

The complaint

Miss W complains that Moneybarn No. 1 Limited shouldn't have agreed to provide her with finance for a car as she said she couldn't afford to sustain the repayments.

In bringing her complaint Miss W is represented by a third party. For ease of reading, I will only refer to Miss W in my decision.

What happened

In February 2021 Miss W acquired a car when she entered into a conditional sale agreement with Moneybarn. The cash price of the car was £5,480 with interest and charges applied the total amount repayable was £10,202.85, repayable over 48 months at £212.55 a month. Miss W said Moneybarn hadn't sufficiently checked whether the lending was affordable for her. She complained to them.

Moneybarn said they'd verified Miss W's income, checked her credit history and used statistical data to determine her outgoings. Based on this they said Miss W had enough disposable income to sustain the repayments. They said her credit history showed she'd struggled financially previously, but this had been 20 months prior to the lending. And Moneybarn said they're a lender who provide access to credit for consumers who'd had previous credit impairment.

Miss W wasn't happy with Moneybarn's response and referred her complaint to us.

Our investigator said given the length of time the loan was for, and Miss W's previous financial vulnerability, Moneybarn should have looked further into Miss W's financial situation. But based on the information provided by Miss W he didn't think Moneybarn had acted unfairly in agreeing to lend to her, as she'd sufficient disposable income to maintain the repayments under the agreement.

Miss W didn't agree and asked for her complaint to be referred to an ombudsman for a 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, and acknowledging it'll be disappointing for Miss W but I'm not upholding her complaint, I'll explain why. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely considering the available evidence and the wider circumstances. And DISP 3.5.9(3) allows for an ombudsman to *"reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested"*

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as the

Consumer Credit sourcebook (CONC) what lenders must do when deciding whether or not to lend to a consumer. What this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss W before providing it.

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

1. Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Miss W would be able to repay her loan without experiencing significant adverse consequences?

a) If so, did they make a fair lending decision?

b) If not, would those checks have shown that Miss W would have been able to do so?

2. Did Moneybarn act unfairly or unreasonably in some other way?

Repaying debt in a sustainable manner means Miss W 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.

CONC doesn't give a set list of checks that should be done. But that the level of detail that should be sought was dependent 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.

We might think a lender needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

So, I've considered the checks Moneybarn did before they agreed to lend to Miss W.

Moneybarn said they verified Miss W's declared income of £1,436 through a credit reference agency (CRA), from which they assessed her income to be less than the amount she'd declared £1,148.80, as well as checking her credit file. They said this provided details about her current borrowing levels; her repayment history, including any arrears; and past defaulted accounts. They said that Miss W's borrowing levels and monthly credit commitments were reviewed and appeared affordable. They said with this information and the use of statistical data for her housing costs, council tax, utilities, vehicle costs, basic living costs, and credit commitments Miss W's had non-discretionary spending, not including the buffer amount of £29.90 allowed for by Moneybarn, of £676. After factoring in the new lending of £212.55, this left Miss W with a disposable income of around £260. And based on this they decided to lend to her.

CONC says a lender shouldn't accept a consumer's declared income without verifying this through an independent source or third-party supplier. And I can see Moneybarn did this by verifying her income through a CRA. CONC also says a lender should take reasonable steps to determine a consumer's outgoings and allows for the use of statistical data, which is what Moneybarn did.

But as I stated above, we'd expect a lender to do more where the borrower's income was low – in this case they assessed Miss W's income as being around £1,148, less than she declared. And I note Miss W said she was self-employed which could mean her income fluctuated. As Miss W would be indebted for over £10,000 for a period of four years and

she'd experienced financial vulnerability before. I think Moneybarn should have checked further into her actual financial situation rather than placing a reliance on statistical data.

But saying Moneybarn should have done more before lending to Miss W doesn't automatically mean her complaint should succeed. I also need to be persuaded that what I consider to be proportionate checks would have shown Moneybarn that Miss W couldn't sustainably afford the credit.

As previously mentioned, there isn't a set list of checks that a lender should make, but bank statements will I think usually provide a good understanding of someone's financial situation as they should show their income and essential outgoings.

Miss W provided statements for one of her bank accounts for the three months prior to the lending. And these show she was in receipt of universal credit, but I couldn't see any evidence of any other income from her self-employment being paid into this account. But there was evidence of transfers in and out of another of Miss W's bank accounts, which our investigator asked Miss W to provide three months statements for. While I can see Miss W provided some statements for the three months prior to the lending she didn't provide statements covering the entire period. From the statements she provided I can see Miss W was in receipt of other benefit payments. And so, her average monthly income was around £1,750.

The amount of Miss W's non-discretionary spending differed across the three months, but I concur with our investigator that this was around £1,000. This included rent, food, insurance and other transport costs, communications and utilities. This would have left Miss W with over £500 in disposable income after the new lending of £212.55 was factored in.

So, if Moneybarn had carried out further checks to establish Miss W's financial situation, given the information provided by her I think they would have still agreed to lend to her as these showed she'd sufficient disposable income to sustain the repayments. So, I can't say they acted unfairly in lending to her.

I understand that my decision will disappoint Miss W but I hope from my reasoning she can understand the outcome that I've reached. Although I'm not upholding this complaint, I'd like to remind Moneybarn of their continued obligation to exercise forbearance and consideration if they intend to collect any outstanding balance remaining on the account and it's the case that Miss W is still experiencing financial difficulty.

I've also considered whether Moneybarn acted unfairly or unreasonably in some other way given what Miss W has complained about, including whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But, for the reasons I've already given, I don't think Moneybarn lent irresponsibly to Miss W or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 6 September 2024.

Anne Scarr
Ombudsman