DRN-5304105

## Complaint

Mrs J complains that Moneybarn No.1 Ltd (trading as "Moneybarn") unfairly entered into a conditional sale agreement with her. She's said the monthly payments were unaffordable and so she shouldn't have been lent to.

## Background

In June 2015, Moneybarn provided Mrs J with finance for a used car. The cash price of the vehicle was £5,499.00 and Mrs J paid a deposit of £400 and applied for finance to cover the remaining £5,099.00 she needed. Moneybarn accepted her application and entered into a conditional sale agreement with her. The conditional sale agreement had interest, fees and total charges of £5,149.30 and the balance to be repaid of £10,248.30 was due to be repaid in 59 monthly instalments of £173.30.

Although it initially argued that Mrs J's complaint was made too late, Moneybarn agreed that Mrs J's complaint was late as a result of exceptional circumstances and it provided consent to us considering the complaint on this basis.

Mrs J's complaint was considered by one of our investigators. He didn't think that Moneybarn had done anything wrong or treated Mrs J unfairly. So he didn't recommend that Mrs J's complaint should be upheld.

Mrs J disagreed with our investigator and asked for an ombudsman to review her complaint.

## My provisional decision of 22 January 2025

I issued a provisional decision – on 22 January 2025 - setting out why I was intending to uphold Mrs J's complaint.

In summary, I was intending to conclude that Moneybarn hadn't carried out reasonable and proportionate checks before lending to Mrs J. And if Moneybarn had carried out such checks, it will have seen that the monthly payments to Mrs J's agreement were more likely than not unaffordable for her. Therefore, Moneybarn didn't act fairly and reasonably towards Mrs J by lending to her in these circumstances.

## Mrs J's response to my provisional decision

Mrs J responded to my provisional decision confirmed that she accepted its conclusions and that she had nothing further to add ahead of my final decision.

## Moneybarn's response to my provisional decision

Moneybarn responded confirming that it disagreed with my provisional decision and providing further comments for me to consider. In summary it said:

- It accepts that Mrs J had just started a new job and that is why it requested a copy of a payslip from which showed that she received a monthly income of £1,532.44 at the time of the application.
- The November 2016 income and expenditure form was completed at a time where Mrs J's income had reduced to £1,205.72. The notes from the time also indicate that Mrs J had been out of work for two months and this might explain why she had rent arrears at this time.
- The income and expenditure form indicates that working tax credits were no longer being received. This could have been due to the change in Mrs J's employment status and why she had to make payments to HMRC.

The agreement was affordable at the point of sale and it is likely that a change in circumstances was responsible for the repayment difficulties Mrs J had.

**My findings**

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

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 Mrs J's complaint.

Having carefully considered everything, including the responses to my provisional decision, I remain satisfied that Mrs J's complaint should be upheld. I'll 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 Mrs J could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneybarn carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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.

*Were the checks that Moneybarn carried out before lending to Mrs J reasonable and proportionate?*

Moneybarn hasn't really said much about the checks that it carried out before entering into this agreement to Mrs J. When it agreed that we could look at Mrs J's complaint, it merely referred to the final response that it sent Mrs J. However, the final response was mainly concerned about the fact that it considered Mrs J's complaint to have been made late.

In any event, I've seen that Moneybarn has provided a screenshot entitled 'quotation' and looks like this shows the information it gathered prior to agreeing to provide finance to Mrs J. The screenshot shows that Moneybarn was aware that Mrs J was employed full time, was aware of Mrs J's employer and the fact that Mrs J was a tenant and therefore renting.

In his assessment, the investigator concluded that Moneybarn verified Mrs J's monthly income as being £1,885.74 through checks with credit reference agencies. In my provisional decision, I explained that I couldn't see that Moneybarn did this or even that it reached a conclusion that Mrs J had an income of this much.

However, my attention has been drawn to a further document which Moneybarn provided in its submissions. This document does state that Moneybarn verified Mrs J's income at £1,885.74, although there is no explanation of how the income was verified. Indeed, on the quotation document, under the section entitled financial details, Mrs J's income is recorded as 0 and a figure of 0 is recorded for her expenditure. So it's fair to say that the documentation Moneybarn has provided is inconsistent and incoherent and the weight that I'm able to place upon it is limited.

That said, Moneybarn's system notes, which is effectively a record of all the contact it has had with Mrs J about her agreement, do show that it requested a copy of two payslips from Mrs J. Moneybarn did not provide a copy of these payslips with its file and it hasn't provided them in its response to my provisional decision either.

Nonetheless, Mrs J has provided a copy of a payslip, from June 2015, which shows that she received around £1,532.44 a month. Mrs J has also provided an email from the employer listed on Moneybarn's quotation screenshot which confirms that she was due to start employment in late April 2015.

Bearing this in mind, I think it is more likely than not that Moneybarn did request payslips from Mrs J in order to confirm Mrs J's income, most likely because she'd only started employment with her employer. And as a result of requesting this information, Moneybarn would have seen that Mrs J received £1,532.44 a month, rather than £1,885.74 which our investigator used in his assessment. Moneybarn's response to my provisional decision has confirmed that this is the case and it presumably accepts that Mrs J's monthly income wasn't £1,885.74.

Moneybarn has also said that it carried out a credit check on Mrs J. Moneybarn has been unable to provide the full results of its credit check. Given this is information from almost a decade ago, I don't consider this to be surprising. Nonetheless, I note that it has said that it was aware that Mrs J had a defaulted account and a county court judgment ("CCJ") recorded against her. Although it considered this information to have been historic.

Moneybarn has said that it typically lends to customers who have had difficulties repaying credit in the past. Be that as it may, I note that Moneybarn hasn't provided any indication that it knew anything at all about Mrs J's expenditure. Indeed, the only evidence that it has provided is the proposal screenshot showing Mrs J's expenditure recorded as 0.

In these circumstances, I disagree with our investigator's conclusion that Moneybarn's checks were proportionate. In the first instance, his conclusions were based on an incorrect understanding of Mrs J's income. Secondly, I do not consider it proportionate to simply assume that a customer who has had previously difficulty with credit will have sufficient funds left over from their income to meet their existing commitments and living expenses, simply because the payments on a new agreement are below a certain percentage of their income.

As I've said, Moneybarn has said that it wouldn't have been concerned about the fact that Mrs J had adverse credit information and this in itself wouldn't mean that she shouldn't have been lent to. I do agree that a prospective borrower having adverse credit information, recorded against them doesn't on its own mean that a subsequent lender shouldn't lend to them.

That said, I would expect a lender to take steps to try and understand the reasons behind any previous difficulty the prospective borrower might have had. I don't see how Moneybarn could have done this, in this instance, by simply finding out about Mrs J's income and not finding out anything at all about her living expenses.

So, bearing in mind what Moneybarn is likely to have been aware of, as well as asking Mrs J about the details of her income and carrying out credit checks, I think that Moneybarn needed to do more to verify Mrs J's expenditure. It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mrs J did have enough funds to be able to make the payments.

As I can't see that Moneybarn did anything at all to understand Mrs J's regular committed expenditure, I'm satisfied that it failed to complete fair, reasonable and proportionate affordability checks before entering into this conditional sale agreement with her.

*Would reasonable and proportionate checks have indicated to Moneybarn that Mrs J was unable to sustainably make the monthly repayments to her conditional sale agreement?*

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what they would've shown. Nonetheless, I do need to decide whether it is more likely than not that a proportionate check would have told Moneybarn that it was unfair to enter into this agreement with Mrs J.

Mrs J has only been able to provide us with limited information on her financial circumstances from the time. As I've said she's provided a payslip and while she's provided a credit report as this is from 2024, it has very limited information on her credit history in 2015.

Nonetheless, Moneybarn has provided a copy of an income and expenditure assessment which it carried out with Mrs B when she fell into arrears. This income and expenditure assessment isn't dated but Moneybarn's system notes appear to suggest that it took place in or around December 2016. Of course, I accept different checks might show different things. And as this income and expenditure assessment was carried out some eighteen months after the agreement, it doesn't necessarily follow that had Moneybarn carried out proportionate checks in June 2015, it would have obtained similar information.

But given what Moneybarn knew about Mrs J in June 2015, I would have expected it to have obtained a similar level of granularity about her expenditure at this time. Furthermore, in the absence of anything else from the parties on what proportionate checks are more likely than not to have shown, I think it's perfectly fair and reasonable to place considerable weight on the income and expenditure carried out in December 2016, as an indication of what Mrs J's financial circumstances were more likely than not to have been in June 2015. Although, I have exercised caution in avoiding drawing too strong a conclusion about Mrs J's circumstances.

The income and expenditure assessment shows that Mrs J had living costs, priority bill and non-credit related commitments of just under £1,150.00. Moneybarn's income and expenditure then goes on to include Moneybarn as a creditor and add the monthly payments for this agreement to the £1,150.00 in living costs. This is despite the fact that the credit report Mrs J has provided does show that in 2024 she had credit accounts that had been open at the time Moneybarn agreed to lend and which presumably were open in December 2016.

Furthermore, Moneybarn's income and expenditure assessment then includes payments to HMRC as well as rent arrears. I don't know what these payments to HMRC were for. But Mrs J wasn't self-employed and therefore wasn't calculating her own taxes. So it would appear as though the amount due to HMRC is likely to be due to some kind of arrears or an amount that was being reclaimed from Mrs J.

In its response to my provisional decision, Moneybarn has said that Mrs J had a reduced income in December 2016 and this is the reason for her expenditure exceeding her income in this assessment. Moneybarn appears to be hinting that Mrs J may not have owed an amount to HMRC in June 2015.

I think that this is the case as it says that Mrs J was no longer receiving tax credits in December 2016 and it believes that she might have been paying back previous receipts at this point. However, I've not seen any clear evidence that Mrs J was in receipt of working tax credits in June 2015 either. So I don't think that it necessary follows that the fact that Mrs J wasn't in receipt in receipt of tax credits in December 2016, necessarily means that she didn't have already have a debt with HMRC in June 2015.

In any event and more importantly, Moneybarn hasn't really addressed the fact that its December 2016 income expenditure, did not include payments to Mrs J's other creditors and payments to cover her other non-discretionary costs such as food. As I explained in my provisional decision, Mrs J had two dependents and I understand that she was also a single mother required to meet all household costs. This is reasonably foreseeable committed expenditure I would have expected the expenditure side of its income and expenditure assessment in June 2015 to have accounted for.

So even if I were to give Moneybarn the benefit of the doubt and remove the amounts reserved for HMRC and the rent arrears from the December 2016 income and expenditure, I would still need to include costs to cover Mrs J's food, clothing and other essential expenses and also reasonable amounts to cover Mrs J's existing credit commitments. And when this information is added instead of the rent arrears and what was due to HMRC, it seems to me that Mrs J was not in a position to sustainably repay this agreement, irrespective of whether she had rent arrears and owed HMRC in June 2015.

In these circumstances, and notwithstanding Moneybarn's further arguments to my provisional decision, I remain satisfied that the information I do have, shows that it is more likely than not that Mrs J didn't have the funds necessary to make the monthly payments to this agreement, without borrowing further or it having a significant adverse impact on her financial position. In other words, the monthly repayments to this conditional sale agreement weren't sustainable for Mrs J.

So overall and having carefully considered everything, I'm satisfied that reasonable and proportionate checks would more likely than not have alerted Moneybarn to the fact that Mrs J wasn't in a position to sustainably make the payments to this agreement. And it therefore follows that I find Moneybarn shouldn't have lent to her and that it now ought to put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Mrs J might have been unfair to Mrs J under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Moneybarn to do (in the section below) results in fair compensation for Mrs J given the overall circumstances of her complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

**Fair compensation – what Moneybarn needs to do to put things right for Mrs J**

Overall and having considered everything, I'm satisfied that it would be fair and reasonable in all the circumstances of the complaint for Moneybarn to put things right for Mrs J by:

- refunding all interest, fees and charges Mrs J paid as a result of her conditional sale agreement;

- adding interest at 8% per year simple on any refunded payments from the date they were made by Mrs M to the date of settlement†;

- removing any adverse information recorded on Mrs J's credit file as a result of this agreement.

† HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mrs J a certificate showing how much tax it has taken off if she asks for one.

**My final decision**

For the reasons given above and in my provisional decision of 22 January 2025, I'm upholding Mrs J's complaint. Moneybarn No.1 Limited should put things right for Mrs J in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 March 2025.

Jeshen Narayanan
**Ombudsman**