

complaint

Mr K has complained about credit granted to him by Moneybarn No. 1 Limited ("Moneybarn"). He says it was irresponsible to have agreed credit for him as he had a history of reliance on short-term lending and had recently defaulted on a loan.

background

Moneybarn agreed credit for Mr K in January 2014 via an intermediary in order for him to acquire a car. The cash price of the car, as per the agreement, was £11,905¹. Mr K paid a deposit of £400 and borrowed the remainder. The deposit and the credit, along with £7,367 interest and charges, came to a total £19,272. This was to be repaid by 47 instalments of £402, following the initial deposit.

The credit was granted under a conditional sale agreement meaning Mr K would own the car when the credit had been repaid. Moneybarn was the owner until that point and Mr K was, in essence, paying for the use of it. I understand that Mr K voluntarily terminated the agreement in February 2016 when he'd repaid half the amount owing and so returned the car with nothing further to pay.

Mr K says that Moneybarn should not have agreed to lend to him because at that time he had recently borrowed from short-term credit lenders and had problems managing an existing loan. He says he paid over £10,000 to have the use of the car for two years and had to borrow from elsewhere again to meet his repayments. Mr K says the agreement cost him years of financial pain.

Moneybarn says that it undertook suitable checks to ensure the credit was affordable for Mr K and that it wasn't irresponsible to agree to lend to him.

Our investigator looked into what happened when Mr K's agreement was set up and didn't recommend that his complaint be upheld. Mr K didn't agree with this assessment and asked for his complaint to come to an ombudsman to review and resolve.

I issued a provisional decision on the 16 February in which I explained why I was thinking of coming to the same outcome and explained my reasons. Mr K responded to my provisional decision to say that he didn't agree with it. I've summarised his points below.

Mr K says that Moneybarn has not proved that it carried out any checks before lending to him. Furthermore, Moneybarn could not have seen Mr K's bank statements for the period 20th of November 2013 to 27th of January 2014 because the statement covering the 10th of January 2014 onwards wasn't issued until 3rd of March 2014.

Mr K also said that this Service has quoted two different average monthly earnings in its responses – the investigator estimated an average of £1,646 and I referred to an average of £1,888 as Moneybarn's estimation. Mr K says this difference is significant because it shows how close he was to being declined for credit.

Finally, Mr K says that if Moneybarn had carried out further checks it would not have included a particular deposit (of £1,080) as earnings because this was out of sync with his usual income deposits. Mr K doesn't recall now what this amount was for but says that he

¹ I've rounded all figures to the nearest pound for simplicity.

would have known what it was for at the time and that it would not have been earnings. He says Moneybarn should have disregarded this deposit, as it did with two other deposits, which would have resulted in his application being declined (as the repayments would then take up more than 25% of his monthly income and Moneybarn has said that it wouldn't approve an application under those circumstances).

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I've carefully considered what Mr K has said in response to my provisional decision. Having done so, I am not upholding his complaint. I know this will be disappointing for Mr K and I am sorry this isn't the outcome he was hoping for.

I'll start by addressing Mr K's specific point about bank statements – Moneybarn provided a copy of the bank statements it says it relied on in its assessment which show they were printed from the bank's website on the 28 January 2014 and so include information from the day before. Regarding Mr K's point about the different average earnings quoted – our investigator said that the bank statements they'd seen from before the inception of the agreement showed Mr K had an average monthly income of £1,646. In my provisional decision I'd quoted the figure Moneybarn mentioned in its final response to him, which was higher. I can see that the former was calculated over three months (as Mr K provided additional bank statements to this Service) and Moneybarn calculated its figure over eight weeks.

I still don't think Moneybarn's estimate was unreasonable - it may have varied if the lender had seen more of Mr K's bank statements than it did but not to the extent I think that it would have automatically declined to lend to him. With regard to including or excluding certain deposits – given the length of time that has passed, I can understand why Mr K isn't in a position to identify specific deposits into this bank account. But, on balance, I can't therefore say it was wrong of Moneybarn to have considered this as income.

I am still of the view that Moneybarn ought to have looked further into Mr K's circumstances before lending to him. I've explained why I think it ought to have done so in my provisional decision so I won't set out my reasoning here again. And, as before, taking into consideration what Mr K has told this Service about his expenses at that time and what I can see on the bank statements he's provided, I think Moneybarn would most likely have concluded that Mr K had enough disposable income to afford the repayments sustainably and would have agreed to lend to him. In conclusion, I don't find that it was irresponsible to have done so on this occasion.

my final decision

For the reasons I've set out above and in my provisional decision I am not upholding Mr K's complaint against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 April 2021.

Michelle Boundy
Ombudsman

EXTRACT FROM PROVISIONAL DECISION

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I am not minded to uphold Mr K's complaint. I appreciate this will be very disappointing for him and I hope the following explanation clearly sets out my reasons.

The Office of Fair Trading (OFT) was the regulator when Mr K borrowed from Moneybarn². The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that before lending it needed to check that Mr K could afford to meet his repayments in a sustainable manner. This meant Mr K being able to meet his repayments out of his normal income and savings without having to go without or borrow further.

The regulations weren't prescriptive about what checks Moneybarn needed to carry out in order to reasonably assess whether or not Mr K would be able to meet his repayments sustainably. But the regulations said that such checks needed to be proportionate. This suggests that the same checks might not be the appropriate thing to do for all consumers, or for the same consumer in all circumstances. I've highlighted some of the relevant guidance below for ease.

ILG Paragraph 4.2 stated:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

Paragraph 4.3 stated:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- without undue difficulty – in particular without incurring or increasing problem indebtedness*
- over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- out of income and/or available savings, without having to realise security or assets.*

And Paragraph 4.4 described "undue difficulty":

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- while also meeting other debt repayments and other normal/reasonable outgoings and*
- without having to borrow further to meet these repayments.*

Paragraph 4.26 gave an example of irresponsible lending as "Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable."

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

² The Financial Conduct Authority took over regulation in April 2014. Its rules and guidance are set out in the Consumer Credit Source Book (CONC) and were similar to and referenced the ILG.

- the *lower* a person's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr K's case, I have considered the following questions:

- did Moneybarn complete reasonable and proportionate checks when assessing Mr K's application to satisfy itself that he would be able to repay the credit in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Moneybarn make a fair lending decision?

Moneybarn says that it verified Mr K's income against his bank statements and checked his credit file. It hasn't been able to provide the results of this check but it said that having reviewed the information it gathered, it concluded that the credit would be affordable for Mr K. It says the checks it carried out were sufficient to enable it to make a reasonable assessment of Mr K's ability to meet his repayments.

Mr K was entering into a significant commitment with Moneybarn in that he would, potentially, need to make monthly repayments for four years. So I think it was reasonable that Moneybarn wanted to gather, and independently check, some detailed information about his financial circumstances before it agreed to lend to him. I think that, on the face of it, the checks Moneybarn did seemed proportionate. But a lender also needs to react appropriately to the information shown by those checks by, for example, ensuring that the information it has is complete and correct (ILG 4.29). So I've looked carefully at the information Moneybarn says it checked to consider whether the lender's assessment of it was reasonable.

Moneybarn estimated Mr K's monthly net income at the time to be £1,888 based on his bank statements covering the period from 20 November 2013 to the 27 January 2014. The monthly repayments of £402 came to about 21% of Mr K's estimated monthly take-home pay. I appreciate that this was a lower proportion of his estimated income than Moneybarn's internal criterion, nevertheless it amounted to a fifth of Mr K's income which he would potentially need to set aside each month for a period of four years. The bank statements show a mixed pattern of deposits – regular weekly amounts and ad-hoc payments and I think Moneybarn ought to have checked whether all deposits were in fact income which Mr K could use to meet his payments.

As mentioned, I don't know what Moneybarn might have seen on Mr K's credit file, but I can see from a copy he's provided he had difficulty repaying vehicle finance with sustained arrears throughout 2013 until it was settled in August. He'd taken out several concurrent short-term loans around this time which were repaid in November, less than two months prior to taking on this agreement. These short term loan repayments can be seen on the bank statements. I can't see that Mr K had any other finance in place when he borrowed from Moneybarn, or any short term loans. Mr K pointed out that at that time he had direct debits returned and paid unauthorised overdraft charges. The bank statements Moneybarn saw show overdraft charges in December and January. These appear to have been caused by Mr K going overdrawn by about £100 due to the timing of a regular payment.

Altogether, I don't think any of this means that Moneybarn should have automatically declined to lend to Mr K. Afterall, Moneybarn says it specialises in providing credit for people who might be declined elsewhere. However, I do think that, given the above circumstances, a reasonable and proportionate response from Moneybarn would have included gathering an understanding of Mr K's outgoings at the time to check that he could repay the credit over the term while meeting his other commitments. I also think it ought to have inquired further into his income. I appreciate that Moneybarn acquired copies of

Mr K's bank statements but it says that it didn't carry out an income and expenditure assessment on these.

But although I don't think the checks Moneybarn did before agreeing the credit were entirely sufficient, that in itself doesn't mean that Mr K's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Moneybarn that Mr K couldn't sustainably afford the repayments. I've considered what Moneybarn might have found out, had it looked further into Mr K's circumstances before agreeing credit for him and I don't think that further information would have led it to decline his application.

Mr K says that he was self-employed at the time, was living with his father and didn't pay rent or housing costs. When asked by this Service about his income, Mr K said that some of the deposits into his bank account would have been for company costs and not income for his personal use. He says his income was usually paid weekly on a Wednesday and pointed to three deposits that were out of sync with that pattern. One was labelled 'office refurbishment', the other 'entertainment' and together these amount to £300. The third deposit is unidentifiable and amounts to £1,080.

Moneybarn didn't take the former two amounts into consideration when estimating Mr K's monthly net income but it did include the third. I asked Mr K specifically about this and he was unable to recall what this payment was for. Mr K has also told this Service that his annual gross salary ranged from about £28,000 to £34,000. Altogether, I don't have enough to persuade me that Moneybarn's estimate of Mr K's income was unreasonable.

Mr K gave some figures for his regular outgoings. I can identify these on the bank statements and they generally came to less than £700 a month.³ So, although I think Moneybarn ought to have looked into Mr K's spending in more detail, I don't think it would have found anything which would have been of such concern it would have concluded that Mr K didn't have enough disposable income to afford the repayments sustainably and declined to lend to him.

I appreciate Mr K's strength of feeling on this matter and I want to reassure him I have carefully considered everything he's said and all the information I have available to me. I think Moneybarn could have done more before agreeing to lend to him but, had it done so, I think it's unlikely that it would have found anything to suggest that the credit would be unsustainable for him. Altogether, I am not currently persuaded that it lent irresponsibly or unfairly on this occasion.

³ Approximate costs include food £100, travel £250, car insurance and cover £100, media £120 and gym £85.