

The complaint

Mr G complained to Moneybarn No.1 Limited (“Moneybarn”) that a car he was paying for under a conditional sale agreement wasn’t of satisfactory quality from the outset. He also says that the credit was unaffordable for him and shouldn’t have been agreed.

What happened

Moneybarn agreed credit of £7,414 for Mr G on 6 November 2019 via an intermediary in order for him to acquire a car. The total amount owed (including Mr G’s deposit of £580) came to £15,328 which was to be repaid over 59 monthly instalments of £250¹.

The finance was granted under a conditional sale agreement meaning Mr G would own the car once it had been repaid. Moneybarn was the owner until that point and Mr G was, in essence, paying for the use of it. Any complaints about the quality of the car as given to Mr G then fall to Moneybarn.

Mr G voluntarily terminated the agreement on the 10 January 2020 and returned the car. Moneybarn says that Mr G is liable for half the amount owed under the terms of the agreement, in other words £7,665.

Moneybarn has confirmed that the voluntary termination of the agreement was completed in early 2020, and Mr G was sent a final billing letter for the amount of £7,084 (half the total amount minus his deposit). I’ve assumed that the car has been collected though I don’t know if the debt has been sold to a third-party debt collector at this point.

One of our investigators looked into Mr G’s complaint and recommended that it be upheld in part because they found that Moneybarn was irresponsible to have entered into a conditional sale agreement with him. They didn’t uphold the aspect of his complaint relating to the quality of the car.

Neither Moneybarn nor Mr G has responded to our investigator’s view so the case has been passed to me to review and resolve.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

The facts of the case are well known to both parties and are not in dispute, so I won’t go into what happened in any more detail but will focus on giving the reasons for my decision. Having considered everything, I’ve come to the same conclusions as our investigator: I don’t

¹ All figures quoted are rounded to the nearest pound.

think that the car was of unsatisfactory quality but I do find that Moneybarn was irresponsible to have agreed credit for Mr G on this occasion. My reasons are as follows.

It is not in dispute that the interior of the car had some damage prior to Mr G taking possession of it. However, having considered what both parties have said about that and having looked at the photos provided by Mr G, I don't think the damage was out of proportion to the wear and tear that could reasonably be expected in a car of such age and mileage.

I accept that the damage to the car wasn't mentioned in the advertisement for the car nor, it seems, was it pointed out to Mr G. However he did have the opportunity to take the car for a test drive albeit in the evening. Furthermore, it doesn't seem that Mr G's use of the car was limited by the condition of its interior and I can't say that he was unable to make fair use of the car for the time it was in his possession.

It is also not in dispute that the car was advertised as having a tyre mobility kit. Mr G says this was missing. I can see that Moneybarn directed Mr G to speak to the selling dealership in the first instance. I don't know what has happened regarding this item but, as events have now moved on, I don't feel I need to comment further on this point.

I've concluded that Moneybarn was irresponsible to have entered into a conditional sale agreement with Mr G. This is because I find that Moneybarn's affordability assessment wasn't proportionate on this occasion, and that a reasonable and proportionate check would likely have shown that Mr G wouldn't be able to meet his repayments without experiencing a significant adverse impact on his financial situation.

Moneybarn says it accepted what Mr G told the intermediary about his income and expenses. It says it compared these figures with statistical datasets and checked his credit file, though it hasn't provided the results of this or commented further. I don't think relying on statistical comparisons was appropriate in this case. Mr G's income consisted solely of state benefits, including disability payments. He had several accounts in default and ongoing arrears, some of which Moneybarn would likely have seen on its credit file check. Furthermore, from the credit file information Mr G has provided it seems he had an existing unpaid debt with Moneybarn for over £3,000. Moneybarn hasn't commented on this but I can't say that agreeing further credit for Mr G under these circumstances was fair.

Altogether, I don't think Moneybarn took reasonable steps to ensure Mr G would be able to meet his repayments without difficulty over the five year finance term. On reviewing the available information, I don't think further checks would have provided any reassurance to Moneybarn that Mr G would have been able to do so. Mr G's bank statements support what he says about his monthly income consisting of benefits and amounting to about £700. He was making token payments to two debt management companies, which suggests to me that he wasn't managing to clear his existing debt.

Agreeing this finance for Mr G increased and prolonged his indebtedness, left him with a debt of over £7,000 to have the use of a car for two months and the agreement has been recorded on his credit file.

Putting things right

Putting Mr G back into the position he would have been in, had Moneybarn not agreed finance for him, means that he shouldn't be liable for the outstanding amount. If Moneybarn has sold the debt then it will need to work with the current owner to put things right as I've set out below.

I think it's fair that Mr G pays something for the time he had the use of the car as there was likely to have been a cost to him in staying mobile without it. I understand that Mr G didn't make any payment for the car beyond his initial deposit of £580. In this case, I think it's fair that Mr G pays the agreement amount of £250 a month for the use of the car for two months.

In summary, Moneybarn should:

- a) Recover the car from Mr G at no cost to him and end the agreement (I'm including this for completeness as I think it has already carried out these actions); and
- b) Cap the total amount Mr G needs to pay at £500; and
- c) Refund any amounts he's paid (either to Moneybarn or a third-party) above this amount along with 8% simple interest* per annum; and
- d) Remove all adverse information about this agreement from Mr G's credit file once the agreement is settled. As I've found Mr G shouldn't have been given this finance, it follows that he wouldn't have been in the position of voluntarily terminating the agreement and so Moneybarn shouldn't record this as such on his credit file.

* HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr G a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out above, I'm upholding Mr G's complaint about Moneybarn No.1 Limited and it should put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 March 2021.

Michelle Boundy
Ombudsman