DRN-4782330

Financial Ombudsman Service

The complaint

Ms C is complaining about Moneybarn No.1 Limited (Moneybarn). She says they were irresponsible in lending to her as the loan was unaffordable. Ms C's complaint has been brought to us by a representative but for ease I've written as if we've dealt directly with her.

What happened

In June 2022, Ms C took out a conditional sale agreement with Moneybarn to finance the purchase of a car. She paid a deposit of £1,000 and borrowed £7,800 – the cash price of the vehicle was £8,800. The agreement required Ms C to make 59 monthly repayments of £259.35. Ms C has made the majority of her payments on time, missing one in June 2023, and the agreement is ongoing.

In November 2023, Ms C complained to Moneybarn. She said they'd not taken reasonable steps to assess whether the agreement was affordable or suitable for her, this had caused her financial difficulty, and had meant the relationship between herself and Moneybarn was unfair. Ms C also said Moneybarn hadn't treated her with forbearance and due consideration when she missed payments.

In their response, Moneybarn said they had carried out a credit search before lending to Ms C. They said they could see she'd previously defaulted on other accounts but the most recent of these was 25 months prior to her application. They also said they'd verified her monthly income using a Credit Reference Agency (CRA) and made reasonable considerations for her existing expenses, concluding that the repayments would be affordable for her. So they didn't uphold her complaint.

Ms C was unhappy so brought her complaint to our service, but our investigator also didn't uphold the complaint. She said she didn't think Moneybarn had done proportionate checks but if they had, they could have fairly decided to lend to Ms C.

Ms C disagreed. She said at the time of the agreement she was frequently using her overdraft. And she said she was concerned that the investigator had included certain benefits she was receiving when assessing her income. She asked for a decision and the complaint'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 Ms C, I'm not upholding her complaint for broadly the same reasons as our investigator - I'll explain more below.

I've considered Ms C's statement that Moneybarn's failure to establish that the hire purchase agreement was unsuitable resulted in the relationship being unfair. She referred to the 2020 High Court judgment in the case of Kerrigan vs Elevate Credit International Limited ("Kerrigan") where HHJ Worster confirmed a breach of creditworthiness assessment is a significant factor in making the relationship unfair.

I’ve considered the Kerrigan judgment and I’m inclined to agree with Ms C - paragraph 11 states: “*Thus a failure by a creditor to undertake a proper creditworthiness assessment prior to entering into a regulated credit agreement would almost certainly affect the fairness of the relationship and so trigger the Court’s power to make appropriate orders under section 140B.”* So I’ll first consider whether Moneybarn carried out a proper creditworthiness assessment before deciding to lend to Ms C. I’ll then go on to think about whether there are any other factors that might have made the relationship between Ms C and Moneybarn unfair to Ms C.

Did Moneybarn carry out a proper creditworthiness assessment?

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 said they conducted a full credit search and checked Ms C’s income using a CRA tool. They also said they estimated Ms C’s monthly expenditure as around £1,600 using data from the CRA and statistical data about spending patterns from the Office for National Statistics (ONS).

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what Moneybarn found. The agreement required Ms C to pay Moneybarn over £15,000 over five years, so my starting point is that the checks needed to be thorough.

Moneybarn verified Ms C’s income at £2,100 using a CRA tool, and estimated her credit commitments also using CRA data. I haven’t seen anything to suggest her credit commitments were higher than this or her income was lower and I’m satisfied it was reasonable for them to check her income and credit commitments in this way.

CONC allows a business to use statistical data to estimate a customer’s expenditure when there isn’t any reason to think their expenditure might be significantly different from that described by the data. In Ms C’s case though, the credit report Moneybarn obtained showed that she had outstanding balances on defaulted accounts of over £5,000, and had recently missed several payments against two home credit accounts. Whilst I appreciate the defaults were historic, Ms C hadn’t made any payments against them and was also missing payments to other creditors. Both of these are indicators that she might have been in some financial difficulty and that using the statistical data might not be appropriate.

Taking into account the size and term of the loan and these missed payments, I think Moneybarn should have done more to understand Ms C’s expenditure.

If Moneybarn had done proportionate checks, what would they have found?

Proportionate checks would have involved Moneybarn finding out more about Ms C’s expenditure to determine whether she’d be able to make the repayments in a sustainable way.

I’ve looked at Ms C’s bank statements for the three months leading up to her 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 from the time, bank statements provide a good indication of Ms C's financial circumstances at the time the lending decision was made.

The bank statements suggest Ms C was paying £575 per month for rent and around £420 per month for council tax and utilities. She was also spending around £230 a month on TV and phones for herself and her dependents and £40 per month on insurance.

Moneybarn verified Ms C's monthly income was £2,100 and her credit commitments were £350. Deducting her credit commitments and cost of living expenses from her income suggests she would have had around £485 per month to cover payments under this agreement as well as food and fuel. The repayments required by the agreement were around £260 per month – leaving £225 per month for food and fuel.

That doesn't strike me as a lot. But I think if Moneybarn had done these additional checks it's likely they'd have discovered Ms C had additional benefit income – child benefit and a personal independence payment totalling an average of £630 per month. I appreciate Ms C doesn't think this should be considered as her income because it was intended to cover specific costs arising from her disability and her dependents. But the bank statements don't suggest that Ms C had committed outgoings coming to anywhere near this figure so I think Moneybarn could have fairly assumed that a significant proportion of it would be available to cover food, fuel and other emergency expenditure.

Taking everything together, I'm satisfied that if Moneybarn had done proportionate checks they could have fairly decided that Ms C would be able to make the repayments required in a sustainable way and therefore fairly decided to lend to Ms C.

Ms C's also commented that she was in her overdraft every month and Moneybarn shouldn't have lent to her for that reason. Whilst I can see that Ms C did use her overdraft each month, this wasn't persistent – she was also in credit for significant portions of each month. The statements don't suggest she was reliant on the overdraft – the bank statements include a reasonable amount of discretionary spending. So I can't say Ms C's use of the overdraft should have meant Moneybarn shouldn't have lent to her.

Did Moneybarn act unfairly in any other way?

Ms C also complained that Moneybarn hadn't treated her with forbearance and due consideration when she missed payments on her account. I can see Ms C called Moneybarn in June 2023 to tell them she wouldn't be able to pay that month due to an unexpected bill. Moneybarn spoke with Ms C and completed an income and expenditure assessment, then set up a payment plan for her to cover the payment over four months. I'm satisfied they treated her with forbearance and due consideration. Ms C cleared the arrears as planned and missed no further payments.

Conclusion

In summary, I don't think Moneybarn's decision to lend to Ms C was unreasonable. And I think they treated Ms C fairly when she missed payments. I haven't seen anything else to suggest that the relationship between Ms C and Moneybarn was unfair – so I'm not upholding the complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms C to accept or reject my decision before 18 June 2024.

Clare King
Ombudsman