

The complaint

Miss M complains that Moneybarn No. 1 Limited irresponsibly granted her a conditional sale agreement she couldn't afford to repay.

Miss M is represented by family members but for ease of reference I have referred to Miss M throughout this decision.

What happened

In June 2018, Miss M acquired a used car financed by a conditional sale agreement from Moneybarn. Miss M made an initial payment of £830 and was required to make 59 monthly repayments of £624. The total repayable under the agreement was £37,657.

Miss M says that Moneybarn didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. She notes that her bank statements showed payments to several debt collection companies and that her income was seasonal. It is also noted that Miss M is a vulnerable adult. Moneybarn didn't agree. It said that it carried out a thorough assessment which included a credit check and receiving Miss M's bank statements to confirm her income.

Miss M also complains that the initial loan amount was for a higher amount than the value of the car resulting in immediate negative equity; that Moneybarn didn't provide the information in a timely way in response to requests made on her behalf; and that the collection of the car was delayed by several months.

Our adjudicator recommended the complaint be upheld. She thought Moneybarn ought to have realised the agreement wasn't affordable to Miss M.

Moneybarn didn't agree that total payments of £3,826 for a vehicle Miss M had travelled 40,000 miles in was appropriate. It said it allowed Miss M to retain the vehicle while her complaint was being investigated as was standard practice. It said it had instructed recovery agents to collect the vehicle in October 2020, but the vehicle wasn't able to be located. Miss M then contacted the recoveries agent to say she was intending to proceed with a consent order and following this information was provided to the recovery agents that this complaint had been raised with the Financial Ombudsman Service.

My provisional conclusions

I issued provisional decision on this complaint. I concluded in summary:

- Before granting the finance, I thought Moneybarn gathered a reasonable amount of evidence and information from Miss M about her ability to repay. It completed a credit check and received three months' worth of bank statements. However, this didn't automatically mean it made a fair lending decision.
- The loan required monthly repayments of £624 over five years and I thought it would have been proportionate to consider the details of the income information provided in

the bank statements. These showed that Miss M's income came from different sources and varied over the three months. I thought it would have been reasonable for Moneybarn to have asked further questions about this. This might have identified the reasonable nature of Miss M's income.

- Moneybarn didn't provide a copy of the results from its credit check but did provide a review of Miss M's bank statements for the months leading up to the agreement. These statements showed that Miss M was already struggling financially. In the three months leading up to the agreement, Miss M's total debits were more than her total credits, she had four returned direct debits and had an outstanding payday loan. Miss M was also making payments to several debt collection companies. I thought this gave a clear indication that Miss M wasn't in a position to afford the repayments towards the new agreement without experiencing difficulty or having to borrow further. Moneybarn therefore didn't make a fair lending decision.
- Although Miss M agreed to voluntarily surrender the car in September 2020, this was put on hold while her complaint was investigated. Miss M continued to use the car and I understood that the mileage at the time of the provisional decision was just over 73,000 (mileage recorded in the agreement was 24,382). This delay meant that this issue has continued to cause Miss M stress over an extended period.

Moneybarn responded to my provisional decision and reiterated its concerns that full consideration hadn't been given to the mileage of the car.

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.

As I set out in my provisional decision, I think the information gathered raised concerns about the reliability of Miss M's income and had this been considered in more detail Moneybarn would likely have realised the variability and seasonal nature of Miss M's income. The information in Miss M's bank statements raised concerns that she was struggling financially. She was paying out more than she was earning, had returned direct debits payments, an outstanding pay day loan and was making payments to several debt management companies. I think this showed that providing further credit to Miss M at that time wasn't responsible, therefore I uphold this complaint.

I note the comment Moneybarn has made about the usage Miss M has had of the car and the mileage covered. I have considered this and factored it into my assessment. However, given the unique circumstances of this complaint, noting Miss M's vulnerability, her financial situation and the distress the issue is causing, I think the redress set out in my provisional decision is reasonable.

Putting things right

In this case I don't think Moneybarn ought to have approved the lending. Miss M is a vulnerable adult and while Moneybarn may not have been aware of Miss M's vulnerability at the time the agreement was provided, as I think further checks would have shown her to have been in financial difficulty when the agreement was provided I now have to consider

the additional stress and anxiety Miss M has been caused by this irresponsible lending decision.

We treat each case based on its merits. One approach in this type of situation would be for Miss M to return the car and pay a fair usage value. However, Miss M is already in financial difficulty, it has been explained the nature of her income is seasonal and much lower than included in the assessment, and that she is already paying money to debt management companies. This approach would likely result in further amounts for Miss M to pay and it isn't clear these would be affordable given Miss M's circumstances. What is clear is the anxiety this complaint is causing, and I think this needs to be considered and a solution is found that draws a conclusion to this situation.

I can see there have been delays in the process of dealing with this complaint and providing the options for Miss M and these have added to the stress this issue has caused. There has been a delay in the car being returned while the complaint has been investigated. Miss M has had the use of the car during this period but Moneybarn was aware of her financial difficulties and that she said she would voluntarily surrender the car in September 2020. So, it doesn't seem right that she is then penalised for the delay in this issue being finalised.

We have considered the amount that is likely to be received from the sale of the car and the amount that Miss M has paid to date and as these together total an amount around the original purchase price of the car, I think in this specific case the recommendation made by our adjudicator and set out in my provisional decision gives a fair and reasonable outcome.

Moneybarn should:

- keep all the payments (including any deposit paid) that they have received from Miss M;
- take back the car with no additional costs to Miss M;
- write off any outstanding debts on the account; and
- remove adverse information recorded on Miss M's credit file regarding the agreement.

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 Miss M to accept or reject my decision before 23 May 2022.

Jane Archer
Ombudsman