

complaint

Miss R complains that Moneybarn No. 1 Limited (“Moneybarn”) approved lending to her when she couldn’t afford it.

background

Miss R entered into a conditional sale agreement with Moneybarn for a car in July 2013 having been declined in the previous month. The agreement was for 48 months with repayments of just over £200 each month. The total amount repayable was around £10,000.

Miss R says that she struggled to make repayments throughout the term of the agreement and was only able to do so by taking out other loans and by borrowing from friends.

Moneybarn carried out an income and expenditure check in August 2014 as Miss R had fallen into arrears. Moneybarn said this showed Miss R had enough disposable income to maintain her repayments.

When Miss R had a change to her income for health and personal issues, Moneybarn said they carried out another income and expenditure assessment with her and determined she wouldn’t be able to maintain her payments whilst she was sick from work. Moneybarn said Miss R was confident she would still be able to meet her commitments as she was expecting a large payment.

Miss R continued to fall into arrears and a default notice was sent to her in August 2016. Moneybarn said Miss R made the necessary payment but her account remained in arrears. In January 2017, another income and expenditure form was completed and a weekly payment plan was agreed. But Miss R only made the first payment so the agreement was ended. Miss R wanted to keep her car as she needed it for work. Moneybarn sought and got a Consent Order, with a payment plan agreed by the court.

Miss R complained to Moneybarn in late 2017 as she didn’t think that they had done enough to check she could afford the repayments before agreeing to the finance. Moneybarn said they had carried out their normal credit and affordability checks which didn’t highlight any concerns around affordability.

Moneybarn also said that Miss R had been provided with a document which explained how the finance agreement would work and that there was a section in there which was designed for Miss R to think about whether she should proceed if she had concerns about meeting the repayments.

Miss R wasn’t happy with Moneybarn’s response so one of our investigators looked at her complaint. The investigator considered whether our service could look at the complaint as there had been a court order. She felt that the court hadn’t considered the affordability of the finance agreement, which is what Miss R had asked us to consider. So she told Moneybarn that we were able to look at Miss R’s complaint.

Our investigator felt that Moneybarn hadn't conducted reasonable checks when assessing Miss R's application. She said there were a number of concerning entries on Miss R's credit file, in particular outstanding County Court Judgements (CCJ), which Moneybarn would have seen and which should have prompted them to ask Miss R more questions about her monthly outgoings. And she felt that had they done this, Moneybarn would have realised the lending wasn't affordable.

Moneybarn didn't agree with the investigator. They said that the information she had referred to on Miss R's credit file may not have been seen by them when Miss R's application had been assessed. Moneybarn also said that Miss R having outstanding CCJ's wouldn't have precluded her from being given finance as their business scope included offering finance to those who have lower credit scores. Moneybarn mentioned that the CCJ's were for relatively small amounts as part of their rationale.

Miss R's case was then passed to me for a decision. I issued my provisional findings to both parties on 5 December 2019, an extract of which I include below.

I'll firstly deal with our jurisdiction to consider Miss R's complaint as I'm aware this has been raised by Moneybarn. Moneybarn says that the sum payable under the agreement was subject to a Court Order, which was suspended on the provision that Miss R makes monthly payments of a particular amount. And they also say that if Miss R had any dispute on what she owed them, this should have been raised by her to the Court.

Miss R's complaint is about whether or not the finance agreement was affordable at the outset. This subject was not, from what I can see, brought before or considered by the Court. So I see no reason why this service should not consider this complaint. Miss R isn't complaining that Moneybarn shouldn't be pursuing her for the sums payable as agreed by the Court. It is that Moneybarn shouldn't have advanced her credit to begin with. I am satisfied that we are able to consider this complaint.

I turn now to the merits of Miss R's complaint. When Moneybarn assessed Miss R's application for credit, they had to have regard to the relevant guidance on responsible lending at the time. This was the Office of Fair Trading's (OFT) guidance on responsible lending. So I have taken this guidance into consideration.

The OFT guidance set out that proportionate affordability checks had to be carried out by finance providers. It didn't set out hard and fast rules of what these should have been. Rather, it gave guidance in broader terms, about what may be appropriate. This would depend on the particular circumstances of each particular case and would take into account factors such as the size of the loan, the amount of the repayments, and what the finance provider knew about Miss R and her circumstances. And the guidance set out that finance providers should have made a reasonable assessment of whether a borrower could afford to meet repayments in a sustainable manner.

This check should have been 'borrower-focussed'. This means it wasn't good enough for Moneybarn just to think about how likely Miss R was to repay the debt – in other words, their credit risk. Moneybarn also had to consider whether Miss R could sustainably afford to repay the borrowing.

In Miss R's case, Moneybarn asked for details of her income and checked this against her payslips. They also looked at information from her credit file, however due to the passage of time they no longer have a record of this particular check that they can send to us.

Moneybarn have explained that they wouldn't have extended credit if the repayments represented more than 25% of her income. I note that this clearly formed part of their own lending criteria and in particular what kind of 'risk' they were willing to take on. But I don't think this was an adequate borrower-focussed check on whether it was affordable and sustainable to Miss R.

As Moneybarn doesn't have a copy of the credit check they carried out, it's not possible for me to say with certainty what they would have seen from this. I have though seen a copy of Miss R's credit file obtained by our investigator and note that she had two fairly recent CCJ's against her name at the time of the application.

I think this in itself should have been enough for Moneybarn to have considered in more detail whether Miss R was able to afford taking on a further financial commitment, rather than simply taking her monthly income into account. I note that Moneybarn has said that they possibly would not have seen these entries because Miss R's credit file was from a different credit reference agency to the one they used. This is of course entirely possible. But it's also possible that these entries would have been seen by Moneybarn at the time.

Moneybarn has also said that the amounts outstanding under the CCJ's weren't particularly high and so this likely wouldn't have prevented them from accepting Miss R's application. So it seems Moneybarn likely would have still proceeded with the application anyway.

I note that Moneybarn says that their scope is to provide access to affordable credit to customers with lower credit scores. That is of course for Moneybarn to decide rather than our service. However, the key word here is 'affordable'. Moneybarn still had to determine whether or not the proposed finance agreement was likely to have been affordable based on what they knew about Miss R's circumstances. This was a large amount of borrowing over a long term so it was a big commitment for Miss R, particularly when about 20% of her monthly income would be going towards repaying this every month.

I think that at the very least, Moneybarn should have been prompted to ask Miss R some questions about her monthly outgoings to determine whether or not she could likely have afforded to enter into the finance agreement. I accept that the presence of two CCJ's doesn't automatically mean that further lending should not have been granted. However, these were clear indicators that Miss R may have been struggling to pay existing credit commitments and could struggle to take more credit on.

Moneybarn has pointed out that the CCJ's weren't particularly high value. But, as they were recent this ought to have alerted them to the possibility that Miss R either had very little or no disposable income. Not only that, Miss R had taken out a number of high cost short term loans with other credit providers in the period of time leading up to her application to Moneybarn.

Moneybarn has said that the credit file provided by our investigator didn't show that this was the case. However, I have seen from Miss R's bank statements at the time that this was in fact the case. Miss R has made complaints about some of this lending so it's possible, and indeed likely, that these entries have been removed from her credit file since 2013. So I can't discount the possibility that Moneybarn would have seen this in 2013.

It's notable also that Moneybarn declined Miss R's application a month prior to accepting it because of information shown on her credit file. I can't see that Miss R's credit situation improved in such a short period of time between applications. Moneybarn clearly had some initial concerns so this rather lends weight to my view that they should have asked further questions around the new applications.

I think it's likely had Moneybarn asked some questions about Miss R's monthly outgoings and her existing commitments, it would have been apparent that the proposed finance agreement was not affordable for her. I can't be certain what additional information Moneybarn would have requested at the time. But I've looked at Miss R's bank statements for the three months leading up to the application. In the absence of any other evidence I think this gives a good indication of what Moneybarn would have most likely discovered had it asked her more questions about her income and expenditure. From those statements I can see that a number of sizeable payments to high cost short term lenders were due and were being paid by Miss R.

And from what I've seen, her existing commitments were a sizeable proportion of her monthly income. It's also notable that Miss R took out a significant amount of money from a high cost short term lender on the day that her application with Moneybarn was granted. Moneybarn of course may not have known that, but that does give a rather valuable insight into how Miss R was struggling to maintain her finances and credit commitments at that time.

Taking everything into account, I do not find that Moneybarn carried out proportionate checks when assessing Miss R's application for credit. I find that had they carried out a more proportionate check by asking her some questions around her monthly outgoings and existing commitments, it would have been apparent to Moneybarn that Miss R was not able to afford to enter into the finance agreement.

I note Moneybarn has mentioned the factsheet that accompanied the details about the finance agreement which includes a section for Miss R to think about whether she could actually afford the agreement. However, that does not absolve Moneybarn from their own obligation to determine whether Miss R was able to afford to enter into the agreement and sustainably repay it.

I accept that Miss R wanted to finance a car as it was important for her. However, that doesn't mean that everyone who wants to finance a car should have their applications approved. And in this case, for the reasons I've mentioned, I don't think it was appropriate for Moneybarn to accept the application.

This leaves to me decide what a fair remedy should be. Miss R has repaid the finance and now owns the car. It wouldn't be reasonable for Moneybarn to refund any of the payments Miss R paid towards the cash price of the car as she has clearly derived benefit from it. However, I don't believe it reasonable for Moneybarn to have derived any benefit themselves for approving this application.

I think a fair solution would be for Moneybarn to refund all interest and charges paid by Miss R towards this agreement from the outset. I will also be directing Moneybarn to pay interest on these sums at 8% simple from the date each amount was paid to the date of settlement. Moneybarn should also remove any adverse information it recorded on Miss R's credit file.

my provisional decision

My provisional decision is that I uphold this complaint and direct Moneybarn No.1 Limited to:

*refund all interest and charges paid by Miss R in respect of the conditional sale agreement;
pay interest on the above at 8% simple each year from the date of each payment to the date of settlement; and
remove any adverse information recorded on Miss R's credit file in relation to this agreement.*

I invited both parties to reply to what I had said in my provisional decision. Miss R replied saying that she agreed with my provisional findings and decision. Moneybarn didn't reply.

my findings

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

I still consider my provisional findings to be fair and reasonable in the particular circumstances. Neither party has added anything which gives me cause to change these.

Therefore, my final decision is the same, for the reasons as set out my provisional decision which I have included above.

my final decision

I uphold this complaint and direct Moneybarn No.1 Limited to:

- refund all interest and charges paid by Miss R in respect of the conditional sale agreement;
- pay interest on the above at 8% simple each year from the date of each payment to the date of settlement; and
- remove any adverse information recorded on Miss R's credit file in relation to this agreement.

If Moneybarn considers that they are required by HM Revenue & Customs to withhold or deduct income tax from the interest part of my award, they should tell Miss R how much they have taken off. Moneybarn should also give Miss R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 23 January 2020.

Dan Picken
ombudsman