

The complaint

Miss H complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement because it didn't complete reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Miss H entered into a conditional sale agreement with Moneybarn in April 2020. The cash price of the car was £4,695 and no deposit was paid. Miss H was to pay a total of £8,073.66 under the agreement by way of 47 equal monthly repayments of £171.78.

Miss H is represented in her complaint but for ease of reading I'll only refer to Miss H throughout this decision. Miss H complained to Moneybarn in May 2023 because she was concerned it had made an irresponsible lending decision.

Moneybarn responded to the complaint in July 2023. It said it carried out reasonable and proportionate checks. This included verifying income through a credit reference agency and completing a full credit search. Based on the information obtained, it felt it made a fair lending decision.

Miss H remained unhappy with the response and asked our service to investigate. Our Investigator issued a view explaining why they felt reasonable and proportionate checks hadn't been carried out. However, they went on to explain why they felt had such checks been carried out, it's likely they would have shown the agreement was affordable. Miss H didn't agree with the view, so the case has been passed to me to decide.

What I've decided – and why

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

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay the agreement in a sustainable way?

Moneybarn said it independently verified Miss H's income of £1,800 with credit reference agencies which use current account data to confirm regular income over a reasonable period. It also considered if the income was in line with the stated occupation.

It completed a credit search which showed existing borrowing levels. It hasn't been able to provide a copy of the original search, but it has provided a summary. I also have seen a copy of the credit file which reflects some of the information Moneybarn was likely to have seen at the time. It shows Miss H's monthly credit commitments were around £342. Also, that Miss H hadn't defaulted on any previous borrowing (there was also no county court judgments or insolvency information).

I can appreciate Miss H's overall credit balance at the time of the lending agreement might not have necessarily indicated concern. But looking at the credit file I can see there were numerous instances of missed payments. Some of these were for credit cards but also for a communications account Miss H had. Additionally, some of the missed payments were in the months leading up to the agreement and Miss H hadn't caught these up at the time of the lending agreement. So, whilst the overall credit balance might not have been a cause for concern, there were indicators Miss H might be struggling to meet her financial commitments at the time of entering the agreement. In addition to this, Miss H did take four cash advances from her credit card for a total amount of £180 in the seven months leading up to the lending.

Moneybarn used information received from the Office of National Statistics (ONS) to estimate Miss H's other expenditure. I note there were no housing costs. Nevertheless, it estimated her spend as around £450.15 (this included a buffer of around £45). Therefore, it identified her total expenditure, including credit commitments, at around £837 with disposable income of around £963.

Having considered everything, I'm not satisfied Moneybarn completed reasonable or proportionate checks to ensure this agreement was affordable. It's likely there would have been indicators from the full credit search that Miss H may have been struggling to meet financial commitments. This should have prompted further checks about Miss H's expenditure because it showed there may have been further undisclosed committed expenditure which might have affected the affordability of the agreement.

Would reasonable and proportionate checks have shown that Miss H would be able to repay the agreement in a sustainable way?

As I don't think reasonable and proportionate checks were completed, I must consider whether such checks were likely to have shown the agreement was affordable. To do this, I've considered the information from Miss H's bank statements which covered the period leading up to the agreement and show Miss H's committed spend. For clarity, I'm not saying Moneybarn needed to obtain these bank statements to complete reasonable and proportionate checks. But they do show the information Moneybarn were likely to have received had such checks been completed.

Usually, I'd consider the full three months leading up to the agreement. However, I am missing some of the statement information from January 2020. This has been requested, but I've not received it and a reasonable time has now passed. So, I've relied on the information I do have to determine what I think reasonable and proportionate checks were likely to have shown at the time of the lending.

In the statements I can see, Miss H received an average income of around £1,220. There were some fluctuations in her income each month and it showed she was receiving less than the income figure verified by Moneybarn.

Looking at Miss H's outgoing payments, I think Miss H's average committed expenditure for living expenses was around £414. This was for things such as food, petrol and phone bill. It also includes an average regular payment of £200 Miss H paid her mother.

Moreover, Miss H also had other credit commitments she was paying towards. The statements don't seem to completely reflect her credit commitments. So, I have considered information from the credit file, Moneybarn's submission and Miss H's statements and I think it's fair to say Miss H had a monthly total repayment amount of around £342.

So, altogether Miss H's non-discretionary spend was around £756 each month. I appreciate my figures are higher than those outlined by our Investigator. This is because of information Miss H has provided and because I've included a higher figure for Miss H's credit commitments. I wanted to be sure I'd thought about all the non-discretionary commitments proportionate checks were likely to have shown, but it doesn't change the overall outcome.

Taking this from her average income, she was left with around £464 disposable income. This was sufficient to meet the repayments of £171.78 and she'd have around £292 remaining to cover other expenditure which might arise. It also would have allowed her to catch up on arrears within a reasonable time. So, whilst Miss H did have some adverse information on her credit file, I don't think this meant Moneybarn shouldn't have lent.

I'd also note Miss H sent outgoing payments to her partner and friend. She has explained these were for everyday purchases. I'm unable to conclude all of these payments were for non-discretionary spend. However, I note Miss H also had incoming payments from her partner. Overall, I don't think the incoming and outgoing payments towards her friend and partner would have shown this agreement was unaffordable at the time.

Therefore, Moneybarn should have done more when making the decision to lend to ensure it completed reasonable and proportionate checks. However, I think it's likely had such checks been carried out at the time then they would have shown the agreement was affordable.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 2 April 2024.

Laura Dean
Ombudsman