

complaint

Mr B complains that Moneybarn No.1 Limited (Moneybarn) acted irresponsibly when it lent him money to buy a car, and that now the loan is in default, he's being asked to repay more than he owes.

background

Mr B entered into a conditional sale agreement with Moneybarn in 2016. He was to pay about £316 a month towards a loan of just under £10,000 which he used to buy a car. He didn't make the first few payments and about three months later talked to Moneybarn about his financial situation. Based on the information Mr B provided, Moneybarn agreed a new payment going forwards – about £127 a month extra, until he'd caught up on missed payments. Mr B didn't make the next payment, so the following month Moneybarn said the account was in default, and over the next month or so matters progressed until Moneybarn terminated the agreement.

A couple of weeks later Mr B said he could bring the account up to date. Moneybarn obtained a consent order. That essentially meant it had been through a repossession process in court – but it wouldn't repossess the car if Mr B maintained monthly payments of just under £330 a month. Mr B brought the account up to date, but still didn't make all the payments as they fell due. Eventually Moneybarn said it was going to repossess the car, and Mr B explained that there had been some fraudulent activity on his bank account which prevented him from making payment. He made one more payment, but eventually the car was repossessed in February 2018. It was sold a month later.

Mr B doesn't think he should have any outstanding debt as he's returned the car. And he also doesn't think Moneybarn should have lent to him in the first place. When he complained to Moneybarn about this it said it wouldn't change its stance.

Our investigator looked at whether Moneybarn had lent responsibly – and concluded it had. She also thought Moneybarn was correct in asking Mr B to repay the outstanding debt, which she thought was the amount due after the sale of the car had been taken into account.

Mr B is unhappy about this so 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.

There are two main parts to this complaint. I'm not going to uphold either part. I'll explain why.

the lending decision

Moneybarn was required to lend responsibly to Mr B. So it should have carried out a credit assessment of Mr B's circumstances before it lent to him. There aren't any set rules about *how* Moneybarn should conduct such an assessment – but it should carry out sufficient, proportionate checks before it agrees to lend.

The Financial Conduct Authority (FCA) sets out the rules and guidelines Moneybarn must follow when deciding whether to lend to a customer. In 2014, the FCA issued rules on responsible lending. Part of those rules (in particular CONC5.2A.17) says that a lender should – in nearly all cases – assess an applicant's outgoings as well as income before deciding whether to lend.

Moneybarn says that it carried out sufficient checks. It looked at Mr B's credit file and his income before deciding whether to lend. Having looked at Mr B's credit file from the time I think the first part of the check was reasonable. Although Mr B's record wasn't perfect, there weren't strong indicators that he wouldn't be able to meet the repayments.

Moneybarn also checked Mr B's income. It says as the required monthly repayment wasn't more than 25% of Mr B's income they should have been affordable. Our adjudicator thought that was sufficient.

I don't agree with that approach. To be in line with the FCA rules, I think Moneybarn should have made an assessment of Mr B's actual outgoings, rather than assume he could afford repayments based on his income. Only if the information Mr B provided flagged up potential difficulties would I think it proportionate for Moneybarn to check bank statements before lending.

I understand Mr B should have provided information about his outgoings during the application process – but I haven't seen any evidence that this was done. I think that was a failing on Moneybarn's part. So I've thought about whether, if Moneybarn had carried out this check, it would still have lent to Mr B.

Overall, I think it would have.

I think it reasonable to say Mr B would have given Moneybarn information in line with his actual outgoings when he applied for the loan. Our adjudicator looked at Mr B's bank statements covering the period when he applied for the loan, and she concluded Mr B could afford the first repayment figure. I've looked at them too and agree with her conclusions.

Moneybarn also talked to Mr B about his outgoings less than three months after providing the loan, and he gave information that suggested he could afford an extra £127 a month on top of his regular payment. Our adjudicator looked at the worst case scenario for Mr B based on what he told us and Moneybarn – that's minimum income and maximum outgoings – and thought he could afford the increased payment. Again I agree with what she said.

I also think it unlikely Mr B's financial situation changed much in less than three months – he hasn't said, for instance that he lost his job in the intervening period. He has mentioned splitting up with his partner – but I can't say Moneybarn should have anticipated that might happen when it lent.

On balance I think Mr B would have most likely provided the same or similar information at the point he was applying for the loan as he did three months later. That suggests he should have been able to afford the loan.

Mr B has told us he was gambling when he applied for the loan and a check of his bank statements would have revealed that. I've already explained why I don't think Moneybarn needed to ask for Mr B's bank statements before it lent to him. And I can't see Mr B told

Moneybarn he was gambling. So I don't think that was information Moneybarn could have taken into account when deciding whether to lend to Mr B.

In summary I think if Moneybarn had carried out sufficient checks it would still have lent to Mr B.

outstanding debt

Mr B says it's unfair for Moneybarn to say he still owes a substantial amount of money (or anything) because he surrendered the car. And I understand why he thinks that. But Mr B did sign a credit agreement which explained how much he was borrowing overall – which was just under £19,000, once interest had been added to his loan. From what I've seen, Moneybarn has applied all the instalments Mr B paid to his account, and deducted the sale proceeds of the car from his debt. And it does appear to have added fees and charges in line with his agreement. I can see Moneybarn has also offered Mr B a discount if he pays the full amount promptly. So long as Moneybarn calculates the amount due in line with the terms and conditions (including any early settlement rebate) of Mr B's agreement, I wouldn't ask it to change the outstanding figure.

I would remind Moneybarn that it should be treating Mr B positively and sympathetically according to his current financial situation.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 September 2019.

Sue Peters
ombudsman