,200. In these circumstances, I don't think it was reasonable to rely on ONS data to understand Mrs I's committed expenditure as her financial history indicated she might not be the average consumer.

Would reasonable and proportionate checks have shown that Mrs I would have been able to repay the agreement in a sustainable way?

As I don't think Moneybarn completed reasonable and proportionate checks, I must think about what such checks would likely have shown. To do so, I've reviewed the bank statements Mrs I has provided. To be clear, I'm not saying Moneybarn needed to obtain bank statements in order to complete reasonable and proportionate checks, but the statements do show what information Moneybarn were likely to have obtained.

I should also note it seems Mrs I handled her finances somewhat jointly with her partner. However, our service hasn't been provided with the relevant statements. For example, she appears to have had more than one joint account and it doesn't seem we have been provided with statements where joint commitments have been paid from. She has a number of payments into her account from the joint account as well as outgoing transfers. I don't have the information to enable me to verify that the outgoing payments to the joint account were for non-discretionary expenses.

I'll consider anything further I'm provided with but also need to note that I'd need a fuller picture of the financial circumstances leading up to the agreement including her partner's income and expenditure particularly around joint expenses.

Nevertheless, I have reviewed the account information she has provided and the income and non-discretionary expenditure I can see. I can see Mrs I received an average monthly income of around £1,793. This included her salary and child tax benefits. Her average expenditure did vary, and I can see she seemed to make higher contributions to her loan and credit card in June 2020. But it seems on average she spent around £1,238. This left her with around £555, which was sufficient to cover the repayments of £311.31 and left her with some remaining.

In response to our Investigator's view, Mrs I said she had defaulted accounts and relied on short term lending. I can see some short-term loans, but it doesn't seem she was in a cycle of lending and it wasn't for large amounts. Additionally, the previously defaulted accounts don't in themselves lead me to conclude the lending decision was irresponsible. Some of these were historic, and Mrs I's statements don't show she was repaying the balance. But I will consider anything else she has to add here.

Overall, I'm not satisfied Moneybarn completed reasonable and proportionate checks to ensure the lending was affordable for Mrs I. As mentioned above, I don't have a

full picture of Mrs I's income and expenditure as it seems she handled this somewhat jointly with her partner. I've reached a conclusion based on the information I do have of Mrs I's committed expenditure, and it seems she did have sufficient disposable income.

I gave both parties the opportunity to respond with any further arguments or evidence providing they did so by 14 February 2024. Moneybarn didn't provide anything further.

However, Mrs I didn't agree. She said she was confused I had concluded the checks weren't reasonable and proportionate yet didn't uphold the complaint. She asked what else was needed including whether I needed to see her husband's account statements. Also, she was paying £450 towards the mortgage and so considering the mortgage payment she was left with nothing.

Moreover, she explained she had to borrow from family and friends. She said she earnt most of the money at the time, so was paying for almost everything. She said the car agreement did not let her get her head above water. She explained she just wanted the agreement to come to an end so she could get back on track with her mortgage.

As both parties have now had the opportunity to respond, I have proceeded with my 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.

I want to clarify for Mrs I that finding the checks weren't reasonable or proportionate doesn't mean that I'll always find the complaint should be upheld. I need to decide what information I think reasonable and proportionate checks would have revealed to the business. And whether this information was likely to have shown the agreement was affordable.

I've also considered what Mrs I has said in response to my provisional decision and her mortgage payments. I can see this payment was also included in Moneybarn's summary. I understand what she has said about having absolutely nothing left at the end of the month.

I set out in my provisional decision what I can see from the information provided and what I think Moneybarn would likely have seen of Mrs I's non-discretionary expenditure. I said it seemed Mrs I handled her finances somewhat jointly with her husband. In addition to this, I explained I'd need further statements in respect of transfers in and out of Mrs I's account.

In my provisional decision I explained there was no evidence Mrs I was making repayments towards her defaulted balances. I said this because some of the balances seem to have been historic. But for clarity, it seems the information would have shown Mrs I had sufficient disposable income left after her non-discretionary spend to repay this agreement and make some contributions towards reducing the defaulted balance.

Mrs I has been provided with opportunity to provide information which would show the extent of the non-discretionary spend and how herself and husband contributed to this. She has explained all the transfers out of her account to her husband or to a joint account were for non-discretionary spend. But I can't conclude this was the case because she had transfers coming in and out and they were for differing amounts throughout the months.

I haven't received anything further and the deadline has now passed. I appreciate it may be the case that the information isn't available, but this does mean I don't have sufficient

evidence to enable me to conclude reasonable and proportionate checks would have shown this agreement was unaffordable.

Having considered everything, I see no reason to depart from the conclusion I reached in my provisional decision.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 22 April 2024.

Laura Dean
Ombudsman