

The complaint

Mr F complains that Moneybarn No. 1 Limited ("Moneybarn") shouldn't have agreed to lend to him under a conditional sale agreement ("agreement"). He says the agreement was unaffordable.

What happened

Mr F entered into an agreement in early 2016 so that he could obtain a used car. The cash price of the car was £6,995. The agreement was for 48 months with a total repayable of £12,389.20. Mr F's monthly repayments were £263.60. Mr F repaid his agreement in full in early 2020 having paid Moneybarn £12,641.20 - £6,995 in capital, £5,394.20 in interest and £252 in charges.

Mr F says Moneybarn didn't do enough to check that he could afford to repay the agreement.

Moneybarn says it checked Mr F's credit file and two payslips that Mr F supplied during the application. It said these didn't highlight any concerns about affordability.

Mr F's complaint was considered by one of our investigators who came to the view that it should be upheld and that the lending was indeed unaffordable. He then went on to explain what Moneybarn should do to fairly compensate Mr F.

Mr F responded to say that he agreed with the investigator's view. However, Moneybarn didn't respond and so for that reason the complaint was passed to me for review and decision.

I issued a provisional decision on this case in February 2021. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. This includes, amongst other things, having regard to Moneybarn's regulatory obligations under the Consumer Credit Sourcebook ("CONC").

CONC says that lenders need to carry out checks to ensure any lending it gives is affordable and sustainable for the borrower. This is often referred to as an 'affordability check'. This check should be 'borrower-focussed'. This means Moneybarn needed to think about whether Mr F could afford the borrowing, not just how statistically likely he was to repay it back.

The thoroughness of the checks Moneybarn carried out needed to be proportionate to the situation. In deciding what was proportionate Moneybarn ought to have considered the following (but not limited to):

- The size and duration of the loan;
- The overall cost of the borrowing and the size of the repayments; and
- Mr F's personal circumstances.

This loan was for four years with a total repayable of over £12,000. I think this was a significant commitment for Mr F. The monthly repayments were also over £250 which was a not insignificant proportion of Mr F's declared monthly income. Mr F was also not putting down any of his own funds towards the car. So, I think the thoroughness of the check Moneybarn carried out ought to have reflected the significant commitment Mr F would be undertaking over a relatively long period of time.

To assess whether Mr F could sustainably afford to repay the loan Moneybarn says it reviewed his two payslips and completed a credit check. It says the credit check didn't highlight any concerns. We've asked Moneybarn to provide us with the data it received from the credit check, but it says this isn't available. This means I can't be sure what information Moneybarn reviewed in order to assess Mr F's current financial position – other than the two payslips he supplied.

Mr F has provided us with a copy of his credit report. So, in the absence of anything from Moneybarn to show what data they saw, I think it's reasonable to conclude the information contained in the report Mr F has supplied was likely to be available to Moneybarn.

This credit report shows that in the year prior to the agreement taking effect Mr F had taken out seven payday loans and had a county court judgement registered against his name for approximately £1,000.

It also shows that in the four months following the agreement taking effect Mr F had three further court judgements registered against his name totalling approximately £3,000. Now I accept that these judgements wouldn't have shown up on Moneybarn's credit check, but I think that at least two of the debts would have been recorded at the relevant time as being delinquent or in default on Mr F's credit file.

In my view the above should have been enough to have prompted Moneybarn to have undertaken further checks. Now it's not my role to say what further checks Moneybarn should have undertaken, but it's my understanding that had it, by way of example:

- requested sight of, and considered the content of, Mr F's bank statements
- completed an income and expenditure form with Mr F

it's likely that it would have discovered that Mr F couldn't afford the agreement.

Moneybarn was required to carry out appropriate and proportionate checks and for the reasons I've explained I don't think it did. And had it carried out proportionate checks, I don't think it ought to have lent to Mr F. I've therefore gone on to consider what a fair remedy would be.

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 keep any interest or charges paid by Mr F under the agreement. However, given that Mr F has had, or appears to have had, uninterrupted use of the car during the term of the agreement and that he was able to retain possession of the car once the agreement came to an end, I think it's only fair that Moneybarn should be able to keep all the capital payments paid by Mr F of £6,995.

This means that Moneybarn should reconstruct the account with an opening balance of £6,995 and deduct from this sum the payments made by Mr F with no interest or charges being debited. It should then refund to Mr F any payments made over and above the sum of £6,995 together with 8% simple interest per year from the date of each overpayment to the date of settlement.

To assist both parties it's my understanding that:

- between 1 April 2016 and 1 May 2018 Mr F made 26 payments totaling £6,708.80 which would leave a debit balance, against an interest and charge free opening balance of £6,995, of £286.20
- on 28 July 2018 Mr F made a payment of £323.60 which would leave a credit balance, against an interest and charge free opening balance of £6,995, of £37.40
- between 28 August 2018 and 28 January 2020 Mr F made 20 payments totaling £5,608.80 which would leave a credit balance, against an interest and charge free opening balance of £6,995, of £5,646.20 (£37.40 plus £5,608.80)

As I've concluded that Mr F shouldn't have been given the borrowing, it isn't fair for him to have any adverse information recorded on his credit file about this debt. Therefore, Moneybarn should arrange to remove any adverse data it may have registered with credit reference agencies in respect of the agreement.

Mr F responded to my provisional decision to say that he had nothing further to add.

Moneybarn didn't respond to my provisional by the date given.

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.

As Moneybarn didn't respond and given that Mr F confirmed he had nothing further to add I see no good reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that Moneybarn No. 1 Limited must:

- Refund all payments made against the agreement over and above £6,995 to Mr F together with 8% simple interest per year from the date of each payment to the date of settlement*.
- Remove any adverse data recorded in respect of the agreement with credit reference agencies.

*HM Revenue & Customs requires Moneybarn No. 1 Limited to take tax off this interest. Moneybarn No. 1 Limited must give Mr F a certificate showing how much tax it's taken off, if Mr F asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 April 2021.

Peter Cook
Ombudsman