DRN-4806519

The complaint

Mr R complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement because it didn't carry out reasonable and proportionate checks to ensure the agreement was affordable for him.

What happened

Mr R entered into the agreement with Moneybarn for a used car in November 2019. The cash price of the car was £6,995 and Mr R paid a deposit of £600. The total amount payable under the agreement was £12,338.16. Mr R was to pay 51 equal repayments of £230.16.

Mr R is represented in his complaint but for ease of reading, I'll simply refer to Mr R throughout the decision. Mr R complained to Moneybarn about irresponsible lending in March 2023.

Moneybarn responded to the complaint in June 2023. It said it felt it had carried out reasonable and proportionate checks. It said it verified Mr R's income using payslips and completed a credit search. Therefore, Moneybarn felt it had made a fair lending decision.

Mr R remained unhappy and asked our service to investigate. On 27 March 2024 I issued a provisional decision, I said:

> *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.*
>
> *<u>Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the agreement in a sustainable way?</u>*
>
> *Moneybarn said it carried out reasonable and proportionate checks. Mr R stated he was in full time employment and Moneybarn said it carried out a credit file search. It has provided a summary of what that search showed. I've also seen a copy of Mr R's credit file which shows what Moneybarn were likely to have seen at the time.*
>
> *Mr R had two defaulted accounts with an outstanding balance of £4,657. The most recent seems to have been 15 months prior to the agreement (recorded in August 2018). I can also see a third default on his credit file which seems to have been recorded in January 2018 with a default balance of £1,260. Mr R also had two County Court Judgments (CCJ) and the most recent was only eight months prior to the lending decision. Whilst it seems Mr R had reduced the outstanding balances, there was still a significant sum remaining.*

Moneybarn said Mr R had entered into an Involuntary Arrangement (IVA) which was settled eight months prior to the lending. We did ask for further information about the IVA, and Mr R said he changed his mind and pulled out of it. So, he understands it was settled during the opt out period.

Moneybarn also relied on data from Office of National Statistics (ONS) to estimate Mr R's expenditure. Additionally, Moneybarn said it verified Mr R's income by obtaining payslips. I appreciate this went some way to verifying the information provided to them by Mr R. But, in light of the adverse information, I'm not satisfied it went far enough because it didn't show Moneybarn anything about Mr R's specific expenditure.

Having considered the information provided, I'm not satisfied Moneybarn did complete reasonable and proportionate checks to ensure the agreement was affordable. I say this because the checks it did carry out showed adverse information about how Mr R had managed his finances. The CCJ had only been registered eight months prior to the lending decision. Whilst Mr R didn't seem to have any active credit commitments at the time, I think the recent CCJ and the other adverse information (including another CCJ and defaulted accounts) should have prompted it to carry out further checks.

I don't think it was sufficient to rely on ONS data and the results from the credit search to determine committed spend. The information showed there might be something more going on with Mr R's finances and this warranted further investigation in order to find out whether Mr R could sustainably repay the agreement.

<u>Would reasonable and proportionate checks have shown that Mr R would be able to repay the agreement in a sustainable way?</u>

As I don't think the checks were reasonable or proportionate, I've thought about what such checks were likely to have shown at the time of the agreement had they been carried out. To do this, I've considered three-months of Mr R's bank statements leading up to the lending being agreed. For clarity, I'm not saying Moneybarn necessarily needed to obtain the bank statements although it is one way in which Moneybarn could consider Mr R's expenditure.

Nevertheless, I'm satisfied the bank statements show what information Moneybarn would likely have obtained had it carried out reasonable and proportionate checks. Throughout the three-month period, Mr R received a steady salary of £1,680 per month. This was verified by Moneybarn with the payslips at the time.

Mr R has told us he withdrew cash to pay for utilities and rent – he said this was around £600 per month. I can see cash withdrawals each month and I don't consider this an unreasonable amount. So, I think its likely Mr R did spend this much. In addition to this, I can see he had other costs including phone, sky and tax. His statements show spend of around £406. Overall, his average committed spend seemed to be around £1,006. But there are very limited transactions for food and petrol (Mr R may have used the cash from the withdrawals I can see).

In terms of his credit commitments, he did have payments to a short-term retail lender of around £24 per month and he also made payments to another bank but it's not clear from his credit file what this was in relation to. These payments averaged around £41. So, his overall committed spend was around £1,071.

Taking his committed spend from his income leaves Mr R with funds of around £609. This was sufficient to make the repayments of £230.16 and left him with around £379. So, based on this alone the agreement might have seemed affordable.

However, Mr R spent an average of around £830 on gambling each month. This was a significant portion of his income. It doesn't appear he had any significant credit extended to him at the time (other than a small amount of credit extended to him for a retail purchase). Also, I note he didn't gamble every day. However, there were a high number of transactions on the days he did gamble. Considering his committed spend and his income, I think the gambling was significant here and was sufficient to have indicated to Moneybarn there might have been a problem. I'm also mindful Moneybarn understood Mr R had previously been in financial difficulties and only eight months had passed since his most recent CCJ.

Overall, I'm satisfied had Moneybarn completed reasonable and proportionate checks it would have seen Mr R spent a significant proportion of his income on gambling which would have indicated he may have a problem. In the circumstances, I don't think it would have considered it responsible to lend. This is particularly the case bearing in mind the evidence of his recent financial difficulties.

I gave both parties the opportunity to respond with any further arguments or evidence provided they did so by 15 April 2024. Mr R accepted the decision and Moneybarn confirmed it had nothing further to provide.

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 see no reason to depart from the conclusion I reached in my provisional decision.

Putting things right

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr R should therefore only have to pay the original cash price of the car, being £6,995. Anything Mr R has paid in excess of that amount should be refunded as an overpayment.

To settle Mr R's complaint Moneybarn No.1 Limited should do the following:

- Moneybarn should end the agreement with nothing further to pay and transfer ownership of the car to Mr R.

- Refund any payments Mr R has made in excess of £6,995, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr R's credit file regarding the agreement.

*If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I’m upholding this complaint and Moneybarn No.1 Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 17 June 2024.

Laura Dean
Ombudsman