DRN-4594303

Financial Ombudsman Service

The complaint

Mr S, via a third party, complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable.

What happened

In December 2019 Mr S entered into a conditional sale agreement with Moneybarn for a used car costing £7,190. Under the terms of the agreement, everything else being equal, Mr S undertook to make 59 monthly repayments of £242.42 making a total repayable of £14,302.78 at an APR of 36.9%.

Mr S complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn didn't uphold the complaint. It said that the finance provided was assessed fairly and the amount offered was affordable.

Mr S' complaint was considered by one of our investigators. They came to the view that Moneybarn had done nothing wrong and it hadn't treated Mr S unfairly. In other words, they didn't uphold Mr S' complaint.

Mr S disagreed with our investigator and so his complaint has been passed to me for review and decision.

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.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr S' complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr S' complaint. I'd like to explain why in a little more detail.

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether Mr S could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Moneybarn carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn says it agreed to this application after Mr S provided details of his monthly income, which it verified with a credit reference agency. It also says that it carried out a credit search on Mr S which showed that he had previously defaulted on some previous borrowing, had a court judgment ("CCJ") recorded against him and some insolvency information recorded against him. The most recent default was 33 months old, the CCJ was 47 months old and the insolvency information was 36 months old and had been marked as settled.

In Moneybarn's view, when the amount Mr S already owed plus a reasonable amount for his living expenses (based on average data) were deducted from his monthly income the monthly payments for this agreement were still affordable.

On the other hand, Mr S says the agreement was unaffordable from the outset and this could and should have been apparent to Moneybarn.

I've thought about what Mr S and Moneybarn have said.

The first thing for me to say is that I'm not persuaded that the checks Moneybarn carried out did go far enough. For example, I'm not persuaded that it was reasonable to rely on an estimate of Mr S' living costs given what the credit search carried out showed, the monthly payments, the term of the agreement and the total cost of the loan.

In these circumstances, I think that Moneybarn ought to have done more to ascertain Mr S' actual regular living costs. That said, I don't think that Moneybarn obtaining further information on Mr S' actual living costs, rather than using average data, would have made a difference to its decision to lend in this instance.

I say this because based on bank statements provided by Mr S when his actual living expenses are added to his active credit commitments and deducted from the income he received he appears to have had enough left over to make the repayments to this agreement. So I think that Moneybarn obtaining further information is likely to have led it to conclude that when Mr S' regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

So in summary I don't think that Moneybarn acted unfairly or unreasonably towards Mr S and I'm not upholding his complaint. I appreciate that this will be disappointing for Mr S, but I hope he'll understand the reasons for my decision and at least accept that his concerns have been listened to.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 May 2024.

Peter Cook
Ombudsman