Financial Ombudsman Service

Complaint

Ms B has complained about credit granted to her by Moneybarn No. 1 Limited ("Moneybarn"). She says that the credit was unaffordable for her and Moneybarn would have known this had it carried out adequate checks beforehand.

Background

Moneybarn agreed credit for Ms B on 20 February 2014 via an intermediary in order for her to acquire a car. The cash price of the car, as per the agreement, was £7,125[1]. Ms B paid a deposit of £595 and borrowed the remainder. The deposit and the credit, along with £4,551 interest and charges, came to a total £11,676. This was to be repaid by 47 instalments of £236, following the initial payment.

The credit was granted under a conditional sale agreement meaning Ms B would own the car when the credit had been repaid. Moneybarn was the owner until that point and Ms B was, in essence, paying for the use of it.

Ms B says that Moneybarn should not have agreed to lend to her because she couldn't afford to meet the repayments. She says that she had outstanding debts at the time and struggled to meet her repayments alongside her other costs. Moneybarn says that it undertook suitable checks to ensure the credit was affordable for Ms B and that it wasn't irresponsible to agree to lend to her.

Our investigator looked into what happened when Ms B's credit was agreed and didn't recommend that her complaint be upheld. Ms B didn't agree with this assessment and asked for the complaint to come to an ombudsman to review and resolve.

I issued my provisional decision on 2 February 2021 explaining why I was thinking of coming to a different view of Ms B's complaint and provisionally found that Moneybarn was irresponsible to have agreed credit for her. Ms B has accepted my provisional decision and I haven't had a response from Moneybarn.

This is my final decision on the matter. If Ms B accepts this then it will be legally binding on both parties.

My findings

I've reconsidered 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. Neither party has provided any new information or comment so I see no need to depart from my provisional conclusions. I've set out my final conclusions and my reasoning below.

As I'd explained in my provisional decision, this is a finally balanced case. The credit was agreed in 2014 and there is limited information available. I have made my decision on the basis of the available information and on the balance of probabilities, in other words on what I consider most likely to have been the case. Having considered everything carefully, I'm upholding Ms B's complaint.

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

The Office of Fair Trading (OFT) was the regulator when Ms B borrowed from Moneybarn. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that before agreeing credit it needed to check that Ms B could afford to meet her repayments in a sustainable manner. This meant Ms B being able to meet her repayments out of her normal income without having to go without or borrow further. I've set out 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."*

The regulations weren't prescriptive about what checks Moneybarn needed to carry out in order to reasonably assess whether or not Ms B would be able to meet her repayments sustainably. But the regulations said that such checks needed to be proportionate. This suggests that the same checks might not be appropriate for all borrowers, or for the same borrower in all circumstances. In general, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- 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 Ms B's case, I have considered the following questions:

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

Moneybarn says that it asked Ms B about her income and expenses when she applied for credit. It says it also checked her credit file but it hasn't been able to provide either the results or a summary of them. The lender provided a copy of the bank statements and payslips it used to check Ms B's income and says its checks were sufficient to enable it to make a reasonable assessment of her ability to meet the repayments. Moneybarn says that after reviewing the information it concluded that the credit would be affordable for her.

Ms B says that she was hasty in filling out her application form for this agreement and missed out some expenses and mis-calculated others. She says that Moneybarn's checks weren't adequate because it ought to have seen inconsistencies between what she'd said about her finances and the arears it would have seen on her credit file and the expenses on her bank statements.

I don't know what Ms B told Moneybarn about her expenses or her circumstances. So it's not clear to me whether there were any obvious mis-matches between what she'd declared and the information it had. Given the size of the repayments relative to Ms B's income and the length of time over which she'd need to meet this level of repayment, I think a reasonable and proportionate assessment by Moneybarn would have included verification of Ms B's income and usual outgoings. As mentioned, Moneybarn saw copies of her payslips and her bank statements which covered the period 27 November 2013 to 12 February 2014. I've reviewed all this information in considering whether Moneybarn made a fair lending decision based on the information it had.

The information shows that Ms B's monthly net pay was £1,057 in December 2013 and a total of £963 in January 2014. Moneybarn says that the monthly credit repayments of £236 didn't take up more than 25% of Ms B's monthly net pay at 23.34% which, I assume, refers to the average of these income deposits. I appreciate that this percentage was lower than Moneybarn's internal criterion, nevertheless it amounted to almost a quarter of Ms B's net monthly income which she would need to set aside, potentially for a period of four years. Moneybarn could also see from her payslips that these were her first two months' pay from this employer.

Ms B says that at the time of taking out the credit agreement she had two existing credit cards and was paying monthly for football season tickets. As mentioned, I don't know what Moneybarn might have seen on Ms B's credit file. Ms B hasn't provided a copy of this either so I have no information about how she was managing any existing credit commitments beyond what she's said, which is that she was behind in her payments on one of her credit cards. However, it doesn't seem to me that Moneybarn would have declined to lend to her solely on the basis of missed payments on one of her lines of credit.

Ms B says that she was living with her father at the time as she was his carer. She says she contributed to the household expenses through buying food and paying rent and bills. She paid rent and bills in cash (the latter through shop counter payments) and altogether these living costs came to about £600 a month. Let me say at this point that Ms B has been consistent in what she's said about this matter and what she's said about her circumstances seems plausible to me.

On investigation, I can see from the bank statements that from Ms B's payday on the 20th December 2013 she withdrew £400 in cash and paid about £300 on food shopping. She also spent about £90 on payments for season tickets, her mobile phone, credit card and petrol. From her January payday (23rd) to a week before her February payday Ms B withdrew £400, spent £190 on food plus £115 for the other costs I've mentioned. Ms B was left with on average £250 each pay period and this is without considering any other usual living costs or one-off expenses. I note that Ms B's bank balance was £12 before her December pay and £6 about a week before her January pay. I think this information supports what Ms B said about her circumstances at the time.

I think this level of disposable income, taken together with Ms B's relatively low level of income in the circumstances of this agreement ought to have alerted Moneybarn to the likelihood that Ms B wasn't going to be able to meet her repayments in a sustainable manner. I also think any further investigation of her finances would not have provided any assurance to the contrary. Ms B has provided more of her bank statements from around that time. I don't know what her source of income was in the months before December but I can see she had far less coming in than she spent. And so I've concluded that Moneybarn was irresponsible to have lent to Ms B on this occasion.

I appreciate that Ms B managed to meet her payments for about 18 months before raising concerns about being able to pay. However, in this case I don't think it's reasonable to conclude that successfully meeting repayments meant that Ms B was able to do so without undue difficulty. Ms B said of this time *"I was left struggling financially every month and was unable to properly afford my other living costs. I was left feeling stressed and anxious."*

In November 2015 Ms B's direct debit was returned and I can see from the customer contact notes that she had various discussions with Moneybarn after that about refinancing and early settlement. The notes record that when her father suffered a medical emergency mid-2016 Ms B took several weeks of unpaid leave from her job and undertook a repayment plan to clear her arrears. Ms B settled the agreement in full early in August 2017.

What Moneybarn needs to do to put things right

As I think the credit was irresponsibly agreed, Ms B shouldn't repay more than the capital amount she borrowed. In other words, she isn't liable for any interest, charges or fees associated with the agreement. To be clear, this includes any unpaid direct debit fees.

I'd expect Ms B to repay the capital she borrowed as she's had the use of these funds or, in this case, the use of a car in exchange for the funds. This has the effect of reducing the amount Ms B owes under the agreement to the capital borrowed, in other words £7,125 being the cash price of the car.

Moneybarn should:

a) Treat all payments, including the deposit and any upfront fees, Ms B made as payments towards the cash price of the car; and

b) Refund any payments Ms B has made above the cash price along with 8% per annum simple interest* from the date of each overpayment to the date of settlement to reflect the fact that she should not have been deprived of these funds; and

c) Remove all adverse information about this credit from Ms B's credit file.

* HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Ms B a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons set out above, I am upholding Ms B's complaint about Moneybarn No. 1 Limited and require it to put things right for her as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 11 April 2021.

Michelle Boundy
Ombudsman