

The complaint

Mr W complains that Moneybarn No.1 Limited irresponsibly granted him a conditional sale agreement that he couldn't afford to repay.

What happened

In May 2016, Mr W acquired a **used** car financed by a conditional sale agreement from Moneybarn No.1 Limited ("Moneybarn"). Mr W was required to make 59 monthly repayments of **£220.33**. The total repayable under the agreement was £12,999.47.

Mr W says that Moneybarn didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Moneybarn didn't agree. It said that it carried out a thorough assessment which included a credit search to assess Mr W's creditworthiness and level of indebtedness. It also said that it checked Mr W's recent bank statements to verify his income and that based on the checks it carried out, Mr W did not exceed its lending criteria.

Mr W fell into arrears on the agreement soon after, and consequently the car was recovered by Moneybarn in October 2016. Moneybarn terminated the conditional sale agreement and sold the car at auction, which has left Mr W now owing Moneybarn just under £10,000.

Our **investigator** recommended the complaint be upheld. **She** thought Moneybarn ought to have realised the agreement wasn't affordable to Mr W.

Moneybarn didn't reply to our investigator and so the case has been passed to me for 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.

Moneybarn will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

I note that Moneybarn verified Mr W's income. However, it didn't ask Mr W about his expenditure. Although it says that it completed a credit check, this won't have indicated what Mr W's regular living expenses were. Without knowing what Mr W's regular committed expenditure was, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. Not only that, Moneybarn had an opportunity to consider Mr W's expenditure from the bank statements that he provided which covered the two months prior to his application for finance.

Moneybarn only used the bank statements to verify Mr W's income. However, it surely would have been prudent for Moneybarn to have looked at these in a little more detail as it would

have given a reasonable picture of Mr W's overall financial situation at the time. I'm not satisfied therefore that Moneybarn completed proportionate checks.

Mr W's bank statements, which were seen by Moneybarn, show that he was struggling financially. There were at least ten direct debits which bounced for other credit commitments he had at the time. This includes payments that were due to the DVLA and his gym membership. Not only that, direct debits bounced on three payday loans on more than one occasion. So, not only was Mr W borrowing from a number of payday lenders at the time which likely indicated that he was struggling to pay existing commitments with disposable income, he wasn't able to make these payments sustainably. Additionally, Mr W was being charged for the bounced direct debits which was a further cost he had to repay. And the statements don't show that Mr W had enough credit in his account to comfortably afford the proposed repayments.

Clearly Mr W wasn't in a position to afford the repayments towards the new agreement without financial difficulty or having to borrow further. Had Moneybarn completed proportionate checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance.

Putting things right

As I don't think Moneybarn ought to have approved the lending, it should, in theory refund all the payments Mr W has made. However, I note that Mr W did have use of the car for around four months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £220 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr W's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr W should pay is £110 for each month he had use of the car. This means Moneybarn can only ask Mr W to repay a total of £440 (plus the £40 charge for damage it levied when it collected the car as this charge doesn't form part of this complaint). Anything Mr W has paid in excess of this amount should be treated as an overpayment.

To settle Mr W's complaint, Moneybarn should do the following:

- End the agreement with nothing further to pay.
- Refund all the payments Mr W has made, less £440 for fair usage, and the damage charge.
 - If Mr W has paid more than this, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mr W has paid less than this figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Moneybarn has received the amount, it should remove any adverse information recorded on Mr W's credit file regarding the agreement.

If Moneybarn has sold the current outstanding debt on, it should take appropriate steps to ensure that the above direction is carried out.

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

My final decision

I uphold this complaint and direct Moneybarn No.1 Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 February 2022.

Daniel Picken
Ombudsman