DRN-4687579

The complaint

Miss F complains that Moneybarn No.1 Limited trading as Moneybarn acted unfairly in agreeing to a loan which she said was unaffordable for her.

Miss F is represented by a third party but for ease of reading I will only refer to Miss F in my decision.

What happened

In February 2021 Miss F acquired a car by entering into a Conditional Sale agreement with Moneybarn. The cash price of the car was £11,000 with added interest the total amount repayable was £20,515.89 payable over 60 monthly instalments of £328.99. Miss F said Moneybarn hadn't carried out sufficient checks to see if she could afford the repayments before they agreed to lend to her. And she said she told them that she was no longer working and in receipt of benefits. Miss F complained to Moneybarn.

Moneybarn said Miss F had applied saying she was self-employed. And they'd confirmed her salary through her current account turnover. They said they used statistical data to determine her outgoings and had checked her credit file. They said that Miss F's credit file showed she'd defaulted on previous borrowing, but this had been 12 months prior to her application. They said their checks were proportionate and reasonable and hadn't raised concerns that Miss F would struggle to repay, so they'd agreed to lend to her.

Miss F wasn't happy with Moneybarn's response and referred her complaint to us.

Our investigator agreed with Moneybarn that their checks had been proportionate and reasonable.

Miss F didn't agree and asked for an ombudsman to decide.

A provisional decision was issued in February 2024 that said:

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 currently minded to uphold this complaint. I'll explain why.

I've considered the relevant rules, guidance, and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider when deciding what's fair and reasonable in all the circumstances of the complaint. These are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy themselves that Miss F would be able to repay the credit in a sustainable way?

a. if so, did Moneybarn make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Miss F could sustainably repay the borrowing?

2. Did Moneybarn act unfairly or unreasonably in some other way?

Regulations in place at the time Moneybarn lent to Miss F required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower focused", meaning Moneybarn need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss F In other words, it wasn't enough for Moneybarn to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss F herself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty. And I'd expect a reasonable and proportionate check be more thorough:

- *the lower a consumer's income,*
- *the higher the amount due to be paid,*
- *the longer the term of the loan; and*
- *the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans.*

So, I've considered whether Moneybarn in lending to Miss F had been thorough enough in the checks they did.

Moneybarn said they'd checked Miss F's income through the information given to credit reference agencies (CRA) by her current account provider as this showed her income over a reasonable period of time. Moneybarn said they assessed Miss F as having a monthly income of £1,316.

They said they'd checked Miss F's credit file and assessed her credit commitments to be £81, and using the Office for National Statistics data, her non-discretionary spending for housing costs, council tax, utilities, vehicle costs and basic living costs would be £783.43. They said they also allowed a buffer of £39.87. Which meant they assessed Miss F as having expenditure of £904.30. Moneybarn said this would have left Miss F with an available income of £411.70. Factoring in the new loan amount they said this would have left Miss F with a disposable income of £82.71. Adding this to the buffer amount Moneybarn had allowed, in total Miss F they said would have had £122.58 available for discretionary and unexpected spending. Moneybarn haven't kept a copy of the credit file they looked at, but they said it showed Miss F had previously defaulted, but this had been 12 months before.

As the credit report seen by Moneybarn isn't available, I've looked at the credit report Miss F provided to see what else Moneybarn might have been aware of. I can see that Miss F had defaults around 12 months prior to the lending. I can also see that Miss F had recently paid her last car insurance instalment which equated to around £200 a month. I can see that

Moneybarn in their assessment only allowed £58.50 for vehicle costs which would also include petrol and car tax. And I can Miss F was repaying around £34 a month for a loan from the Enterprise fund.

Considering Miss F's indebtedness was increasing by over £20,000 across a period of five years, she was self-employed on a relative low income, and had previous financial difficulties. And the disposable income Moneybarn assessed Miss F to have would have been reduced further if they'd have considered her potential vehicle costs, in light of what could be seen on her credit report. I don't think the checks Moneybarn did were proportionate and reasonable. I think they should have verified Miss F's actual financial situation to see if the lending was sustainable.

This doesn't automatically mean Moneybarn shouldn't have lent to Miss F as I need to consider whether these checks would have shown that the repayments were unaffordable for her – or in other words that she lost out because of Moneybarn's failure to complete proportionate checks. I can't be sure exactly what Moneybarn would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Miss F's bank statements.

Having reviewed Miss F's bank statements for the three months prior to the loan, I can see that her income was comprised of benefits, excluding child benefit this was on average across the three months around £1200. Lower than the income assessed by Moneybarn. I can also see Miss F's rent was £375, her utilities around £140, council tax £58 which were around the amounts Moneybarn allowed in their assessment. But Miss F's vehicle costs are far higher than the £58.50 estimated by Moneybarn, more around £150 a month. Miss F's basic living costs are also higher around £300 a month. Which at best would leave Miss F around £170 a month before the new loan was factored in.

I can also see that Miss F made sporadic gambling transactions totalling between £10 and around £200 a month, but there was little evidence of gambling in the month prior to the lending.

So, I think if Moneybarn had done further checks prior to agreeing to lend to Miss F I think they would have seen that the loan was unaffordable, and I don't think they would have lent to her.

As I don't think Moneybarn should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Miss F has had use of the vehicle for around 36 months so it's fair she pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Miss F's case I've thought about the amount of interest charged on the agreement, Miss F's overall usage of the car, and what her costs to stay mobile would have likely been if she didn't have this car. In doing so, I think a fair amount Miss F should pay is £190 for each month she had use of the car, so a total of £6,840.

Responses to my provisional decision

Neither party has asked for any further representations to be considered.

My final decision

I uphold this complaint. And ask Moneybarn No.1 Limited trading as Moneybarn to:

- End the agreement and collect the car with nothing further to pay.

- On return of the car, calculate how much Miss F has paid in total and deduct £6,840 for fair usage. If Miss F has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement. If there is an underpayment after the settlement is calculated, Moneybarn should arrange an affordable repayment plan, treating Miss F with forbearance and due consideration.

- Remove any adverse information recorded on Miss F's credit file regarding the agreement.

*If Moneybarn consider tax should be deducted from the interest element of my award they should provide Miss F a certificate showing how much they've taken off should Miss F ask for one

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 13 April 2024.

Anne Scarr
Ombudsman