complaint

Mr M complains that Moneybarn No. 1 Limited (Moneybarn) is asking him to make payments he can't afford on a debt. He wants Moneybarn to reduce the monthly payments.

background

In mid-June 2016 Mr M took out a conditional sale agreement with Moneybarn to buy a car. He was to pay £285.51 a month for five years.

Mr M didn't manage to keep up the payments, and in mid-2017 Moneybarn arranged a payment plan so that Mr M could catch up with the arrears. Things didn't improve, and in early 2018 Moneybarn got Mr M to complete an income and expenditure assessment to see how much he could reasonably afford towards his outstanding debt. Moneybarn thought Mr M could afford £100 a month on top of his normal payment and says Mr M agreed to this. The payment plan failed – and a couple of months later Mr M didn't pay the normal monthly payment. So Moneybarn terminated Mr M's agreement, and started repossession proceedings for the car. It applied for a court order in late 2018.

Mr M complained that £100 extra each month was too much and said he could have paid £50. He wanted Moneybarn to accept this, but it didn't. So Mr M brought his complaint to us.

Our investigator looked at the income and expenditure paperwork Mr M had completed and thought that £100 extra each month was affordable, as it was about a quarter of Mr M's declared disposable income. But he thought that, as Mr M had struggled to meet payments almost from the start of the arrangement, it was appropriate for him to explore whether Moneybarn should have lent to Mr M in the first place. So he asked Moneybarn to share the information it collected when assessing Mr M's ability to repay in 2016.

Moneybarn said it asked for proof of income, and Mr M chose to send in his bank statements for this. It says it also completed its "normal" credit checks to assess affordability, indebtedness and payment history. It says a credit search showed nothing that would prevent it from lending, pointing out that it does specialise in lending to "higher risk" customers. It was satisfied it carried out the relevant checks.

Our investigator thought the statements Mr M provided showed his outgoings were much higher than his income and that he had an unarranged overdraft. He also pointed out a court fee, which he said should have prompted Moneybarn to ask further questions. He said that if Moneybarn had looked at Mr M's credit history in more detail it would have realised he had several defaults registered against his name and had gone into arrears on a second mortgage. He also had several debts with debt collectors.

Our investigator concluded that Moneybarn shouldn't have lent to Mr M. He suggested Moneybarn should close Mr M's account, write off any remaining debt and amend his credit file as though the loan never existed.

Moneybarn doesn't agree. It says the outgoings on Mr M's bank account were skewed because he transferred money in and out of his savings account – which it says is a common way people manage their cash flow. It thought that stripping these from both in and outgoings showed a more balanced result – and that there was no compelling reason why it shouldn't have lent.

I've been asked to decide this complaint.

my findings

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

affordability

Mr M applied for a loan he'd be repaying for five years. That's a fairly substantial commitment. So when Moneybarn lent to Mr M, it needed to carry out sufficient checks to satisfy itself that Mr M could afford the loan. There's no set list of checks it had to carry out – but they did need to be proportionate to the amount of the loan and the commitment Mr M was entering into.

Moneybarn says it received Mr M's bank statements for the two months prior to his application, which it used to confirm his income. It also carried out a credit check which contained nothing that prevented it from lending using its own criteria.

Those seem to me to be reasonable checks. But I don't think they go far enough. I think reasonable enquiries would also establish whether Mr M had sufficient money left each month, after paying his regular commitments and living costs, to afford this loan. I can't see that Moneybarn did that. One way of doing this might have been to ask Mr M what his outgoings were and compare them to his bank statements. We have those statements. So I'll look at the information Moneybarn did get and whether it should have affected its decision to lend. That's because even if Moneybarn didn't have a list of outgoings from Mr M, the information it did have might have meant it could reach a reasonable decision without that.

bank statements

Many lenders don't see bank statements before lending, but Mr M chose to send these to Money barn. It says they were to confirm his income – but it's also reasonable to say that if they contained other information pertinent to the lending decision Moneybarn should have noted this. I've looked at the statements and it appears that over the two months or so the amounts paid into the account and out were roughly equal (added together they were about £4,784 in and £4,778 out). That's reflected in the fact that Mr M had an overdraft of about £500 at the beginning and end of the two months – although he was in credit at one point, so I can't say the overdraft was permanent. I can see Mr M paid some unauthorised overdraft charges. Our investigator suggested Mr M didn't have an arranged overdraft, and I agree there isn't one shown on the statement. But I can see Mr M's bank was making payments on his behalf up to about a £500 overdraft. I can only see one returned payment when Mr M went over £500, so this arrangement seems to have been working.

I can also see Mr M was transferring money to and from a savings account. But as Moneybarn says, that's something many people do to help them manage their cash flow. Mr M says he was supplementing his outgoings from his savings and Moneybarn should have realised he was over-spending. I can't see that this was apparent from the statements, given that the money moved from the savings account was only about £200 more than was transferred into the savings account during the period. But even if Mr M had been asked about this, supplementing an income with what appears to be a small amount of savings isn't necessarily a reason for Moneybarn not to lend.

Overall, I think these statements show that Mr M was just about getting by – or at least his situation didn't worsen over these two months. But I can't see he had enough "free" money to pay nearly £300 a month for five years.

Based on these statements I think Moneybarn had enough information to prompt it to make further enquires. It can't show me it did that, so I can't say it responsibly lent to Mr M.

Our investigator said that an entry marked "court order fee" for £25 should have prompted Moneybarn to make further enquiries. I'm not convinced a low value fee – which could have been for any court procedure Mr M was involved in – should have prompted further enquiries. But this doesn't make a difference as I think Moneybarn was already on notice to enquire further before it lent to Mr M.

credit file

Mr M sent us a copy of his credit file. I should say that the credit search Moneybarn carried out wouldn't have given the same level of detail we can see in Mr M's report. But it will show defaults etc. Mr M's report does show several defaults and that he was behind on his second mortgage (although this only seems to be one payment). The defaults were all from some time earlier – the most recent was more than a year old. That tallies with what Moneybarn says its reports showed too – and its lending criteria meant it was content to lend to Mr M even with his previous financial problems. That might be so, but combining the information on Mr M's credit file with what Moneybarn could see on his bank statements suggests Mr M wasn't in a position to borrow long term.

When we got Mr M's credit file, we noticed that he entered into a Trust Deed on 10 June 2016. That's a method of dealing with someone's insolvency. I understand this is what the £25 court fee on Mr M's statement refers to. Mr M has told us the arrangement is still running. He told us he thought he'd applied for the loan before the Trust Deed came into force. And the paperwork he's sent us does show a second date in August 2016 as the "date of protection", although it also shows his insolvency practitioner was appointed on 10 June.

I doubt the Trust Deed would have showed on Mr M's credit file when he signed the loan agreement, whether it was registered in June or August, given there's often a delay in updating credit files. But I do think Mr M must have known of its existence. We sent this information to Moneybarn for comment, but it hasn't responded.

I think it's possible there were mistakes on both sides here. But I think Moneybarn is the expert in lending decisions – not Mr M. And even without the information about the Trust Deed, I think Moneybarn had enough information to make further enquiries before it lent to Mr M. It didn't do that, so I can't say it lent responsibly.

I think the fairest way to put things right is for Moneybarn to cancel Mr M's outstanding debt once the car is returned to Moneybarn (if it hasn't been repossessed by Moneybarn already). I'm not going to ask Moneybarn to refund any of Mr M's payments as he had use of the car even during the periods he wasn't making all the required payments. Moneybarn should also arrange for Mr M's credit file to be amended to remove any negative references to this loan.

my final decision

My decision is that I uphold this complaint.

I order Moneybarn No. 1 Limited to cancel any outstanding debt owed by Mr M once the car is returned and/or sold on his behalf. It must also remove any reference to this loan from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 July 2019.

Sue Peters
ombudsman