DRN-5185156

The complaint

Miss W complains that Moneybarn No 1 Ltd trading as Moneybarn didn't sufficiently check she could afford to sustain the repayments for two conditional sale agreements she'd with them.

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 August 2019 Miss W acquired a car when she entered into a conditional sale agreement with Moneybarn. The cash price of the car was £6,990, Miss W paid a £1,000 deposit and after interest and charges were applied the total amount repayable was £14,881.52. This was to be repaid over 60 months at £235.28 a month. Miss W said she struggled to maintain the repayments early into the agreement. And eventually settled the agreement after she sold the car.

In December 2022 Miss W acquired another car when she entered again into a conditional sale agreement with Moneybarn. The cash price of the car was £9,359, Miss W paid a deposit of £800 and after interest and charges were applied the total amount repayable was £12,546.71. This was to be repaid over 48 months at £249.93 a month. Again shortly into the agreement Miss W said she struggled to maintain the repayments.

Miss W agreed a payment plan but after that ended she couldn't sustain the repayments and the car was returned in October 2023. Miss W said Moneybarn hadn't checked the sustainability of either loan with the checks they'd done. She complained to Moneybarn.

Moneybarn said they'd done reasonable and proportionate checks. They said before agreeing to lend to Miss W on each occasion they'd verified her income, checked her credit file, and used statistical data to determine her non-discretionary spending. And based on this they decided the lending for both cars was affordable as Miss W had sufficient disposable income to sustain the repayments.

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

Our investigator didn't think Moneybarn had sufficiently checked before lending to Miss W in August 2019 as her credit report showed previous financial difficulties. But on the evidence provided by Miss W she couldn't say the lending had been unaffordable for her. For the December 2022 our investigator said the checks done by Moneybarn had been reasonable and proportionate.

Miss W didn't agree and asked for an ombudsman to decide. A provisional decision was issued in October 2024 that said:

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 I'm currently minded to partially uphold Miss W's complaint. I'll explain why.

I've considered the relevant rules, guidance, and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider when deciding what's fair and reasonable in all the circumstances of the complaint. These are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Miss W would be able to repay the credit in a sustainable way?

a. if so, did Moneybarn make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Miss W could sustainably repay the borrowing?

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

Regulations in place at the time Moneybarn lent to Miss W required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower focused", meaning Moneybarn need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss W In other words, it wasn't enough for Moneybarn to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss W herself.

So, I've considered whether Moneybarn in lending to Miss W had been thorough enough in the checks they did.

For the lending in August 2019 Moneybarn said they'd checked Miss W's income through payslips. Through these Moneybarn said they assessed Miss W as having a monthly income of £1,188.93.

They said they'd checked Miss W's credit file and assessed her credit commitments to be £24 and using the Office for National Statistics (ONS) data, her non-discretionary spending for housing costs, council tax, utilities, vehicle costs and basic living costs would be £527.22 which included a contingency amount of £136.72. Moneybarn said this would have left Miss W with an available income of £500.99. Factoring in the new loan amount they said this would have left Miss W with a disposable income of £265.71 available for discretionary and unexpected spending.

Moneybarn have summarised the information they say they saw when they looked at Miss W's credit file. They said it showed Miss W had previously defaulted around 14 months before her lending application. And that Miss W was making contributions to the reduction of the outstanding balance. They also said there was a county court judgement (CCJ) that had been applied five months prior to the lending.

As the credit report seen by Moneybarn isn't available, I've looked at the credit report Miss W has provided which was created January 2024. From this I can see Miss W had a communications account with an opening balance of £96 and a credit card account with a credit limit of £100 at the time of the lending so her credit commitments were low. I can see

Moneybarn in their affordability assessment allowed for £24 which seems reasonable. But I can also see that Miss W had a default in February 2019 and a CCJ recorded in March 2019. Given the lending was in August 2019 I think this showed Miss W had recent financial vulnerability. And so I don't think the checks Moneybarn did were proportionate and reasonable. I think they should have verified Miss W's actual financial situation to see if the lending was sustainable.

This doesn't automatically mean Moneybarn shouldn't have lent to Miss W as I need to consider whether these checks would have shown that the repayments were unaffordable for her – or in other words that she lost out because of Moneybarn's failure to complete proportionate checks. I can't be sure exactly what Moneybarn would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Miss W's bank statements.

Miss W has provided her bank statements from the end of May 2019 prior to the lending. We would usually consider the three months prior to the agreement which was entered into 16 August 2019. But despite requests for further information about Miss W's financial situation no further details have been supplied. Where the evidence is incomplete, inconclusive, or contradictory, as in this complaint 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.

Miss W at the time of lending provided Moneybarn with three payslips, one for June 2019 and two for July 2019 for £198.78, £150.04 and £315.92 respectively. And I can see these amounts showing on her bank statements. I can see from Miss W's bank statements she received Universal Credit of £182.62 on the last day of May 2019. And received three salary payments totalling £800.82 in June 2019 and four salary payments totalling £996.92 in July 2019. If I consider the seven weeks of salary payments and extrapolate this across the year to a monthly salary this would equate to around £1,113 similar to the amount Moneybarn used in their assessment.

Miss W's bank statements show non-discretionary spending for food, transport costs, insurance, communications and media. But no details about housing costs. I've considered all cash withdrawals and payments to and from others should Miss W have paid her housing costs this way. And taking all of this into account Miss W had non-discretionary spending of around £600 a month. Meaning she'd around £520 in disposable income before the new lending was factored in. And I think shows the affordability assessment made by Moneybarn was fair and reasonable. And based on the evidence I've seen I think Moneybarn would still have lent to Miss W as she'd sufficient income to sustain her repayments.

I've next considered the checks Moneybarn did in December 2022. Again, I can see they verified Miss W's income, this time checking her current account income over a reasonable period of time, this showed her income had increased to £1,660. They again checked her credit file and used statistical data as an estimation of her non-discretionary spending which the relevant guidance allows them to do.

From the credit report Moneybarn said that the last default had been recorded 33 months prior to the lending. And there'd been a CCJ 46 months prior to the lending. So, at the time of this lending Miss W wasn't showing any signs of financial vulnerability. But as outlined above the assessment Moneybarn did should be borrower focussed. I can see from the affordability assessment Moneybarn did they considered Miss W's non-discretionary spending, and along with her credit commitments deemed her outgoings to be £1,318, this didn't include any contingency 'buffer', leaving Miss W after the new lending was factored in £92.07 for discretionary and unexpected spending.

I can see from the records of Miss W's engagement with Moneybarn that Miss W now had at least one dependent. Also, her application details showed that she was now a home owner rather than a tenant, although her application was from the same address as her previous application.

Taking this into account I don't think £92.07 would be sufficient disposable income to cover discretionary and unexpected costs for someone in Miss W's circumstances. And so, while I'm satisfied the checks Moneybarn did were proportionate and reasonable. I don't think Moneybarn made a fair lending decision as I doubt Miss W would have had sufficient disposable income to sustain the repayments.

As I don't think Moneybarn should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Miss W did have use of the vehicle for around 10 months so it's fair she pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Miss W's case I've thought about the amount of credit charged on the agreement, Miss W's overall usage of the car, and what her costs to stay mobile would have likely been if she didn't have this car. On the evidence I've seen I think a fair amount Miss W should pay is £178 for each month she had use of the car, so a total of £1,780.

I can see that Miss W no longer has the car as this was recovered by Moneybarn in October 2023.

Responses to my provisional decision

Neither party has asked for any further representations to be considered**.**

I've 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 because I'm upholding Miss W's complaint already for the reasons I've explained I don't think I need to make a finding on this. I believe the redress I've suggested results in fair compensation for Miss W in the circumstances of her complaint.

My final decision

I'm upholding this complaint. And ask Moneybarn No 1 Limited to:

- End the December 2022 agreement.
- Calculate how much Miss W has paid in total and deduct £1,780 for fair usage. If Miss W has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Remove any adverse information recorded about this agreement from Miss W's credit file.
- If there is an underpayment after the settlement is calculated, Moneybarn should arrange an affordable repayment plan, treating Miss W with forbearance and due consideration.
- And once settled remove any adverse information about this agreement from Miss W's credit file.

*If Moneybarn consider tax should be deducted from the interest element of my award they should provide Miss W a certificate showing how much they've taken off should Miss W ask for one

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss W to accept or reject my decision before 31 December 2024.

Anne Scarr
Ombudsman