DRN-4325241

The complaint

Mrs P complains that Moneybarn No. 1 Limited (Moneybarn) approved a conditional sale agreement for her that was unaffordable.

Mrs P is represented in this complaint by a claims management company but, for ease, I'll refer to Mrs P directly throughout my decision.

What happened

In May 2022, Mrs P acquired a used car, financed through an agreement with Moneybarn. The cash price of the car was £6,400. Mrs P put down a deposit of £1,000 with the balance of £5,400 provided as credit through the agreement. Mrs P was required to make 44 monthly repayments of £216.40.

Mrs P fell behind by one payment in the first few months of taking the agreement out, telling Moneybarn this was due to poor budgeting. A short-term plan to clear the arrears over the following three months was agreed, after which Mrs P made her monthly repayments when due.

In January 2023, Mrs P complained to Moneybarn that the finance was unaffordable and that by approving the agreement, they'd treated her unfairly. She said even though she met the repayments, because of the finance being approved, this was at the expense of her repaying money owed elsewhere.

Moneybarn didn't uphold Mrs P's complaint. They said at the point of the application Mrs P told them she was employed, earning £2,250 a month. Moneybarn said Mrs P's income was verified via a credit reference agency and they used statistical data and her existing borrowing commitments at the time to estimate the level of Mrs P's non-discretionary expenditure. And they calculated she had a net monthly disposable income of around £900.

Moneybarn also said they completed a full credit search and while it showed Mrs P had defaulted on some previous borrowing, the most recent default was entered 21 months prior to the lending application and they could see she was paying back the amounts owed. Moneybarn also said that whilst County Court Judgements (CCJs) were also visible on the credit search, the most recent had been registered 35 months prior to the agreement.

Mrs P remained unhappy so, she referred her complaint to the Financial Ombudsman Service.

One of our Investigators looked into things, but he didn't think the complaint should be upheld. He said whilst he didn't think Moneybarn had carried out proportionate checks, had they done, he thought they still would've approved lending to Mrs P. Our Investigator said after reviewing Mrs P's income and expenditure, he was satisfied the monthly repayment was affordable and thought it was likely Moneybarn would've seen the same, so he didn't think they'd done anything wrong by approving the finance.

Mrs P disagreed with our Investigator's opinion saying her bank account statements showed multiple failed payments to her local council, suggesting she was suffering financial difficulty paying her priority bills.

Our Investigator's opinion remained unchanged. As Mrs P remained unhappy and no agreeable resolution could be reached, this case has been passed to me to decide.

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 it. I realise this will be a disappointment to Mrs P, so I'll explain why.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mrs P's complaint. Moneybarn needed to ensure that they didn't lend irresponsibly, which in practice means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for her before agreeing to provide the finance.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like Moneybarn to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- Did Moneybarn complete reasonable and proportionate checks to satisfy themselves Mrs P would be able to meet the repayments of the borrowing without experiencing significant adverse impact on her financial situation?

- If they did, was their decision to lend to Mrs P fair?

- If they didn't, would reasonable and proportionate checks have shown that Mrs P could sustainably repay the borrowing?

<u>Did Moneybarn complete reasonable and proportionate affordability checks?</u>

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary depending on the details of the borrowing and the consumer's specific circumstances at the time.

Here, the total amount repayable under the agreement was around £10,500, with Mrs P committing to make 44 monthly repayments of £216.40. This was therefore a relatively significant and lengthy credit commitment for someone to enter into, so my starting point is that I'd expect to see Moneybarn to have completed a thorough affordability check.

Moneybarn say relevant checks were completed because Mrs P's credit report didn't cause them any concerns regarding her financial status. They say whilst she'd defaulted on some accounts and they were aware of CCJs, these were historic, with the debt owed reducing and showing signs of improvement. Moneybarn also say that as a specialist lender, they provide finance to those who may not be able to obtain it from banks and other mainstream lenders due to their credit history.

Moneybarn say they verified Mrs P's income via a credit reference agency and they completed their own affordability assessment using a range of data including the verified income, the credit report data they'd gathered, and statistical expenditure data. Moneybarn also say they took into account Mrs P's existing debt repayment commitments and factored in the allowance of a buffer to account for any other essential expenditure.

CONC does allow the use by businesses of statistical data when completing affordability assessments unless they have reason to suspect that a customer's non-discretionary expenditure is significantly higher than described in the data.

But Moneybarn haven't been able to provide me a copy of the credit search or the income check they completed at the time, rather just a summary of what they saw. And while Mrs P has provided a credit report to me, this isn't in full either, and doesn't show me full details such as payment data or any new lines of credit potentially applied for in the months prior to the agreement.

So, considering what Moneybarn say they saw at the time, alongside looking at the credit report provided to me by Mrs P now, it's clear she had three active CCJs when applying for the agreement, but in the absence of seeing the full checks Moneybarn completed, I can't be certain what in any detail, Moneybarn saw. And therefore, I can't say proportionate checks were carried out.

I acknowledge Moneybarn's comments they are a lender that specialises in lending to people who may have difficulty obtaining mainstream lending because of their credit history. However, that doesn't mean what they saw might not have given them some cause for concern, and based on what I've seen I think they ought to have done more to assess the agreement's affordability for Mrs P.

To do this I think Moneybarn ought to have tried to find out more about Mrs P's income and committed expenditure outside of her active credit commitments. This is because they were asking her to commit to a significant monthly payment for a term of almost four years.

In summary I've not seen Moneybarn carried out proportionate checks given the amount and duration of the loan and considering the results returned on Mrs P's credit file.

<u>If Moneybarn had carried out proportionate checks, what would they have found?</u>

I can't be sure what information and evidence Moneybarn would've asked for or received had it carried out a reasonable and proportionate check but as I've said above, I think it would have involved them finding more out about Mrs P's income and expenditure.

I've looked at the bank statements for two accounts held by Mrs P covering the three months prior to the agreement being taken out. I understand Moneybarn didn't necessarily need to obtain bank statements specifically, but in the absence of any other information, I think they provide the best indication of Mrs P's income and expenditure at the time.

The bank statements issued in March through to May 2022 show that most of Mrs P's income was received via benefit payments from the government as opposed to from her employer, however her net income remained regular and averaged £1,900 a month.

Taking into consideration the monthly average of the regular payments from Mrs P's two accounts, I can see she paid around £670 towards rent and household bills, around £205 for vehicle tax and insurance, fuel, and other transport costs, and around £150 for television and mobile phone subscriptions.

Mrs P also spent monthly on average around £175 on groceries, around £110 towards debt repayment and a further £50 to an existing motor finance company. As it's not clear if this commitment ended when Mrs P took out the new agreement with Moneybarn, I've included it in her committed expenditure. Finally, Mrs P paid on average £70 monthly to repay other credit commitments such as buy-now-pay-later agreements. I've not seen any other regular commitments or non-discretionary expenditure from the statements for either of Mrs P's bank accounts.

In summary, I've seen Mrs P had on average around £1,430 of committed or non-discretionary expenditure a month at the time of taking the agreement out. The monthly repayments for the agreement were £216.40, so this would have left Mrs P with around £250 disposable income on average per month to cover any discretionary spending. Because of this, I'm satisfied even if Moneybarn had done proportionate checks, it's likely they'd have determined Mrs P's income exceeded her non-discretionary expenditure and they could've fairly decided to lend to her.

I'm aware Mrs P notes her bank statements show multiple unpaid payments to priority bills which she says shows she was struggling financially. Whilst I can see that was the case, I can also see Mrs P made high levels of discretionary spending on items such as holidays, eating out and food delivery services. This pattern of spending supports my finding Mrs P did have sufficient disposable income at the time of taking the agreement out.

My final decision

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 19 December 2023.

Sean Pyke-Milne
Ombudsman