

The complaint

Mr L complains that Moneybarn No. 1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement with him.

Mr L is bringing this complaint with the help of a representative, but for ease I'll refer to Mr L throughout this provisional decision.

What happened

In February 2018 Moneybarn provided Mr L with finance to purchase a used car. The car cost £5,930 and Mr L paid a deposit of £150. He entered into a conditional sale agreement to finance the remaining £5,780. After interest and charges the total amount due was £11,679.78, repayable in 59 monthly instalments of £195.42. Mr L repeatedly missed payments. The car was written off in an accident and the agreement was settled in full in January 2022.

In February 2024 Mr L complained to Moneybarn saying that they didn't undertake appropriate checks before lending to him. He said the agreement wasn't affordable. Moneybarn didn't agree with Mr L's complaint. In their view they carried out reasonable checks which showed Mr L could afford the repayments, and they lent on this basis.

Mr L remained dissatisfied with Moneybarn's response and referred the complaint to our service, where it was considered by one of our investigators. Although our investigator didn't think Moneybarn's checks had been proportionate, it was his view that proportionate checks would have shown that the agreement was affordable for Mr L. For this reason, he didn't think the complaint should be upheld.

Mr L didn't agree with our Investigator's view. He sent in his own calculation of his income and expenditure and said this didn't evidence affordability. Mr L also said the gambling transactions shown on his bank statements ought to have caused concern. As no agreement could be reached Mr L asked for an ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 12 July 2024, saying I was inclined to uphold Mr L's complaint. In that I said:

"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, I'm inclined to uphold Mr L's complaint. I agree with our Investigator that Moneybarn didn't conduct proportionate checks when considering if the proposed agreement was affordable to Mr L. But I think that, had they done so, they'd have seen Mr L could likely not afford the proposed repayments. I'll explain why.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether 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. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. And we'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.

Did Moneybarn complete a reasonable and proportionate affordability check?

In his application Mr L told Moneybarn his monthly income was £18,750. Moneybarn asked Mr L for his payslips to verify what he'd told them. Having reviewed the payslips, it appears Mr L inadvertently entered his annual income rather than his monthly income on the application. Overall, I'm satisfied Moneybarn undertook reasonable checks to verify Mr L's income.

Moneybarn checked Mr L's credit report, which showed Mr L had four defaulted accounts, with the most recent around eight months prior to the lending. The original balance across all defaulted accounts had increased from £2,200 to £2,300. Mr L also had an outstanding County Court judgment, which had been applied over two years prior to the lending.

At the time of his application, Mr L held one revolving credit account with an outstanding balance of around £1,064. Moneybarn's notes further show a non-revolving account with a balance of £8. Mr L submitted a copy of his credit report, which doesn't show what the £8 might relate to. But I note that at the time of his application, he had a further hire purchase agreement with monthly payments of £242.

Overall, I don't think Moneybarn's checks went far enough in Mr L's particular circumstances. I say this because Mr L's most recent default was only eight months earlier, and I think this ought to have led Moneybarn to consider if Mr L might be struggling financially. Furthermore, Mr L's credit commitments at the time of the application already took up around a quarter of his verified net monthly income. The proposed repayment would push this to over 40% of his income. In light of this, I think it would have been proportionate for Moneybarn to find out more about Mr L's likely committed expenditure before agreeing to lend.

In summary, I'm satisfied Moneybarn didn't carry out reasonable and proportionate affordability checks before lending.

What would proportionate checks have shown?

I've already set out that Moneybarn did enough to verify Mr L's net monthly income. Having reviewed Mr L's payslips, I can see a deduction was made for a court order in December 2017, but not in January 2018. It's possible that the court order was repaid in December 2017, thus increasing Mr L's net monthly income. Moneybarn relied on an average across the two months (that being £1,187). I think that was reasonable.

On review of Mr L's bank statements, I can see he received an average of £1,151 from his salary each month. I also note that Mr L received an average of £125 per month in housing benefit. I can't ignore the possibility that Moneybarn would have found out about the housing benefit had they undertaken proportionate checks. And I

think it would have been fair for them to include this in Mr L's monthly income. So, on balance I'm satisfied proportionate checks would have most likely led Moneybarn to conclude Mr L's net monthly income was around £1,276.

A proportionate check would have involved finding out more about Mr L's committed expenditure. There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what Moneybarn would have done had they decided to conduct further checks, or what Mr L would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mr L's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

In terms of credit commitments, Moneybarn's credit check showed Mr L had a revolving credit account with an outstanding balance of £1,064. CONC requires a firm to assume that revolving credit is repaid over a reasonable term. I'm inclined to say Moneybarn should have used at least 5% of the outstanding amount to reflect that – so around £53. As mentioned above, there was also a hire purchase agreement with payment of around £242 a month. It was taken out in October 2017, and it appears this was also for a vehicle, so it's possible Moneybarn assumed it would be replaced by the proposed agreement. I can see from the credit report Mr L provided that this wasn't the case. It's reasonable to say Mr L would have told Moneybarn this had they asked about his credit commitments. Overall, I'm inclined to say Moneybarn would have included £295 for credit commitments had they conducted proportionate checks.

On review of Mr L's bank statements, I could see he paid £500 in rent in November 2017 and £625 the next two months. Mr L explained that the shortfall was due to him and his partner struggling financially and not being able to make the full payment. I'm satisfied Moneybarn would have included £625 for rent had they assessed Mr L's committed expenditure.

Mr L was also paying £74 towards an insurance policy as well as £6 in bank charges. I couldn't see regular payments towards council tax, utilities, and communication providers. Mr L said those bills got paid either through his partner's account or in cash at the post office or a pay point. This makes it more difficult for me to assess what Moneybarn would likely have found had they completed proportionate checks. But I don't think I need to determine this further. This is because Mr L's committed spending on rent, insurance, charges, and credit commitments was around £1,000 per month. The cost of the agreement would take this to £1,195, against a net monthly income of £1,276.

So, excluding utilities, council tax and payments towards his defaults, Mr L was left with £81 for discretionary and emergency expenditure as well as the cost of owning the car. Based on the information available to me, I'm inclined to say that, had Moneybarn conducted proportionate checks they'd likely have found the agreement wasn't affordable for Mr L, and they'd have declined to lend on that basis.

Mr L said the gambling transactions visible on his statements ought to have given Moneybarn cause for concern. I could see that Mr L made regular transactions to online gambling providers, averaging around £120 (or 10% of his net monthly income) per month. Given Mr L's financial position I agree it's possible the gambling had a detrimental impact on his finances at the time. But I don't think Moneybarn needed to request bank statements at the time of application. And so I can't be sure Moneybarn would have found out about the gambling transactions prior to lending. In any event, I'm satisfied the information Moneybarn would likely have found had they

considered Mr L's committed expenditure would have led Moneybarn to decline Mr L's application.

Did Moneybarn act unfairly or unreasonably in some other way?

I've also considered whether Moneybarn acted unfairly or unreasonably in some other way given what Mr L has complained about, including whether their relationship with Mr L might have been unfair under s.140A Consumer Credit Act 1974.

However, I'm satisfied the redress I have directed below results in fair compensation for Mr L in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case."

Mr L didn't respond to my provisional decision. Moneybarn said they had nothing further to add.

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 neither party has raised any additional arguments or provided further information for me to consider, I've got nothing further to add – my findings are unchanged from those set out above.

Putting things right

As Moneybarn shouldn't have approved the lending, it's not fair for them to charge any interest or charges under the agreement. But Mr L has had use of the vehicle and it's fair he pays for that use.

Mr L has already paid more than the cash value of the vehicle to Moneybarn, having settled the finance in full in January 2022. To settle Mr L's complaint Moneybarn should do the following:

- Calculate how much has been paid in total under the agreement; including the deposit and final settlement.
- Deduct the cash price (being £5,930) of the vehicle from the total paid.
- Pay Mr L the difference, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr L's credit file regarding the agreement.

*HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr L a certificate showing how much tax they've taken off if Mr L asks for one.

My final decision

For the reasons given above, I'm upholding Mr L's complaint. Moneybarn No. 1 Limited need to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 September 2024.

Anja Gill
Ombudsman