

The complaint

Miss D complains that Moneybarn No. 1 Limited (“Moneybarn”) irresponsibly granted her a conditional sale agreement she couldn’t afford to repay.

What happened

In September 2017, Miss D acquired a used car financed by way of a conditional sale agreement from Moneybarn. The purchase price was £6,995. Miss D was required to make a total of 59 monthly payments of £240.82. The total repayable under the agreement was £14,208.38.

In January 2019 Miss D contacted Moneybarn to say she was experiencing financial difficulties. By January 2020, it was however necessary for Moneybarn to issue a default notice in January 2020. In February 2020 the agreement was terminated. The car was sold at auction in November 2021, following a court order being issued and the car having been collected from Miss D in May 2021.

Miss D says Moneybarn didn’t complete adequate affordability checks. She says if it had, it would have seen the agreement wasn’t affordable. Moneybarn didn’t agree. It said it carried out a thorough assessment and also verified Miss D’s income.

Miss D is also unhappy that she had incurred additional charges due to legal proceedings and the car then being sold by Moneybarn. She says she was ready to return the car to Moneybarn.

Our adjudicator recommended the complaint be upheld and after Moneybarn confirmed that Miss D no longer had the car and it had been sold, another adjudicator made a recommendation for compensation, including a fair usage value.

As Moneybarn didn’t agree the complaint has been passed to me.

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. Information about our approach to these complaints is set out on our website.

Our adjudicator set out in some detail why, having received details about Miss D’s bank account in the three months before she took out the agreement, she didn’t think Moneybarn acted fairly.

Having reviewed the complaint in detail, I've decided to uphold this complaint on the same basis as our adjudicator. I will explain why.

Before the finance was provided, Moneybarn has explained that it carried out affordability checks and asked Miss D to confirm the information provided in her application. It relied on bank statements Miss D provided as part of the application process – from June and July 2017 – in order to calculate Miss D's income. At the time Miss D was working as an agency worker which meant that her level of income was likely to fluctuate. From what I've seen it seems likely that her income for these two months may have been higher than her normal level of income, at around £2,100 for each month. However, her bank statement for August 2017 shows that her income dropped to around £1,700. So it seems likely that Moneybarn made a decision about providing Miss D credit based on evidence of income from the only the first two bank statements. That alone wasn't enough to give an accurate picture of her income when it was open to Moneybarn for example, to ask Miss D to confirm her annual income or obtain further bank statements. I'm therefore not satisfied that the income checks Moneybarn carried out were reasonable.

Moneybarn also carried out a credit check and this showed Miss D's other credit commitments and it said that the checks didn't raise concerns that meant the finance shouldn't be provided. Given that Moneybarn had obtained copies of Miss D's bank statements, it was in a position to check her daily and committed expenditure. However, I can't see it did that or that it took other steps to check or ask Miss D about her expenditure. And although it completed a credit check, that wouldn't necessarily have shown what Miss D's regular living expenses were, including those that wouldn't have appeared on her bank statements. Without having a fuller picture of Miss D's regular committed expenditure, Moneybarn wouldn't have gained a reasonable understanding of whether the agreement was affordable or not. I've also seen that Moneybarn was aware that Miss D had previously had defaults on her credit file.

I therefore don't think that that Moneybarn did enough to complete proportionate checks. I don't know exactly what Moneybarn would have found out if it had asked Miss D for more information about her expenditure. But in the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Miss D's bank statements as to what would most likely have been disclosed. I've seen from the type of bank account she had that Miss D was expected to be using the overdraft facility often. She was using her overdraft most of the time, only being in credit for a short time after receiving any income. And I've seen that her committed expenditure included making payments of around £171 per month to a high-cost lender, alongside her other monthly expenditure. The bank statements also suggest that it was not unusual for her outgoings to exceed her income. Taking all this and her variable level of income account, I think Miss D was likely to have been left with a variable level of monthly disposable income and possibly no disposable income at all.

I therefore think this shows Miss D wasn't in a position to afford to take on the additional expense of 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. Moneybarn therefore didn't make a fair lending decision.

Putting things right - what Moneybarn needs to do

As I don't think Moneybarn ought to have approved the lending, it should therefore refund all the payments Miss D has made, including any deposit. However, Miss D has had the use of the car for around 44 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of around £240.82 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, Miss D's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think that a fair amount Miss D should pay is £115 for each month she had use of the car. This means Moneybarn can only ask her to repay a total of £5,060. Anything Miss D has paid in excess of this amount should be treated as an overpayment.

To settle Miss D's complaint Moneybarn should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments (including the deposit) Miss D has made, less £5,060 for fair usage.
 - If Miss D has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
 - If Miss D has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Remove any adverse information recorded on Miss D's credit file regarding the agreement.

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

My final decision

My final decision is to 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 Miss D to accept or reject my decision before 7 June 2022.

Michael Goldberg
Ombudsman