

The complaint

Mr H believes Moneybarn No.1 Limited acted irresponsibly by agreeing a conditional sale agreement he'd applied for.

What happened

In May 2017, Mr H was supplied with a used car through a conditional sale agreement with Moneybarn. He paid a £400 deposit and the agreement was for £5,590 over 53 months, with an initial payment of £400 and 52 monthly repayments of £243.01.

Mr H has complained that Moneybarn didn't act responsibly when approving the finance. He's said he told the finance broker that his work was inconsistent, and that he could only afford £100 to £130 a month. He also said he was told he couldn't borrow what he was looking for, because it was such a small amount, and that he was encouraged to agree to a higher payment.

Moneybarn didn't agree they'd acted irresponsibly, so Mr H brought his complaint to the Financial Ombudsman Service for investigation.

Moneybarn said they carried out the appropriate checks when they approved the finance. But they couldn't provide a copy of the credit file they checked for Mr H at the time. So the investigator relied on a credit file that'd been produced in 2019 but showed information that was likely to be present at the time Mr H applied for the finance, to establish what his financial circumstances were at the time of the application.

Having reviewed the credit file, and the bank statements Mr H provided Moneybarn at the time of the application, the investigator said Mr H's average income was substantially less than Moneybarn had calculated. Taking this into consideration, as well as Mr H's monthly expenditure at the time, the investigator said that Mr H didn't have sufficient disposable income left after paying Moneybarn to pay for food, other discretionary expenditure, and the costs involved with running a car.

So, the investigator said Moneybarn's lending decision wasn't fair, and they should cancel the agreement. She said Mr H should pay for the use of the car while he had it but, because the finance shouldn't have been agreed, any payments he made above the fair usage figure should be refunded.

So the investigator said that Moneybarn should refund Mr H his deposit and all of the payments he'd made (less the fair usage charge) plus interest. She also said Moneybarn should remove any negative information about the finance from Mr H's credit file.

Moneybarn didn't agree with the investigator, and they believed they'd calculated Mr H's income correctly. The investigator obtained more bank statements from Mr H and considered his income for the six months leading up to the finance being agreed. And, while this average income was greater than she'd originally used, she still didn't think Mr H had sufficient disposable income. So Moneybarn's comments didn't change her view.

However, because Mr H had paid more than the amount originally financed, the investigator changed her recommended remedy. She said Moneybarn should end the agreement, with Mr H keeping the car; refund anything Mr H has paid over the amount originally financed, plus statutory interest; and remove any adverse information relating to the agreement from Mr H's credit file. Moneybarn didn't respond to the this change in recommended remedy, so the matter has been passed to me to make a final decision.

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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the credit in a sustainable way?
 - a. if so, did Moneybarn make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr H could sustainably repay the borrowing?
2. Did Moneybarn act unfairly or unreasonably in some other way?

And, if I determine that Moneybarn didn't act fairly and reasonably when considering Mr H's application, I'll also consider what I think is a fair way to put things right.

Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

Moneybarn haven't provided a copy of the credit file they checked at the time of the application. But I have seen a copy of Mr H's credit file from August 2019. As this shows details of Mr H's credit commitments at the time of the application, I'm satisfied it's reasonable to rely on this information as part of my decision. The credit file I've seen shows that, in April 2017, Mr H had three loans with payments totalling £139 a month; and four credit accounts in default, with a total default amount of £3,440.

Different lenders have different criteria, and I don't think that Moneybarn should've declined the finance application just because Mr H had outstanding defaults. But I would've expected them to take these into consideration when making their lending decision.

The bank statements Mr H provided to Moneybarn show an average monthly income of £1,452.55 for February to April 2017. They also show a number of returned direct debits, which is an indicator that Mr H may be suffering financial difficulties. Mr H was paying £475 a month rent and £193 a month in household bills. Taking into consideration his existing loan payments, this would leave Mr H with £645.55 each month to pay his other outgoings.

The income and expenditure form completed by Moneybarn shows Mr H also paid £285 a month for 'communications & leisure'; £303.33 a month for 'food & housekeeping'; £427.68 a month for 'transport & travel'; and £50 a month for 'personal costs' - a total of £1,066.01. The income and expenditure form also shows Mr H was behind with his payments for council tax, rent and ground rent. And it doesn't take into consideration any payments to his defaults.

Based on the above, Mr H didn't have sufficient income to cover his existing outgoings, let alone make any payments to his existing arrears. So he didn't have any disposable income from which to pay Moneybarn £243.01 a month.

Given this, I don't think that Moneybarn acted reasonably or proportionately by approving this finance agreement.

Would any additional checks Moneybarn could've done have shown that Mr H could sustainably repay the borrowing?

Mr H has provided us with his bank statements for the period 1 January 2016 to 31 May 2017. And these show his income over a longer, more sustained, period. And, if Moneybarn had asked for more proof of income, then these bank statements give a good indication of what Moneybarn would likely have discovered.

The bank statements show that Mr H's average income for the six months before the finance was agreed (November 2016 to April 2017) was £1,113.44 – less than the average amount showing in the bank statements Mr H provided Moneybarn as part of his application.

Based on this I'm satisfied that, even if Moneybarn had looked at a longer time period, Mr H's income was still insufficient to support his existing outgoing. So Moneybarn shouldn't have approved the finance.

Did Moneybarn act unfairly or unreasonably in some other way?

I haven't seen anything to make me think Moneybarn acted unfairly or unreasonably in some other way.

Putting things right

As I don't think the finance should've been approved, I've thought about how to put Mr H back in the position he would've been in if this hadn't happened. So I think that Moneybarn should cancel the agreement. But, because Mr H had already paid Moneybarn more than the original amount of the finance, he should be allowed to keep the car.

So, Moneybarn should:

- cancel the agreement;
- refund everything Mr H has paid above the original finance amount of £5,590, plus 8% simple yearly interest on any overpayments Mr H has made, from the date of the overpayment to the date of the refund †; and
- remove all adverse information relating to the finance agreement from Mr H's credit file.

†HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr H a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained above I uphold Mr H's complaint. Moneybarn No.1 Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 October 2021.

Andrew Burford
Ombudsman