Financial Ombudsman Service

complaint

Mrs R complains that Moneybarn No. 1 Limited shouldn't have agreed to lend to her under a conditional sale agreement. She says the agreement was unaffordable.

background

Mrs R entered into a conditional sale agreement in January 2015 so that she could obtain a used car. The cash price of the car was £13,660. The agreement was for 60 months with a total repayable of around £24,000. Mrs R's monthly repayments were a little over £400 each month.

Mrs R says Moneybarn didn't do enough to check that she could afford to repay the agreement. She says she couldn't afford her existing car finance agreement which was around £100 cheaper each month. She says Moneybarn should have seen that she'd had several defaults and a County Court Judgement ("CCJ") recently. She said she was also in arrears on her council tax and utility bills and had taken out lots of payday loans and other high interest lending.

Moneybarn says it checked Mrs R's credit file and bank statements that Mrs R supplied during the application. It said these didn't highlight any concerns about affordability. Mrs R said the bank statements the broker asked her to supply weren't for her personal current account – they were for her business. She says the broker told her to do this as it would show greater income and affordability. Moneybarn said it couldn't have known they were her business account statements as the statements were in her name, not in the name of a business.

I sent Mrs R and Moneybarn my provisional decision on 13 January 2020. I explained why I thought the complaint should be upheld. I said Moneybarn was required to follow the rules and guidance set out in the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC"). An extract of my provisional findings follows:

CONC says that lenders need to carry out checks to ensure any lending it gives is affordable and sustainable for the borrower. This is often referred to as an 'affordability check'. This check should be 'borrower-focussed'. This means Moneybarn needed to think about whether Mrs R could afford the borrowing, not just how statistically likely she was to repay it back.

The thoroughness of the checks Moneybarn carried out needed to be proportionate to the situation. In deciding what was proportionate Moneybarn ought to have considered the following (but not limited to):

- *The size and duration of the loan;*
- *The overall cost of the borrowing and the size of the repayments; and*
- *Mrs R's personal circumstances.*

This loan was for five years with a total repayable of around £24,000. I think this was a significant commitment for Mrs R. The monthly repayments were also over £400. This was a large proportion of Mrs R's declared £1,700 monthly income. So I think the thoroughness of the check Moneybarn carried out ought to have reflected the significant commitment Mrs R would be undertaking over a relatively long period of time.

To assess whether Mrs R could sustainably afford to repay the loan Moneybarn says it reviewed her bank statements and completed a credit check. It says the credit check didn't *"highlight or indicate any financial hardship". We've asked Moneybarn to provide us with the data it received from the credit check, but it says this isn't available. This means I can't be sure what information Moneybarn reviewed in order to assess Mrs R's current financial position – other than the bank statements she supplied.*

Mrs R has provided us with a copy of her credit report. So in the absence of anything from Moneybarn to show what data they saw, I think it's reasonable to conclude the information contained in the report Mrs R has supplied was likely to be available to Moneybarn.

The credit report shows a number of concerning entries which should have highlighted to Moneybarn that it was likely Mrs R was in financial hardship. In May 2014, Mrs R had a CCJ issued against her for a debt of around £5,500. One month later she defaulted on a credit account leaving an outstanding balance of around £2,000.

It appears Mrs R had been struggling financially since at least 2011. She had defaulted with more than one utility provider in 2012 and 2013, indicating her financial problems were quite severe. I say this because she was clearly unable to meet her essential living costs. All of this information was available on her credit file. There were also a number of defaults for various payday loans between 2011 and 2013.

Although the majority of the defaults had happened more than a year before the Moneybarn agreement, arguably one of the most significant entries (the CCJ) was very recent. There was also a recent default for quite a large amount. This ought to have highlighted to Moneybarn that Mrs R was likely to be struggling financially. It ought to have prompted it to ask more thorough questions about her income and expenditure before agreeing to lend.

Moneybarn did have sight of some bank statements that Mrs R provided as part of her application. But it appears all Moneybarn was concerned with was verifying how much income she had. I say this because that appears to be the only figure it's input into its "affordability calculation". It has also simply relied on the fact that the monthly repayments were less than 25% (but only just) of her monthly income to indicate the agreement was affordable to her.

Moneybarn says it couldn't have known the statements Mrs R provided were for her business. But I don't think that makes a difference. I say this because there were a number of reasons why on reviewing the statements Moneybarn ought to have questioned Mrs R's financial position more.

I say this because it was clear Mrs R was transferring regular and sometimes fairly large sums of money between this account and another one. There were also no typical transactions that you'd reasonably expect to see from someone's main current account. For example:

- *Mrs R had declared she was renting, but there was nothing to indicate she was paying rent.*
- *She had said she was employed full-time (and not that she was self-employed), but there was nothing to show she was receiving a regular salary.*

In addition to this, each month Mrs R didn't have anywhere near the required £400 available to pay for the proposed agreement. There were also several direct debits and standing orders set up to pay numerous different debt collection companies. And there was nothing to indicate she was paying expected bills like utilities or council tax. So I think this showed that *these statements didn't give an accurate picture of Mrs R's financial position. But crucially it also showed that she was still repaying lots of different debts and appeared to only be able to afford relatively small repayments to each of them. This combined with what Moneybarn ought to have seen from its credit check, would have shown Mrs R was likely to be in financial difficulty.*

For these reasons I don't think Moneybarn carried out a reasonable or proportionate check on Mrs R's ability to sustainably repay the borrowing. This means that before agreeing to lend to Mrs R, I think Moneybarn ought to have asked more detailed questions about her income and expenditure.

I can't know what further information Moneybarn would have asked. However, I've reviewed Mrs R's current account bank statements for her other account. In the absence of anything else, I think this gives a good indication of what information Moneybarn would most likely have found out had it carried out a proportionate check.

These do show that Mrs R also held a part-time job as well as running her own business. As Moneybarn has said, this means Mrs R's income was actually greater than she'd declared during her application. This account also details typical essential expenditure such as food, utility bills, insurance and other credit commitments. Just like the other account statements it too has several direct debits and standing orders set up to repay debt collection companies. These were also for generally low amounts.

Moneybarn says the statements show Mrs R had an additional £1,000 to spend. But I disagree. There are two statements which cover the period of November 2014 to January 2015. During this time Mrs R paid in around £4,500 and she paid out around £4,500. Further, £1,000 of that income Mrs R has told us was from a successful PPI claim that she made , so a large proportion of the income on those statements wasn't regular income she could rely on.

From reviewing her personal and business statements its clear Mrs R was struggling to meet all of her regular financial commitments and essential bills. She frequently transferred money between the two accounts to try to avoid going overdrawn and was only able to make small token repayments towards numerous existing debts. So I think had Moneybarn carried out a proportionate assessment of Mrs R's ability to sustainably repay, I think it's likely it would have discovered this too. For this reason I don't think it made a reasonable lending decision.

Moneybarn says Mrs R should have been in a good position (given the nature of her business) to assess whether she could afford the borrowing. But regardless of what Mrs R's profession was, that doesn't absolve Moneybarn of its responsibilities in ensuring it doesn't lend irresponsibly. It was required to carry out appropriate and proportionate checks and for the reasons I've explained I don't think it did. And had it carried out proportionate checks, I don't think it ought to have lent to Mrs R.

I've therefore gone onto consider what a fair remedy would be. Mrs R voluntarily surrendered the car in April 2016. The agreement was later defaulted and the car was sold at auction for £9,300. The sale proceeds were taken off what Mrs R owed under the agreement.

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. But Mrs R did have use of the car for around 15 months, so I think it's fair she pays for that use. But I'm not persuaded *that monthly repayments of over £400 a month are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.*

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mrs R's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mrs R's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have this car. In doing so I think a fair amount Mrs R should pay is £200 for each month she had use of the car. This means Moneybarn can only ask her to repay a total of £3,000.

If Mrs R has already paid back more than £3,000, Moneybarn should treat any excess she's paid as an overpayment. It should then refund those overpayments to Mrs R, adding 8% simple interest per year from the date of each overpayment to the date of settlement. As Mrs R shouldn't have been given the borrowing, it isn't fair for her to have any adverse information recorded on her credit file about this debt. Moneybarn should therefore arrange to remove any adverse data.

Mrs R accepted my provisional decision. Moneybarn thought appropriate affordability checks were carried out when the agreement was entered into. But it said it wasn't able to provide any further information or comments. And it agreed to accept the provisional decision as it didn't think it would be in Mrs R's best interests to prolong the issue further.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided any further information or comments for me to consider, I see no reason to come to a different conclusion to what I reached in my provisional decision.

my final decision

For the reasons given above, I uphold this complaint and direct Moneybarn No. 1 Limited to:

- Cancel the agreement, ensuring Mrs R only has to repay a total of £3,000.
- If Mrs R has already paid more than £3,000 towards the agreement, any overpayment she's made should be refunded to her, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse data from Mrs R's credit file.

If Moneybarn considers tax should be deducted from the interest part of my award, it should provide Mrs R with a certificate showing how much its taken off. She can then reclaim that amount, assuming she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 11 March 2020.

Tero Hiltunen
ombudsman