

complaint

Mr G complains that Moneybarn No. 1 Limited acted irresponsibly in giving him a conditional sale agreement to allow him to buy a car. Mr G says that he cannot afford to make repayments under it.

The complaint is brought on Mr G's behalf by a corporate recovery consultant.

background

Mr G entered into a conditional sale agreement with Moneybarn in May 2013 to finance the purchase of a car. He was 69 years at this time. Before agreeing to provide finance to Mr G, he was required to show his last two bank statements. No income and expenditure assessment was carried out. Mr G paid a deposit of £700, and his monthly repayment figure was £297.37. He had to take out a loan of £500 to pay the deposit although Moneybarn was unaware of this.

Mr G made one repayment under the agreement. In August 2013, Mr G contacted Moneybarn to tell it that he could not afford the repayments. It refused to allow him to sell the car, or to enter into a reduced payment period. Mr G has returned the car, but Moneybarn is asking him to pay half of the payments due under the agreement. This is a sum of £6,415.83. Moneybarn has said it will accept reduced monthly payments of £180 from Mr G to pay off this balance.

Mr G brought a complaint to us to consider. He says that he should never have been given the loan as he was unable to make the repayments under the loan.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. She considered that Moneybarn had assessed Mr G's ability to afford the loan. It had looked at his last two bank statements and pension scheme information. This indicated that his loan repayments were less than 25% of his income.

The adjudicator noted that Moneybarn was not required to assess Mr G's income and expenditure under Office of Fair Trading guidance on responsible lending.

The adjudicator pointed out that Mr G had funded the deposit payment by a loan but that Moneybarn had not been made aware of this. She noted that Mr G's bank statements indicated that he was in credit each month. In light of this, the adjudicator was satisfied that Moneybarn had carried out a reasonable assessment of affordability.

The adjudicator considered that Moneybarn had correctly advised Mr G about his options in regard to returning or selling the car.

Mr G is not happy to accept the adjudicator's recommendation. He says, in summary, that Moneybarn should only take into account guaranteed monthly income when assessing affordability. Mr G's loan repayments were not a quarter of this income. He adds that his benefits and other rebates should not be used to calculate his income. Further Mr G has little or no money left at the end of each month. Mr G says the loan is unaffordable to him due to the high interest rate which is being charged.

my provisional findings

After considering all the evidence I issued a provisional decision on this complaint to Mr G and to Moneybarn on 2 December 2014. My findings were as follows:

Mr G says that the loan was unaffordable. This service will not generally interfere in a lender's legitimate use of its commercial judgment in providing a loan. It is primarily for a lender to decide whether it is prepared to lend to a customer, and if so, how much and on what terms. But, we do expect a lender to assess whether any lending will be affordable when making that judgment, in line with industry guidance.

At the time of Mr G's loan application, Moneybarn was required by the Office of Fair Trading's ("OFT") guidance on irresponsible lending to undertake a reasonable assessment of affordability. It was obliged to consider sufficient information to be able to reasonably assess a borrower's likely ability to be able to meet repayments in a sustainable manner without the borrower incurring financial difficulties and/or experiencing adverse consequences. The guidance sets out a number of things that a lender may wish to consider when assessing affordability.

I considered the checks that Moneybarn made when it agreed to Mr G's loan, but I was not persuaded that they were sufficient to demonstrate that the loan was affordable. Moneybarn said that its lending decision to Mr G was based on evidence of his declared income, two bank statements and a credit check. No information was requested in the application about Mr G's expenditure and other financial commitments.

Whilst Moneybarn said that the declared income supported the monthly loan payments as these were 25% of his income, I was not persuaded that such an assessment of affordability was adequate. It did not consider Mr G's other commitments and expenditure. I could not see how an assessment of Mr G's ability to meet repayments in a sustainable manner could be made without considering information about Mr G's expenditure and his other financial commitments. I also noted that the two bank statements produced by Mr G showed that his account was in credit by a small sum at the end of the month. The loan payments would take the balance into debit.

I considered that if an income and expenditure exercise had been carried out by Moneybarn, it would have been apparent to Moneybarn that the loan was unaffordable to Mr G. This was evident by the fact that he was only able to make one repayment under the loan agreement. Mr G has returned the car to Moneybarn.

Moneybarn did not ask if Mr G had any other savings. He did not, and had to fund the deposit by way of another loan

Overall I was not persuaded that Moneybarn carried out sufficient affordability checks to comply with the OFT's guidance. Had it done so, it would have been apparent that the loan was unaffordable and it should not have been granted.

Having carefully considered the circumstances of this complaint, I was not persuaded that an assessment based on the limited documents provided by Mr G was sufficient to meet the assessment of affordability envisaged by the OFT.

As the loan should not have been granted I thought it was unreasonable for Mr G to now be liable for the remaining amount of finance now that the car has been returned.

My provisional decision was that I was minded to uphold this complaint, and to require

Moneybarn No 1 Limited to:-

1. Cancel Mr G's conditional sale agreement;
2. Write off the outstanding finance balance; and
3. Remove any reference to the agreement from Mr G's credit file.

Mr G did not reply to my provisional findings.

Moneybarn said as follows, in summary. After taking out the loan, Mr G told it the car was saving him £200 on travel expenses. This shows he thought the loan was affordable.

Moneybarn says that a change in Mr G's personal circumstances is the reason he cannot afford the loan payments, rather than it being unaffordable when it was taken out. It says Mr G's income at that time was £1,215 a month. The loan repayments were 25% of his income, and this is a good indicator of affordability. It has used the 25% measurement for many years. Its low default rate indicates it is an effective measure. The 25% is designed to allow for outgoings.

Moneybarn points out that other lenders are not as rigorous when deciding affordability. It asked for documentary evidence to verify Mr G's income

Moneybarn says that it has complied with OFT guidance as it has taken reasonable steps to assess Mr G's ability to meet his contractual repayments. Its credit search did not identify that Mr G was in debt. Further he had no missed payments or arrears on his record.

Finally Moneybarn says that the loan documentation was clear so that Mr G was aware of the financial agreement he was signing up to.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. The further representations that Moneybarn has made do not alter my opinion about what would be the fair outcome to this complaint.

As I noted in my provisional decision, Moneybarn had a duty to assess if the loan was affordable to Mr G before it agreed to lend to him. It says it did this by taking steps to verify his income. It then checked whether the loan repayments were no more than 25% of his salary. Finally it did a search on his credit file.

Moneybarn says it has used this practice for a number of years. Its low default rate shows it is an accurate assessment for affordability. The problem with it in Mr G's case however, was that it took no account of his actual expenditure. This was considerably more than 25% of his income. The 25% assessment did not accurately reflect Mr G's outgoings.

I am unable to find that the assessment of affordability was adequate if it did not also consider Mr G's actual commitments and expenditure. I cannot see how an assessment of his ability to meet repayments in a sustainable manner could be made without considering information about Mr G's expenditure.

The reality was that when Mr G's outgoings were taken out of his income, Mr G could not afford to make the loan repayments. I note that Moneybarn says the 25% assessment has

worked for other persons it has lent to. I am only able however to consider the facts of Mr G's complaint when making my decision.

Similarly, I cannot take into account that Moneybarn may do more checks than other lenders, for the same reason that it is not relevant to Mr G's affordability complaint.

I note that the credit check did not alert Moneybarn to any issue with regard to Mr G's ability to make payments on loans in recent months. Although the search provided background information on Mr G's creditworthiness, it did not help Moneybarn to make a decision about whether Mr G could afford to make these particular loan payments.

In summary, I am not persuaded that the checks carried out by Moneybarn were sufficient to decide if the loan was affordable to Mr G. I do not find that this could be done without an individual assessment of his outgoings. A generic 25% assessment was insufficient for this purpose.

I do not consider that the change in Mr G's personal circumstances meant that the loan became unaffordable to him. I find that it was unaffordable at the outset. I do not agree that Mr G's statement that the car was saving him £200 a month in travel expenses can be relied upon to show that he was able to meet the loan repayments.

In light of my findings, I am not persuaded that Moneybarn carried out sufficient affordability checks to comply with the OFT's guidance.

I agree that the documentation provided to Mr G before he took out the loan was clear in terms of the financial commitment he was agreeing to. This does not however affect my assessment about whether the monthly payments were affordable to Mr G.

my final decision

My decision is that I uphold this complaint. In settlement of it, Moneybarn No 1 Limited should:

1. Cancel Mr G's conditional sale agreement;
2. Write off the outstanding finance balance; and
3. Remove any reference to the agreement from Mr G's credit file.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 2 March 2015.

Rosemary Lloyd
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