DRN-5035955

The complaint

Mr E complains that Moneybarn No.1 Limited (Moneybarn) irresponsibly granted him a conditional sale agreement that he couldn't afford to repay.

What happened

In August 2018 Mr E acquired a vehicle financed by a conditional sale agreement from Moneybarn. Mr E was required to make a deposit of £250 and 59 monthly repayments of £396.59. The total amount repayable under the agreement was £23,648.81. Mr E believes Moneybarn failed to complete adequate affordability checks. Mr E says that if it had it would've been clear the agreement wasn't affordable at the time.

Moneybarn disagreed. It said it carried out an adequate assessment which included credit file searches, verification of Mr E's income via payslips and statistical estimation of his non-discretionary expenditure. It said these searches showed Mr E had sufficient headroom to comfortably afford the agreement. It was unable to provide its credit search but said it also could see that Mr E had six defaults, the most recent being 8 months prior to the lending decision, and there were no County Court Judgments on his file. It said the total defaulted amount recorded was £2,100 and the outstanding default balance at the time of the sale was £200.

Our Investigator didn't recommend that the complaint should be upheld. They thought Moneybarn's checks weren't proportionate in the circumstances due to the relative size of the amount of borrowing compared to the information reflected on his credit file. But after performing further checks our Investigator found that the decision to agree to lend was reasonable as the agreement appeared to be affordable.

Mr E didn't agree. He reiterated that he could not afford the loan and was forced to proceed with the agreement as he had no choice and was reliant on a vehicle for his employment. Mr E asked for an Ombudsman to issue a 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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr E's complaint. Moneybarn needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr E before providing it.

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

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay his loan without experiencing significant adverse consequences?
   - If so, did it make a fair lending decision?
   - If not, would those checks have shown that Mr E would've been able to do so?

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

Did Moneybarn complete a reasonable and proportionate affordability check?

The Financial Conduct Authority (FCA) was the regulator when Mr E took out his agreement with Moneybarn. Its rules and guidance obliged Moneybarn to lend responsibly. Moneybarn needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement.

This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. *In making the creditworthiness assessment or the assessment required by CONC 5.2.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant 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 without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended 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 (CONC 5.2.4G (2)).

So, I'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. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement.

When considering the rules and guidance in place in August 2018, Moneybarn needed to carry out reasonable and proportionate checks to be able to assess the potential for the credit agreement to adversely impact Mr E's financial situation. It is from this standpoint and criteria that I've approached my decision.

Moneybarn says that Mr E's application underwent credit and underwriting checks, and these didn't raise any concerns. His income was verified via payslips, and Moneybarn also used statistical data to estimate the level of expenditure Mr E had at the time. It felt that these searches were reasonable and proportionate in this scenario.

I'm not satisfied that Moneybarn gathered a reasonable amount of information from Mr E about his expenditure prior to approving the finance. I understand Moneybarn made the decision to lend on the basis that his estimated disposable income was acceptable and that it found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Mr E.

Moneybarn hasn't provided a copy of the credit file check it completed, but in its absence Mr E has provided his own credit file copy which I feel most likely depicts a fair reflection of the information that was available at the time. It also does not appear to contradict the information contained within Moneybarn's final response letter. So, at the time of the application Mr E had six defaults, the most recent being only 8 months prior to the lending decision, and with an outstanding balance still remaining. Given his existing financial circumstances I do think Moneybarn ought to have taken further consideration of Mr E's specific financial situation before approving the lending.

I want to be clear that I've considered Moneybarn's position about the number and type of checks that it did complete. However, given the size of the lending, the monthly repayments, the length of agreement, and Mr E's credit history present at the time, I think it would have been proportionate for Moneybarn to have verified Mr E's specific expenditure. This would include costs such as food, petrol and housing. Without knowing what his regular committed expenditure was Moneybarn couldn't have got a reasonable understanding of whether the agreement was affordable for his circumstances.

As Moneybarn don't appear to have sought a reasonable understanding of Mr E's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. I'm satisfied Moneybarn didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Did Moneybarn make a fair lending decision?

I've considered what Moneybarn would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Mr M would have told Moneybarn had it asked about his regular expenditure. I don't think Moneybarn necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mr M's statements three months prior to the finance being approved as an indication of what would most likely have been disclosed.

These statements show that Mr E's monthly income averaged at around £3,030. His average monthly expenditure was around £1,520. This includes credit commitments, food, and petrol. It meant Mr E was left with around £1,500 in disposable income. It appears the amount of disposable income allowed enough for emergency or unexpected costs even after factoring in the finance. Even if I rely on the lowest demonstrated income in the month prior to the agreement being taken out, Mr E would still be left with on average around £1,000 in disposable income each month.

I appreciate Mr E feels that this was not the case. He's provided further testimony speaking to his issues with maintaining the commitments once the agreement had been taken out. But it's important to note that I'd only be able to rely on information available prior to the lending decision – it wouldn't be reasonable to expect Moneybarn to use information from after the fact. And as I'm satisfied that the bank statements provided showed that the agreement was affordable for Mr E shortly prior to approval of the agreement, I'm satisfied that it was still reasonable for Moneybarn to have approved the lending.

I also understand that Mr E felt that he had to obtain the finance to maintain his employment due to the need for a vehicle. But it wouldn't be fair for me to hold Moneybarn responsible for this aspect, and I'm satisfied that it was clear in its documentation about the finance offer it was making.

So, taking these figures into account, it appears to show the agreement was affordable for Mr E at the time of the lending decision. For this reason, I'm not persuaded that Moneybarn acted unfairly when approving the finance. I'm satisfied that if Moneybarn had completed proportionate checks it would have likely revealed Mr E was able to sustainably afford the repayments owed under the agreement. So, it follows that I'm satisfied Moneybarn made a fair lending decision.

Did Moneybarn act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Moneybarn acted unfairly or unreasonably in some other way. I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. 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

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 October 2024.

Paul Clarke
Ombudsman