DRN-4608443

The complaint

Mr W complains about Moneybarn No.1 Limited's decision to lend him. He says the loan was unaffordable.

A representative has brought the complaint to our service. But for clarity, I've only referred to Mr W throughout this decision.

What happened

In September 2021 Moneybarn No.1 Limited (Moneybarn) provided Mr W with finance to purchase a used car. The car cost £13,598 and Mr W paid a deposit of £2,000. He entered into a conditional sale agreement to finance the remaining £11,598. After interest and charges the total amount due was £26,878.04, repayable in 59 monthly instalments of £455.56.

In July 2023, Mr W complained to Moneybarn saying that they didn't undertake appropriate affordability checks – and had they done so, Moneybarn would have realised the agreement was unaffordable. Moneybarn didn't agree with Mr W's complaint. In their view, they carried out reasonable checks which showed that the payments for this agreement were affordable for Mr W and they lent on that basis. Mr W remained dissatisfied with Moneybarn's response and referred the complaint to our service, where it was considered by one of our investigators.

Although our investigator didn't think Moneybarn's checks had been proportionate, it was her view that proportionate checks would have shown that the agreement was affordable for Mr W. For this reason, she didn't think the complaint should be upheld.

Mr W didn't agree with our investigator's view. He said Moneybarn's checks showed he had six defaults, which should have led Moneybarn to realise he would likely struggle to make repayments. Mr W didn't think that the amount the investigator said Moneybarn had calculated as being disposable income would leave him with enough money in case of an emergency after taking into consideration the contractual monthly repayment.

Mr W said Moneybarn took advantage of his position by charging a high APR, and this caused him further harm. He asked for an ombudsman's decision – and the complaint has 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, I'm not upholding Mr W's complaint. Before I explain why, I'd like to acknowledge Mr W feels strongly that Moneybarn shouldn't have lent to him. While I've considered everything Mr W has said, I won't be responding to every aspect of his submission. Instead, I'll focus on the points I consider most relevant to deciding 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.

When determining what's proportionate, we'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. I'd expect a lender to find out more about a prospective borrower's ability to repay if for example, a borrower's income was low, the amount lent was high, or the borrower's credit file reveals an impaired credit history.

Were Moneybarn's checks proportionate?

I've thought about the checks Moneybarn carried out. Moneybarn verified Mr W's declared income using data from one of the credit reference agencies (CRA). CONC allows lenders to use CRA data for income verification, so I can't say Moneybarn acted unreasonably here. Moneybarn used data from the Office for National Statistics (ONS) to calculate Mr W's likely outgoings.

Moneybarn checked Mr W's credit report, which showed Mr W had six defaulted accounts. Looking at a copy of the credit search Moneybarn undertook in September 2021, I can see the defaults all occurred within a 16-month period, with the most recent being in November 2018 – so almost three years prior to the lending. Mr W also submitted a copy of his credit file, and this shows a further default within that 16-month period.

At the time of his application, Mr W held one credit card with a low balance, and his credit report showed no missed payments. So, I don't think it's unreasonable for Moneybarn to have considered the adverse information as historic. That said, I don't think Moneybarn's checks went far enough in Mr W's particular circumstances.

I say this because both credit files show that five of Mr W's defaults weren't satisfied, with a total of over £5,600 still outstanding. The credit report shows Mr W had been making payments averaging around £50 per month towards the outstanding balances. This in combination with the size of the lending, the monthly repayments and the length of the agreement means I think it would have been proportionate for Moneybarn to do more to understand Mr W's expenditure rather than relying on estimates.

In summary, I'm satisfied Moneybarn didn't carry out reasonable and proportionate affordability checks before lending.

What would proportionate checks have shown?

I've considered what Moneybarn would likely have found out if they had completed reasonable and proportionate affordability checks.

There are different ways a lender can go about checking a prospective borrower's non-discretionary expenditure. I can't be sure what Moneybarn would have done had they decided to conduct further checks, or what Mr W would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mr W's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

I've already set out that I'm satisfied Moneybarn did enough to verify Mr W's income. He'd told Moneybarn he was employed full time and that his net monthly income was £3,600. Moneybarn's checks showed Mr W's net monthly income was around £2,880. They used this lower figure in their income and expenditure assessment, which I'm satisfied was reasonable.

In response to our investigator's view Mr W said he was on a zero-hour contract and would typically earn more over the summer months. I've considered his comments carefully. Moneybarn didn't specify which CRA tool they used. But typically, those tools consider income into an account over an extended period rather than a few months. They're designed to verify the income a prospective borrower declared on their application. Overall, I'm satisfied Moneybarn acted reasonably by using £2,880 as Mr W's net monthly income.

Mr W had outstanding defaults and on average he paid around £50 per month towards reducing the balances. He had a credit card with £97 outstanding at the time of application. Moneybarn allowed a monthly repayment of £2, so around 2% of the outstanding balance. This would only see Mr W making below minimum repayments towards his outstanding debt. CONC requires a firm to assume that revolving credit is repaid over a reasonable term. I think it would have been reasonable for Moneybarn to have calculated repayments of at least 5% of the outstanding amount to reflect that – so in this case, around £5 per month.

The credit file Mr W sent us also shows a payday loan taken out in August 2021 – but this didn't show on the credit check Moneybarn undertook, possibly because it hadn't updated yet to reflect the new lending. I think Mr W would have told Moneybarn about the repayments had they checked his outgoings with him. The credit report shows Mr W was required to pay six monthly payments of around £40. So overall, Mr W's credit commitments at the time of his application came to around £95.

Mr W's bank statements show he spent an average of around £168 per month on food, £210 on petrol, £35 at the gym and £48 for his mobile phone. I've noted payments to a car subscription service, but they'd likely be replaced by this agreement. Mr W told us he paid £750 in cash each month towards rent. As I've seen no payments for utilities or council tax, I've assumed these were included within Mr W's estimated rent payment. Mr W also said he paid £250 child support per month.

I've not been able to fully evidence the rent and child support payments Mr W said he made using the bank statements he provided. That said, using the figures he's provided for rent and child support brings his average monthly committed expenditure to £1,556. Deducting this from Mr W's verified income of £2,880 suggests he had around £1,324 left over for discretionary and emergency expenditure as well as the cost of owning a car.

Our investigator also concluded Mr W had sufficient disposable income each month to afford the repayment, although the amount she arrived at was around £1,500. Mr W disputes that his disposable income was anywhere near as high as that. And I can see from his statements that he made frequent repayments to his credit card each month, indicating he was spending on it and paying the balance down across the month. I can't say what Mr W used the credit card for. But across the three months prior to his application, the payments average out at around £207 per month. So even if all of Mr W's spending on that card was essential, such as food or transport, this would still leave him with over £1,100 disposable income.

In summary, had Moneybarn conducted proportionate checks I'm satisfied they'd have been able to confirm Mr W had sufficient disposable income to make the repayments. It's more likely than not that Moneybarn would have then reached the same lending decision. So, I don't think Moneybarn acted unfairly or unreasonably in agreeing to lend to Mr W.

Did Moneybarn act unfairly or unreasonably in some other way?

Mr W said Moneybarn took advantage of his situation by charging higher interest. But the rules in place in September 2021 allowed Moneybarn to decide the terms on which they were prepared the lend, including what interest rate they would charge. Ultimately, if Mr W wasn't prepared to accept Moneybarn's terms he could have declined their offer to lend.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 May 2024.

Anja Gill
Ombudsman