

The complaint

Ms M complains through a representative that Moneybarn No.1 Limited trading as Moneybarn ("Moneybarn") gave her a loan without carrying out a sufficient affordability assessment.

What happened

In August 2017, Moneybarn provided Ms M with finance for a used car. This was a conditional sale agreement for £4,995 which was also the cash price of the car. The agreement had interest, fees and total charges of £5,370.71, and the total amount to be repaid of £10,365.71. This sum was due to be repaid in 59 monthly instalments of just over £175.69.

Ms M had problems repaying this agreement which resulted in court proceedings and an order but it's worth saying here that Moneybarn discontinued its claim in March 2019. The statement of account shows the loan was repaid in July 2022.

Following Ms M's complaint, Moneybarn issued a final response letter, and it didn't uphold the complaint. It considered that it fairly assessed the loan as being affordable at the time it was provided. Ms M's representative then referred the complaint to the Financial Ombudsman.

Ms M's complaint was considered by an investigator and she wasn't able to say, with any certainty what Moneybarn saw in the credit check results and so she couldn't be certain the loan was affordable for Ms M. The investigator went on to consider Ms M's bank statements and she thought that even if Moneybarn had looked at these it would've thought the loan was affordable.

Ms M's representative disagreed and across a number of emails gave reasons why. These comments didn't change the investigator's assessment and so the complaint was passed to me to decide. I then issued a provisional decision explaining, with further reasons why I was intending to not uphold Ms M's complaint.

Both parties were asked to respond to the provisional decision as soon as possible, but in any event, no later than 15 August 2024.

Moneybarn didn't respond to the provisional decision and Ms M's representative acknowledged receipt, but no further comments were provided. A copy of the provisional findings follows this and forms part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Why I can look at this complaint

I've noted that Moneybarn initially suggested that the complaint ought to not be considered by us because previous court proceedings mean it is outside of our jurisdiction.

It may help if I explain that there is a number of reasons why a complaint maybe outside of the Financial Ombudsman's jurisdiction these are, but not limited to, whether the complaint was made in time. If a complaint is outside of the Financial Ombudsman's jurisdiction there are limited circumstances that may lead to the complaint to be investigated – such as if exceptional circumstances apply.

Having considered the rules that I must apply, I can't see one which applies in this case. Moneybarn says that the case has been subject to court proceedings but this isn't a reason not to consider this complaint under DISP 2 of the FCA Handbook.

However, even though there is no reason for me to conclude that this case is out of jurisdiction, DISP 3.3.4A does set out some situations where it may be more appropriate to dismiss the complaint. Dismissal is different from jurisdiction because when a complaint is dismissed, we have the power to consider the merits, but the Financial Ombudsman chooses not to do so.

One possible dismissal reason is where there has been court action or a judgement on the merits of the complaint. I can see from the paperwork provided by Moneybarn that there was a "Judgment for Delivery of Goods" in October 2018. I've read the judgement and I can see that the judge found in favour of Moneybarn and ordered either the goods be returned to it or Ms M needed to make a payment.

However, Moneybarn also sent a copy of a March 2019 final response letter which was sent to Ms M which dealt with a different complaint that had been raised. The final response said.

"...I believe the errors were made in the handling of your agreement over the period concerned. Therefore, I am arranging for the termination of your agreement to be rescinded. As a result, I will ensure that the costs associated with the application for a Consent Order are removed from your agreement."

Moneybarn then sent to the courts a "Notice of discontinuance". According to the statement of account, the credits, mentioned in the above final response letter, appear to have been applied to Ms M's account, indicating Moneybarn did refund the associated court costs.

Therefore, as Moneybarn decided to refund the court costs as well as discontinued the claim, I'm satisfied that the Judgment of Goods have been set aside no longer apply. So, I don't think that Ms M is in the position where the subject matter of her dispute has previously been considered by a court and I therefore find no reason to dismiss the complaint.

I've then gone on to consider whether Moneybarn carried out proportionate checks and whether following those checks, it made a fair lending decision.

Lending decision

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Ms M's complaint. Having carefully thought about everything I've been provided with; I'm not upholding Ms M's complaint. I'd like to explain why in a little more detail.

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Ms M before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it 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.

Moneybarn as part of the application process took details of Ms M's monthly income and it took copies of her payslips to verify this. Moneybarn has also said it carried out a credit search and it has explained that the full results it received are no longer available.

But it has explained the sort of information it would've gathered such as Ms M's current borrowing levels, repayment history of accounts and defaulted accounts. Moneybarn has said though that there were no County Court Judgements, defaults or other insolvency records.

A copy of Ms M's credit report has been provided, and so I've taken a look at that to see perhaps whether there is any information contained within it that Moneybarn may have seen. But, the credit report was generated in November 2023, and this does potentially limit what information I can view and so I can't be sure whether it contains all or some of the information Moneybarn may have discovered at the time.

In saying that, having reviewed the credit report, it doesn't provide any meaningful information about Ms M's debt levels at the time, or whether there were any defaults or missed payments.

Moneybarn says it then would've made "reasonable consideration for your existing expenses and accounted for appropriate non-discretionary expenditure before calculating your monthly repayment".

To me this seems that Moneybarn used Ms M's income, minus the loan repayment and then from that it deducted, what it considered to be, a reasonable amount to reflect her existing expenditure. The loan was granted, so I can only conclude that Moneybarn believed the loan to be affordable based on the checks that it carried out.

Moneybarn was fully aware of Ms M's income as it verified it, although it didn't as far as I can see have an accurate reflection or idea of her actual monthly living costs. I appreciate, the loan may have appeared affordable to Moneybarn but I don't think that conclusion could be fairly reached when no outgoings were considered when it didn't ask about them.

Like the investigator, I do think that before the loan was approved, Moneybarn needed to at the very least understand what Ms M's monthly outgoings were. It could've gone about doing this a number of ways, it could've simply asked her what her actual living costs were, asked for evidence from Ms M about her bills or as I've done, it could've asked for copy bank statements.

But to be clear, I've only used the bank statements to get an idea of what Ms M's living costs are likely to have been like at the time. – I've not done this because I think that Moneybarn ought to have request this information as part of underwriting this loan. After all, given the amount lent, the term and the credit check result it may have been perfectly reasonable for Moneybarn to have relied on any declared expenditure provided to it.

I accept that had Moneybarn conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Moneybarn conducting a proportionate check I do think it's fair and reasonable to consider the bank statements that I now have access to.

Looking at the statements, I can see transfers from another account ending 6201. The statements for that account haven't been provided, so I can't say for sure how much, if any, other money there was available to Ms M or what that other account was being used for.

The bank statements provided do show Ms M's living costs for items such as rent, direct debits, council tax and utilities came to around £1,300 each month. But I also have to consider that any review of Ms M's living costs, wasn't meant to be a forensic analysis of the statements, rather Moneybarn needed to obtain a reasonable figure for her living costs. But it is worth saying here that Ms M also appeared to have received, additional income above her salary in the form of benefits, that further increased her income.

Although, I have noted that on top of the income Moneybarn knew about there was other regularly income being paid into Ms M's sole account. Enquires were made with Ms M about this and she explained this was her ex-partner's salary and this wasn't her money. She also told us that she didn't split the bills but instead the ex-partner was using the money to repay debt.

While, this may be the case, the bank statements don't show the money leaving in separate transactions and I've not been able to identify which debts belonged to Ms M's ex-partner. Instead, the money appears to be swallowed up as part of the regularly monthly expenditure on the account.

So, taking into account what I've seen in the statements I'm currently concluding that had Moneybarn conducted further checks into Ms M's living costs it would've likely concluded the loan was affordable and so I am planning to not upholding the complaint.

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 provided any new submissions, I see no reason to depart from the findings I reached in the provisional decision and which I repeat here. I still don't think Moneybarn conducted proportionate checks before it advanced the lending to Ms M. But even if it had carried out further checks, it would've likely thought she was in a position to afford the payments she was committed to making. I am therefore not upholding Ms M's complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Moneybarn lent irresponsibly to Ms M or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Ms M's complaint.

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

Robert Walker
Ombudsman