

The complaint

Mr S complains that Moneybarn No. 1 Limited didn't treat him fairly at a time when he experienced financial difficulties.

What happened

Mr S entered into a conditional sale agreement with Moneybarn to finance the purchase of a van in September 2016. The cash price of the van was £10,000 and the total amount payable under the agreement was £16,672.48 to be repaid by making 48 payments of £326.51 per month, in addition to Mr S's advance payment of £1,000.

From November 2016 Mr S experienced financial difficulties. Arrears built on the account and a payment plan was agreed to address those arrears. Ultimately, due to the level of arrears, in September 2017 Moneybarn ended the agreement, repossessed the car and sold it. It asked Mr S to pay the remaining balance of his agreement, which was £6,403.92.

In the same month, Mr S raised a complaint with Moneybarn. He said that he'd asked Moneybarn if he could sell the van and repay the agreement, but it had said no. He said that if Moneybarn had allowed him to sell the van when he'd asked, he would've got a lot more for it than when it was sold at auction and he likely would've been able to repay the lending.

Moneybarn issued a final response to the complaint in December 2017. It said that the agreement was clear that Mr S would not own the van until the finance had been settled in full, so he was not allowed to sell it before then. It didn't uphold the complaint.

Mr S's complaint was subsequently considered by this service. In January 2018 one of our investigators concluded that Moneybarn had not treated Mr S unfairly by not allowing him to sell the van when he'd asked to. Our file on the case was subsequently closed.

In August 2019 Mr S told this service that Moneybarn had written to him in July 2019 to say that it had been working with the Financial Conduct Authority (FCA) to look at its payment practices and had identified some of the payment plans it had previously agreed with its customers may not have been suitable. It said Mr S's account had been identified as one which may not have been suitable, so it decided to write off the outstanding balance of his account and mark it as settled with credit reference agencies.

Mr S showed this service that he'd raised a further complaint with Moneybarn. In summary, he'd said;

- Moneybarn hadn't treated him fairly overall on the grounds that it didn't offer enough support or empathy, including an occasion it had laughed at him on the phone;
- the payment plan it had set up was not affordable;
- if Moneybarn had allowed him to sell the car when he'd asked, he could've sold it for up to £10,000; and
- the default Moneybarn had recorded on his credit file had a severe impact on his ability to obtain credit and caused a significant amount of stress.

Mr S also told this service that if Moneybarn had come up with a sensible repayment plan, he'd still have the van. Mr S asked for all of the payments he made towards the agreement to be returned to him.

Moneybarn issued a response to Mr S's follow up complaint in November 2019. It said that it thought the agreement had been affordable for Mr S based on the information he had given it at the outset and that it had treated him fairly when he fell into financial difficulty. It said that it had detailed the early exit options available to Mr S to prevent the van being repossessed during February and March 2017. It said that at the time it issued a default notice, Mr S's account was £1,289.04 in arrears and because Mr S had been unable to pay this, it had acted correctly at the time the agreement was terminated.

Mr S referred his subsequent complaint to this service in January 2020. He added that a month after the van was repossessed, he was in a position to pay £1,000 towards the arrears and he reiterated that a representative of Moneybarn had laughed at him on the phone at a point when he'd asked for more time.

Another of our investigators considered Mr S's second complaint. They said we shouldn't comment on whether Moneybarn should've let Mr S sell the van, because that complaint had already been considered. Overall, in reference to Mr S's further complaint, they found that Moneybarn hadn't adequately assessed Mr S's ability to afford the lending, but if it had done so, it likely would've found it affordable. They found that Moneybarn had treated Mr S fairly overall.

Mr S didn't agree, he said that Moneybarn ought to have defaulted the account sooner and asked for an ombudsman's decision.

I issued a provision decision explaining why I didn't intend to uphold the complaint. In summary I said;

Mr S has raised a number of points about the way Moneybarn has treated him and it's clear that he feels strongly about his complaint. I won't necessarily mirror the level of detail in which Mr S presents his complaint, but I'll focus on what I consider to be the relevant points in setting out what I consider to be a fair and reasonable outcome.

I think it's fair to say that both of the complaints which Mr S has presented to this service are closely linked. Whilst I accept that we previously gave an answer on the specific issue of whether Moneybarn should've allowed Mr S to sell the van in 2017, things have moved on and I think that point is relevant to the current complaint. As a result, whilst it's within my power to dismiss this aspect of Mr S's complaint, as our investigator suggested, I don't intend to. So, my provisional decision will cover both of Mr S's complaints outlined above.

In the most part Mr S's complaints are about how Moneybarn treated him when he wasn't able to afford to make payments towards his agreement. Mr S raised issue with the affordability of the payment plan Moneybarn offered him, but not, from what I've seen, the affordability of the lending itself. It's something Moneybarn considered as part of Mr S's complaint, so I'll address it for the avoidance of doubt.

In deciding whether Moneybarn acted fairly in providing lending to Mr S I've taken into account relevant law, rules, regulations, guidance as well as what was considered good industry practice at the time. In this case I've had particular regard for the requirements for lenders set out in the Consumer Credit Sourcebook (CONC), which can be found in the Financial Conduct Authority's handbook.

With that in mind, I think there are two questions I need to examine to decide on what a fair and reasonable outcome to this complaint would be;

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

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

Moneybarn was required to complete reasonable and proportionate checks of Mr S's ability to sustainably repay the lending it provided. Carrying out reasonable and proportionate checks does not look the same for every customer. But I'd have expected Moneybarn to take into account a number of factors including Mr S's specific financial circumstances, the amount of credit, the total repayable, the duration of the agreement and the size of the regular payments, in determining what a reasonable and proportionate check would be.

Moneybarn says that it asked Mr S for information about his income, copies of his banks statements and completed a credit check in assessing the affordability of the lending. Moneybarn no longer had a copy of the credit check at the point Mr S's complaint reached this service, but Mr S has provided a copy of his credit file as well as his bank statements in the period around his application.

Whilst Moneybarn calculated that Mr S's income had been around £1,300 per month in the two months leading up to his application, our investigator believed it was around £1,200 and having looked at Mr S's bank statements, I think that's accurate. I also agree with our investigator that Mr S's credit file showed indications that he might have struggled to manage his finances for as much as a year leading up to his application with Moneybarn.

Our investigator concluded that because of this, Moneybarn ought to have done further checks, but I disagree. I haven't seen every detail of the application Mr S made, but I'm aware that Moneybarn had completed a credit check and had sight of at least two months of Mr S's bank statements. I think that even if Mr S's credit history ought to have been a cause for concern for Moneybarn, I think it likely would've had a reasonable overview of both Mr S's income and expenditure based on the bank statements he'd provided.

I think Mr S's bank statements show that in the months leading up to his application, he was employed and received a regular monthly income in the region of £1,100 to £1,200 per month, from June 2016, which seems to be the point at which he began to receive payments from his employer.

Mr S hasn't given us evidence of his committed expenditure at the time of his application. But, based on his statements it seems he would've had a regular committed expenditure of just under £300, leaving him with a monthly disposable income of in the region of £800 to £900 per month on average. Given this, I'm persuaded that Moneybarn had built a reasonable picture of Mr S's financial circumstances at the time of his application, and it therefore had completed a reasonable and proportionate check of Mr S's ability to afford the borrowing. Taking into account the monthly commitment required under the borrowing Moneybarn gave was £326.51 per month, I think Moneybarn made a fair decision to lend to Mr S.

Lastly, with reference to the affordability of the borrowing, I'm aware that Mr S told our investigator about a commitment in respect of a rental agreement for £300 per month. Our investigator said they couldn't take that into account because they hadn't seen sufficient evidence that Mr S was incurring that cost at the time of his application. In any case, even if we accepted that Mr S was required to make that payment, I think it's fair to say that he still would've been left with sufficient disposable income to afford the borrowing, and Moneybarn more likely than not would've reached the same lending decision.

Did Moneybarn treat Mr S unfairly in some other way

I think it's clear from Moneybarn's records, as well as from what Mr S has said, that he struggled to meet the payments required of his borrowing with Moneybarn early on in the agreement. I think both parties accept that this was due to Mr S being unable to work and therefore not having sufficient income to meet the repayments.

Under the relevant regulations Moneybarn had a responsibility to treat Ms S with forbearance and due consideration. That might have involved Moneybarn asking Mr S for details of his income and expenditure with a view to accepting a reduced level of payments for a period.

From what I've seen, it seems that Moneybarn and Mr S were in regular contact with one another about his financial circumstances and ability to make repayments. I haven't seen that Moneybarn discussed a reduction in the payments Mr S was required to make, rather it set up a payment arrangement to address arrears which would've required an additional sum of £60 per month from Mr S. Given what Mr S has said about his financial situation as well as the events which subsequently played out, I don't think it was realistic to expect Mr S to have met the payment plan Moneybarn offered, particularly because it seems he wasn't able to make the normal monthly payments under the agreement.

In this respect, I agree with what Mr S has said about the affordability of the payment arrangement Moneybarn offered him. In any case, I don't think Moneybarn disagrees. But it's left to me to decide what impact (if any) Moneybarn's treatment of Mr S had on subsequent events which ultimately led to the repossession and sale of the van.

There's not a set action Moneybarn ought to follow in respect of customers experiencing financial difficulty. As I've mentioned above, I might have expected Moneybarn to consider

accepting reduced payments from Mr S on a short term basis to help him regain control of his finances. But I'd also expect it to consider Mr S's long term prospect of meeting repayments as well as whether accepting reduced payments might not be the right thing to do because, for example, the value of the van would inevitably decrease with time, so repossessing earlier rather than later would ensure that Mr S's liability would've been limited.

All things considered, I'm not satisfied that Moneybarn acted unfairly by terminating the agreement when it did. Even discounting the affordability of the payment plan, I think it was clear that Mr S had struggled to make significant payments towards his agreement from very early on – something demonstrated by the income and expenditure reviews Moneybarn completed with Mr S. Additionally, I think the information on Mr S's credit file shows that he continued to experience difficulties after the car was collected, so I think it's likely that Moneybarn would've ended the agreement at some point, if not at the point it did.

At the point the van was repossessed it appears that Mr S's account was between five and six months in arrears. I'm not persuaded that if Moneybarn had accepted reduced payments during that period, Mr S wouldn't have been in a similar levels of arrears. I also think that by that stage, Moneybarn had acted in Mr S's best interest in repossessing the van given his

apparent reluctance to engage with it about ending the agreement. It's also the point at which I think it was fair for Moneybarn to have recorded a default on Mr S's credit file.

From what Mr S has said it's clear he feels strongly that Moneybarn should've allowed him to sell the van at the point he'd asked to. However, I agree that Mr S's agreement makes it clear that he would not be allowed to do this as the van would remain Moneybarn's asset until the agreement was repaid in full.

That being said, I'd have expected Moneybarn to have explored various options available to Mr S to help him end the agreement if he'd wanted to; for example, he had a right to 'voluntary termination', which would involve him handing the car back and limiting his liability to half of the total amount payable under the agreement. Alternatively, Mr S might have been able to 'voluntary surrender' the van, which would mean him handing the van back to be sold by Moneybarn, and the proceeds being deducted from the outstanding borrowing, net of any interest rebate.

I've seen that Moneybarn tried to engage with Mr S a number of times about his exit options, specifically suggesting that it might be able to save him money in the long run. It doesn't seem that Mr S considered that offer though; his correspondence with Moneybarn suggests that he asked for further time to be able to regain control of the agreement. Overall I'm satisfied that Moneybarn took reasonable steps to try to help limit Mr S's liability under the agreement.

I anticipate that Mr S might argue that he may have achieved a higher sale price if he'd been able to sell the van privately as opposed to Moneybarn selling it at auction. But Moneybarn sold the van for around £7,500 at auction around a year after the agreement started. Moneybarn said that the sale price exceeded the value it had expected to receive based on market values, which seems to be the case.

Additionally, whilst I accept that it's generally considered a private sale might reach a higher price in comparison to an auction sale, I have doubts in this specific case; the cash value of the van was £10,000 when supplied by a dealer in September 2016, I think it unlikely that Mr S would've been able to sell the van privately for a price in that region around a year later. I think it would've been more likely to have achieved a price similar to the one which Moneybarn ultimately achieved even if it had allowed Mr S to sell the van privately and it's unlikely he would've been able to repay the borrowing, even once any interest rebate had been applied.

Mr S has said that the presence of the default Moneybarn recorded on his credit file has had an impact on his ability to obtain finance for another car. I've already explained why I think it was fair for Moneybarn to have applied a default at the point it did. But, for the sake of clarity, even if I didn't think it had been applied fairly, I don't think it would've had a significant impact on Mr S's ability to obtain finance elsewhere.

I say this because Mr S's credit file shows that he had a number of defaults applied by other lenders both before and after his relationship with Moneybarn. In particular, it seems that he had a number of further defaults applied after the Moneybarn account was showing as defaulted. So, I think it's unlikely to have had a significant impact.

Overall, I agree that Moneybarn could've been more helpful at the time Mr S experienced financial difficulty by arranging a suitable payment arrangement. But, even if it had I don't think Mr S would've found himself in a different position to the one he ultimately ended up in. Now that Moneybarn has written off the outstanding balance of his lending and removed the default from Mr S's credit file, I think he's likely in a better position than I would've expected even if Moneybarn had handled things better.

With reference to Mr S's assertion that one of Moneybarn's representatives sniggered at him whilst discussing his financial situation during a telephone call, given the length of time which has now passed the call is unlikely to be available, so I haven't been provided with a copy of it. Nonetheless I accept that it would've been upsetting for Mr S if it happened. I wouldn't have necessarily made a compensatory award if I had been presented with evidence that it had happened, so I don't find it necessary to now make one.

Lastly, I'm aware that Mr S has said that he's found that one of the credit reference agencies is still reporting the default, rather than showing the account as settled. The copy of Mr S's credit file he initially provided to this service shows the account as settled, so it's not clear whether the default being represented by another credit reference agency is a mistake on Moneybarn's part. Even if it was, I think it's unlikely to have had an impact on Mr S's credit worthiness given the other adverse information recorded on his credit file. Nonetheless, I'd expect Moneybarn to now ensure that the information it's reported with credit reference agencies is accurate and up to date in light of what Mr S has said.

Moneybarn didn't respond but Mr S did. He said that he didn't agree with the outcome I'd reached but didn't have anything further to add.

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.

Given that neither party has responded with any materially new information or evidence, I find no reason to depart from the conclusions I reached in my provisional decision. As such I now make those conclusions final.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 November 2021.

Stephen Trapp
Ombudsman