

complaint

Mr H complains that Moneybarn No. 1 Limited provided him with a conditional sale agreement that was unaffordable.

To put things right, Mr H wants a refund of all interest and charges he paid in relation to this finance. He also wants Moneybarn to ask the credit reference agencies to remove any negative information about this finance that it asked them to register on his credit file.

background

I set out the background to Mr H's complaint in the provisional decision I issued earlier this year. But I will repeat it again here in summary so that all relevant information is in this one decision.

In August 2013 Mr H took out a conditional sale agreement with Moneybarn for a car. The cash price of the car was £16,100 there was an initial payment of £1,000 and Moneybarn provided Mr H with total credit of £15,100. The agreement was to be repaid over 48 months. The monthly repayments were £498.90.

Mr H told us he could not afford this borrowing at the time he took it out. He suggested this was because when he took out this finance he was already overextended financially. In particular, he said he had several payday loans that he was paying off as well as three credit card accounts. Mr H told us the credit card accounts were all maxed out. Moreover, Mr H indicated that his total payday borrowing before the further new credit from Moneybarn was added in was £2,100.

Plus, Mr H also told us that the only way he was able to make his repayments to the conditional sale agreement was by using both his pre-existing and new payday loans. He explained that at around about the time he entered into the agreement with Moneybarn he also entered into a debt management plan for some of his other debts. He suggested all of this information would have been available to Moneybarn when it was deciding whether to lend to him. But it had chosen not to check for this.

Further, Mr H indicated he had money troubles during the life of the agreement. Specifically, he said to Moneybarn *"you should have realised from the number of times I missed payments that my debt problems were getting worse, but you charged me late fees and default sums."* Mr H also suggested that he had asked Moneybarn for help with his repayments telling it that he was having financial difficulties, but it declined to help him.

In May 2015 Mr H settled the conditional sale finance early by making a lump sum payment of almost £11,000. It appears this was a cash payment. Mr H said he had borrowed this money from his parents.

In July 2018, three years after the end of his agreement, Mr H complained to Moneybarn about its decision to lend to him in August 2013.

Moneybarn's response was that when Mr H took out the finance it did appropriate checks that satisfied it that the lending was affordable. Specifically, Moneybarn said that it checked his income by using the pay slips it asked for and he provided. It told us it found that the monthly repayments represented 18% of his monthly income.

Further, Moneybarn said it also ran its normal credit checks. It told us its customers generally have a higher risk profile than those of other mainstream lenders. But it said nonetheless Mr H passed its checks which are designed to establish if the lending is affordable. It also suggested that its checks fully complied with its regulatory obligations.

In relation to Mr H's other debts, it could see that Mr H did have other finance at the time he applied for the agreement, but its checks showed that all of those accounts were in good order. Therefore, those debts did not give it cause to think that it ought not to lend to Mr H. Moreover, it had provided Mr H with a statement about the affordability of the finance before it went ahead, and Mr H had agreed he could afford the agreement and signed that statement.

For all these reasons Moneybarn didn't agree the lending had been inappropriate.

Moneybarn explained that it had been unaware that during the course of the agreement, Mr H may have been having money troubles. It indicated that in contradiction to what Mr H said, its records showed Mr H never said anything along those lines to it, at the time, in any event. So, it didn't see how it could reasonably have known anything about this.

Dissatisfied with Moneybarn's response Mr H came to our service.

I took a look at Mr H's complaint. In short, I found in my provisional decision that Moneybarn's checks had not gone far enough. But I was not satisfied that the lending was unaffordable. On that basis I told the parties I did not intend to uphold Mr H's complaint. I set out below what I said in my provisional decision about this complaint.

When Moneybarn lent to Mr H it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to him, the regulator at the time was the Office of Fair Trading the ("OFT").

Under the relevant regulations at that time Moneybarn was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate in the circumstances, which might include considerations about the amount borrowed and Mr H's borrowing history. Exactly what a lender should consider was for each lender to decide and the rules listed a number of things each lender such as Moneybarn might have wished to take into account

Further, Moneybarn had to be able to demonstrate that it did enough to ensure that Mr H could repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. This assessment needed to be borrower focused.

Taking into account the relevant rules, guidance, good industry practice and law, I said I thought there were some overarching questions I needed to consider in order to decide what's fair and reasonable in the circumstances of this complaint. I said, these questions are:

- Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the conditional sale agreement in a sustainable way? If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr H would have been able to do so?

- Did Moneybarn act unfairly or unreasonably in some other way?

I explained that if I determined that Moneybarn did not act fairly and reasonably in its dealings with Mr H and that he has lost out as a result, I'd go on to consider what is a fair way to put things right.

did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the conditional sale agreement in a sustainable way?

As set out above, the regulatory framework requires Moneybarn to have carried out a proportionate assessment, based on sufficient information, of whether Mr H could afford to repay the conditional sale agreement with it in a sustainable manner.

This affordability assessment had to be borrower focused in the sense that rather than focusing on the credit risk for Moneybarn the assessment needed to have sufficient checks to satisfy Moneybarn that Mr H would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Mr H's financial situation.

Moneybarn has told us that before lending to Mr H, it requested proof of his income. It asked for and received his payslips for the last two months. From this it worked out his average monthly income. It calculated that the repayments represented 18% of his normal monthly income.

Moreover, it said it also carried out a credit check to assess affordability, level of debt and payment history. It identified that Mr H did have payday loans and he did have credit card debt. However, it noted all of these accounts were in good order. Mr H met Moneybarn's own internal criteria for Moneybarn to lend. It asked for no further information and chose to do no further checks.

On the basis of the steps I have outlined above Moneybarn thought it had done enough to check if the lending was appropriate before it agreed to lend to Mr H.

I noted, it has been helpful to see the checks Moneybarn undertook. I did not doubt that Moneybarn thought it had gone far enough to establish it was appropriate to lend. That said, I did not think those checks were proportionate in these particular individual circumstances. This is particularly so when I also took into account what Moneybarn knew about Mr H.

Mr H was going to borrow a significant sum of money, £15,100, over a fairly short period of time. His monthly payments at almost £500 reflected this. I think the checks it carried out ought to have been more rigorous in this context.

In addition, in the two months immediately before taking out finance with Moneybarn Mr H's bank statements, which, Moneybarn chose not to look at, showed Mr H had taken credit from at least five different payday lenders. It is likely that at least some of this information was available on Mr H's credit file at the time he made his application to Moneybarn. I accepted that by itself, borrowing from payday lender(s) might not mean that a business ought reasonably to dig further. However, in this instance, I thought the amount, volume and timing of this payday lending would have made any reasonable lender make further checks.

As far as I could see Moneybarn placed great emphasis on the fact that the repayments represented 18% of Mr H's monthly income. But that was just one facet of Mr H's financial situation. Moneybarn did not ask about his other outgoings other than the debt repayments

he had. I said it is hard to see therefore how it was able to establish that Mr H would be able to maintain significant monthly repayments without knowing what other financial priorities he might have had other than his debt repayments.

For all of these reasons, I thought that Moneybarn should have conducted further checks before it lent to Mr H to satisfy itself of Mr H's financial standing and that Mr H could initially afford and maintain repayments to the conditional sale agreement.

It follows that, I was not satisfied that the checks Moneybarn undertook before lending to Mr H were proportionate in the circumstances or that it undertook a reasonable assessment of what it did know about Mr H.

would the additional checks have shown that the lending was unaffordable?

Mr H tells us about his circumstances. It appears he was in a full-time role with a regular salary and he sometimes got large lump sum payments for expenses. For example, in July 2013 his bank statement shows he received almost £5,000, which he told us was expenses. But, at the same time, he suggested his borrowing was escalating. His stance is that he was using both payday loans and his credit card accounts to fund himself in addition to his salary. It seems as Moneybarn said the accounts were all in good order, but it was something of a balancing act to keep it so from his perspective. I'm satisfied that Moneybarn might have seen all of this had it checked.

However, it is not enough for me to say that Moneybarn's checks did not go far enough. If I am to ask it to take further action I must be satisfied that Mr H could not afford the borrowing. For me to come to this conclusion I said I need to be persuaded that I have a full picture of Mr H's financial situation at the time. I was not satisfied that I did at the point when I issued my provisional decision. I said this for a number of reasons that I then went through.

Mr H has been very specific about what his outgoings were at the time, he mentions rent, council tax, utilities, transport costs and food and toiletries in particular. These seem to be the type of expenses he might have been expected to have had.

However, on the face of it, none of these outgoings appear on the bank statements he sent us. Mr H explained that this was because all of his outgoings bar, his rent were paid for using his credit cards. I took on board, that Mr H unsurprisingly, cannot now provide the credit card statements for 2013. But he told us he paid his rent in cash and he said this cash came out of his current account. He said his rent was £400 per month. But there was no regular cash withdrawals that matched this monthly amount in Mr H's bank statements. We asked about this. Mr H said.

"RENT CASH WITHDRAWALS

JUNE I DIDN'T PAY MY RENT SO PAID..

11/7/13 £300 RENT ARREARS

17/7/13 £300 RENT ARREARS

29/7/13 RENT £100

31/7/13 £500 RENT

30/8/13 & 2/9/13 £300ea RENT"

I pointed out that the information provided by Mr H does not tally with what he says about paying £400 a month in cash in rent on a regular date. I asked might Mr H be able to explain this?

I explained that I have very little information that I can cross reference about Mr H's living expenses in August 2013. All that is available is the information he has provided about his rent to explain his significant cash withdrawals. That being so, it is even more important that the limited information he has been able to provide ties up with what he tells us about his finances in August 2013.

Mr H also said he had his salary and expenses paid in from a source that is called "Business Account" in his bank statements. I said I'd like Mr H to confirm that he has no separate business account. I asked for this confirmation because again, on the face of it, it appears he was having large transfers of cash coming into his account from a source called Business Account.

Mr H paid off the conditional sale agreement early with cash it seems. Mr H tells us this cash came from his parents. I said it would be helpful if he is able to provide information to demonstrate this.

In the circumstances, for all of these reasons, I was not persuaded, currently, that I had sufficient information to safely conclude that I knew enough about Mr H's financial circumstances at the relevant time, to be able to say the lending was unaffordable.

did Moneybarn act unfairly or unreasonably in some other way?

Mr H suggests he had financial difficulties after he took out the lending with Moneybarn, and this meant he made some of his repayments late. If a consumer is experiencing money troubles a lender is expected to notice for itself. In addition, at the time Mr H's agreement was active Moneybarn was meant to respond positively and sympathetically to such an issue.

As I mentioned above Moneybarn had a proactive duty to notice if Mr H's repayment history fitted the pattern of someone who is struggling with their finances.

Added to which, Mr H suggests he also told Moneybarn specifically that he was having financial problems, and this also put it on further notice. But he indicates far from looking into this as it should have done Moneybarn did nothing.

I took a look at Mr H's repayment history and Moneybarn's internal notes. I saw no reason why those notes would not be accurate.

I said the picture does not appear to be as clear-cut as Mr H suggests. There were several occasions when the direct debit to pay for the repayments required by the agreement bounced. But I saw no notes saying Mr H said this was due to him having money problems. Rather, there is a note on one occasion saying Mr H told Moneybarn the account manager who deals with wages at his employer has gone into hospital without warning, and this caused the direct debit to bounce. On another occasion there is a note saying Mr H did not know why the direct debit did not go through.

That said, in 2014 there appears to be at least five times when there were problems with the repayments. That is the direct debits bounced. In these circumstances, I thought that I might

have reasonably expected Moneybarn to pick up on this. Instead, it seems to have taken the approach that all was well because the follow-up payments were swiftly made by Mr H.

However, a lender ought not to take such a studiously uncurious approach when it sees this pattern of missed and late payments.. But given the notes on the file, I was not persuaded that Mr H might have been ready, at that point, to tell Moneybarn about his money problems. So, it did not seem likely to me, in these very individual circumstances, that even if Moneybarn had asked about this, as it should have done, it would have got to the bottom of it.

It follows, that I did not agree that Mr H was disadvantaged because Moneybarn failed to act appropriately when he was experiencing financial difficulties.

I also noted that Mr H had raised a new issue about his gambling problems. Mr H had not complained to Moneybarn about this in his original complaint so I asked if Moneybarn would allow us to look at this.

Based on all of the above my provisional decision was that I did not intend to uphold Mr H's complaint.

I invited both Mr H and Moneybarn to respond to my provisional decision. Mr H responded and as far as I am aware Moneybarn did not, not even to tell us that it had received the decision.

In short, Mr H responded to say that his rent was £600 per month, not the £400 he previously said it was. He told us he did not have a business account. He said the money that was paid into his account with the payer reference Business Account came from his employer at that time. It, his employer, chose to identify money it paid into employees accounts with the reference Business Account rather than putting its own name on such payments. We said we wanted to contact his former employer to check this one factual point. Mr H asked us not to do that and explained why. He also said in any event no one at his former employer would be able to confirm this information due to changes that had occurred there. But he asked two people to contact us. Both of these people said they had worked at Mr H's employer in payroll and that salaries and expenses had been paid with the reference Business Account.

Further, Mr H explained the money he had used to pay off the conditional sale agreement came from his friend rather than his parents. He told us he had not ever told Moneybarn he was having money troubles as he was worried about what it would do if he revealed his plight.

my findings

I thank Mr H for his responses to my provisional decision. I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision.

It is not ideal that we have heard nothing from Moneybarn in response to my provisional decision. But I am satisfied that it has had a fair opportunity to respond.

I have received no new information since my provisional decision, about whether Moneybarn did enough before it lent to Mr H. That being so, I have come to the same conclusions for the

same reasons as I did in my provisional decision. I am persuaded that Moneybarn should have conducted further checks before it lent to Mr H to satisfy itself of Mr H's financial standing and that Mr H could initially afford and maintain repayments to the conditional sale agreement.

It follows that, I am not satisfied that the checks Moneybarn undertook before lending to Mr H were proportionate in the circumstances or that it undertook a reasonable assessment of what it did know about Mr H.

However, I am not persuaded by the further information that Mr H has provided. I do not find that I have a proper basis to say that he could not afford the lending based on his financial situation in August 2013. As I said in my provisional decision, if I am to ask Moneybarn to take further action I must be satisfied that Mr H could not afford the borrowing. For me to come to this conclusion I need to be persuaded that I have a full picture of Mr H's financial situation in August 2013. I am not satisfied that I do.

As I also explained in my provisional decision. I have very limited information about Mr H's financial situation at the time he borrowed from Moneybarn. That being so it is all the more important that the limited information he has been able to provide ties up with what he tells us about his finances in August 2013.

Mr H tells us about his rent, which he said he paid in cash seemingly on different dates each month. At first he told us the rent was £400 per month. Then £600. I might have expected him to have provided consistent information about this point. Nonetheless even if he was mistaken about how much he did pay, it is not clear why, if his rent was £600 per month every month, he only paid £300 in both August and September for example.

It is unusual in my experience, for an employer to identify payments from itself not by using its own name but by calling itself Business Account. Mr H had almost £5,000 paid into his account from the Business Account reference in July 2013. That is the month before he entered into his agreement with Moneybarn. This was a significant amount of money in the circumstances and made a great difference to his overall financial situation on the face of it. We wanted to ask Mr H's former employer about this as I have already mentioned above. Mr H has given us an explanation about why he does not want us to contact his former employer. But in the circumstances, I am not persuaded that it would be unreasonable to contact his former employer to ask it about one limited factual point. That said we did not contact his former employer given his opposition to this. Neither am I persuaded that no one at his former employer would know about the payroll arrangement which existed when Mr H worked for it, given that Mr H only left its employment fairly recently it would seem. I recognise two people have contacted us at Mr H's request to tell us about the payroll set-up at the former employer. But when it comes to key factual information which this is, it is the employer who I'd expect to provide this information. On balance I am not satisfied that I know enough about this source of funds to be persuaded by what Mr H has said about this.

I thank Mr H for confirming that the money to settle his conditional sale agreement that is around £11,000 came from his friend who lent him the money and not from his parents. Although why Mr H might have been initially mistaken about who such a large sum of money came from is not clear.

In all the circumstances, with such discrepancies in mind and being unable to check key information with a key third party, I have some difficulty relying on the accuracy of some of the information Mr H has provided and on some of his recollections.

For all of these reasons, on balance I do not find that Mr H could not afford the finance.

I also looked again at whether Moneybarn did enough when Mr H was experiencing financial difficulties. It is clear now that Mr H never told Moneybarn that he was in a tight spot financially. I am satisfied he did not discuss his situation with it because he was worried about its response. But equally given Mr H's history of late payments and unconvincing reasons for those late payments, I think Moneybarn should have asked Mr H more about this at the time.

However, I am persuaded that Mr H was worried about its response if he told it he had money problems. So, I think it is unlikely that even if Moneybarn had asked about this straight out that Mr H would have been willing, at that point in time, to talk about his finances. It follows that I find that even if Moneybarn had pursued this it would have got no further. Dealing with financial difficulties is a two-way street both parties have to communicate to get somewhere. That being so I don't think Moneybarn did treat Mr H unfairly when he had financial difficulties.

Mr H told us about his problem gambling. But he never raised this with Moneybarn when he complained to it, it's a new issue. Therefore, it did not deal with the issue in its final response to Mr H. I asked Moneybarn if we might look at this new issue as I needed its consent to do so. But it has not responded. So, on that basis I am unable to look at this issue in this complaint.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 December 2020.

Joyce Gordon
ombudsman