

The complaint

Mrs J complains that Moneybarn No. 1 Limited trading as Moneybarn didn't check whether she could sustain the repayments when they agreed to lend to her.

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

What happened

In October 2022 Mrs J acquired a car when she entered into a conditional sale agreement with Moneybarn. The cash price of the car was £14,989 and after interest and charges were applied the total amount repayable was £21,611.70. This was to be repaid over 60 months at £366.30 a month. Mrs J said she struggled to sustain the repayments and if Moneybarn had properly checked they would have seen the lending was unaffordable. She complained to Moneybarn.

Moneybarn said their checks had been proportionate and reasonable. They'd checked Mrs J's income and her credit commitments through a credit reference agency (CRA). And had used statistical data to understand her other non-discretionary spending. Based on this they deemed the lending to be affordable as Mrs J had sufficient disposable income to sustain the repayments.

Mrs J wasn't happy with Moneybarn's response and referred her complaint to us.

Our investigator asked Mrs J to provide additional information but this wasn't provided. So based on the bank statements provided by Mrs J our investigator found the lending to be affordable.

Mrs J disagreed. She said as Moneybarn hadn't shown us the checks they'd done they'd acted unfairly in their actions with her. She asked for an ombudsman to decide.

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 the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened or not considering the available evidence and the wider circumstances. I appreciate Mrs J will be disappointed by my decision but having done so I'm not upholding this complaint. I'll explain why.

Moneybarn needed to ensure that they didn't lend irresponsibly as per the rules set out in the Financial Conduct Authority's (FCA) 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 Mrs J before providing it.

In this case, there are two overarching questions that I need to answer to fairly and

reasonably decide Mrs J's complaint. These two questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Mrs J 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 Mrs J would have been able to do so?

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

Repaying debt in a sustainable manner means Mrs J 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. 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.

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

Mrs J has said that Moneybarn in not providing the actual record of the credit check or statistical details to us shows that they acted unfairly. And that they hadn't done these checks. But I disagree with this point. I've no reason to doubt Moneybarn did carry out the checks they said they did. And they've provided a summary of what they saw from Mrs J's credit file, and the figures they used to assess her non-discretionary spending.

Moneybarn said they checked Mrs J's declared income of £2,400 through a CRA 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 Mrs J's borrowing levels and monthly credit commitments were reviewed and appeared affordable. There was a registered default but this had been 49 months prior to the lending, so considered to be historic with an outstanding balance of around £700.

They'd used statistical data for Mrs J's housing costs, utilities, vehicle costs and basic living costs and assessed these to be £1,764.66, added to which her credit file showed she'd credit commitments of around £80, meaning Mrs J's non-discretionary spending would have been £1844.66. After factoring in the new lending of £366.30 this would have left Mrs J £189.04 for any discretionary and unexpected costs. Based on this Moneybarn decided this was affordable and agreed to lend to her.

Mrs J has provided her credit report which was generated in September 2023 I've looked at to see if this would be reflective of the information Moneybarn say they saw. This shows Mrs J at the time of the lending had an active credit card with a balance of around £900. A current account and a couple of telecommunication accounts. Another credit card account had defaulted in 2018, at the time of default the balance had been £1,333 but this had reduced to around £700 when Moneybarn said they checked and reflects what they say they saw. I can see other lending on Mrs J's credit report but this was taken out after her agreement with Moneybarn and so wouldn't have been visible on her credit report at the time Moneybarn checked her credit history.

CONC 5.2A.19 does allow for a lender to use statistical data to determine a consumer's non-discretionary spending. Unless they'd a reasonable cause to suspect that the consumer's non-discretionary expenditure is significantly higher than that described in the data or that the data is unlikely to be reasonably representative of the consumer's situation. I can't see from the application data what Mrs J's circumstances were other than she was a tenant and in full time employment.

And as outlined above I'd require 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. Given the length of time Mrs J would be indebted, the amount she'd be indebted for and her previous financial difficulties albeit they were historic I think they should have sought a more accurate picture of Mrs J's situation rather than a reliance on statistical data.

But saying Moneybarn should have done more before lending to Mrs J 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 Mrs J 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.

I've considered Mrs J's bank statements for the three months leading up to her agreement with Moneybarn.

While Moneybarn assessed Mrs J's income as £2,400. From Mrs J's bank statements for the three months prior to the lending, July, August and September 2022 I can see her income was on average around £3275. I can also see she had access to other funds as there are regular transfers into the account from another of Mrs J's bank accounts which across the three months was in total around £7,400. Our investigator asked for sight of this account but to date this hasn't been provided. I can also see regular payments into the account with the reference "*housekeeping*" from another account that amounted to a total of over £4,500 across the three months. Again, our investigator asked for further information about this but again none was provided. While these monies were being paid into the account I can also see that there were regular transfers back the other way.

From Mrs J's bank statements, her average non-discretionary spending (excluding the above-mentioned transfers out and pocket money paid to what appears to be a family member) was around £2,200. Given Mrs J's average income (again excluding the above-mentioned transfers into the account) was around £3,200, factoring in the new lending of around £366, I'm satisfied that she would have had enough disposable income to sustain the repayments. So, I can't say Moneybarn acted irresponsibly in lending to her as if they'd seen the evidence provided by Mrs J I'm satisfied they would have still agreed to lend to her.

I've also considered whether Moneybarn acted unfairly or unreasonably in some other way given what Mrs J 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 Mrs J 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 Mrs J to accept or reject my decision before 29 October 2024.

Anne Scarr
Ombudsman