Financial Ombudsman Service

The complaint

Mr W is complaining about Moneybarn No.1 Limited. He says they shouldn't have lent to him as the lending was unaffordable. A representative has brought the complaint on Mr W's behalf but for ease I've written as if we've dealt directly with Mr W.

What happened

Mr W has had two conditional sale agreements with Moneybarn. The first was approved in September 2014 and required Mr W to make payments of £566.87 per month for five years. The second was approved in July 2017, and this one required 47 monthly repayments of £685.65. The cash price of the vehicle was £22,000 and Mr W borrowed £21,000, paying a deposit of £1,000.

In June 2023, Mr W complained that the agreements may have been unaffordable. He said he had to continue to take out further loans, and it should have been obvious that he wouldn't be able to repay the Moneybarn agreements in a sustainable way.

Moneybarn didn't uphold Mr W's complaint, saying they'd done enough to check affordability. Mr W remained unhappy so brought his complaint to our service and one of our investigators looked into it. Our investigator's view was that Mr W had complained too late about the 2014 agreement but she did look into Moneybarn's 2017 lending decision. Our investigator thought Moneybarn's checks hadn't been proportionate. But her view was that if Moneybarn had done proportionate checks they could have fairly decided to lend to Mr W.

Mr W didn't contest our investigator's view that we couldn't look into the 2014 agreement. But he said it was clear from his credit file that he had various high interest and payday loans before and during the application process, and most of these were in arrears. He said that the Moneybarn agreement added to his spiral of debt. Mr W asked for a decision – and the matter's come to me.

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.

Having done so, and acknowledging it'll be disappointing for Mr W, I'm not upholding his complaint for broadly the same reasons as our investigator - I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not 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 carry out proportionate checks?

Moneybarn haven't been entirely clear about what checks they did before lending to Mr W in 2017, but it's apparent they looked at his credit file and that they obtained a payslip from him to check his income.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Moneybarn found. This agreement required Mr W to pay Moneybarn well over £33,000, over a period of four years, so my starting point is that the checks should have been thorough. On top of that, Moneybarn said the credit file they looked at showed Mr W had four defaulted accounts with a total defaulted balance of around £12,400. And they said it showed he was paying around £1,000 a month against existing creditors.

Mr W's income was relatively high, at around £4,000 per month. But his payslip showed that this amount was made up of a mix of overtime and basic pay and so wasn't a reliable monthly amount. In addition, Mr W had existing defaults and high levels of debt. So I'm not satisfied Moneybarn did proportionate checks and I think they should have taken further steps to understand Mr W's income and expenditure.

Mr W has commented further on his credit file, saying that in itself meant Moneybarn shouldn't have lent to him. I've been through the credit report Mr W sent us in detail. I can see that at the time of the lending decision Mr W had a number of active creditors, and that included some high-cost and short-term lending. But I'm not persuaded that this meant Moneybarn shouldn't have lent to him. At the time of the lending decision, Mr W had only been using one short term lender. He had no recent defaults or arrears on active credit, and instead he had been making additional payments on some agreements. I don't think there's enough to say it was irresponsible for Moneybarn to have lent to Mr W.

I can see that Mr W took out increasing amounts of credit after entering into this agreement. So I'll consider whether that was reasonably foreseeable for Moneybarn by considering Mr W's income and expenditure at the time.

What would Moneybarn have found if they had done proportionate checks?

A proportionate check would have involved Moneybarn finding out more about Mr W's income and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

I've looked at statements for Mr W's main bank account for March 2017 to May 2017 – the months leading up to his application to Moneybarn. I'm not saying Moneybarn needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Mr W's income and expenditure at the time the lending decision was made.

The bank statements show Mr W's income was a little inconsistent – his net income varied between around £3,200 in March and £4,000 in May. On average his income was around £3,500 per month – I'm satisfied Moneybarn could have reasonably assessed it at this amount.

Turning to expenditure, Mr W was spending around £950 per month on rent, rates and utilities, including phone and TV. He was paying around £150 per month for gym and other memberships. And I think £400 per month would be a reasonable estimate for how much he was spending on food and fuel. The amount he was paying to creditors was around £1,000. This doesn't include the repayments to payday lenders, because this is short term rather than repeated monthly payments. And it excludes the amount he was paying against his previous hire purchase agreement, which was to be replaced by this one. In total, I think

Moneybarn could have reasonably concluded Mr W's committed and non-discretionary expenditure was around £2,500 each month. Deducting this from his income would have left him with around £1,000 a month from which to make his monthly payments of £685.65. So I can't say Moneybarn should have concluded the agreement was unaffordable for Mr W at the time – and I don't think it was reasonably foreseeable that he would take out increasing amounts of credit later on.

This is consistent with the relatively high level of discretionary spending seen in Mr W's bank statements. It appears that whilst he was using significant amounts of credit, this was a personal choice rather than a necessity.

In summary, I'm satisfied that if Moneybarn had done proportionate checks they could have reasonably arrived at the same outcome and decided the loan was affordable for Mr W. So I'm not upholding the complaint.

My final decision

As I've explained above, I'm not upholding Mr W's complaint about Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 March 2024.

Clare King
Ombudsman