

The complaint

Mr P complains that Moneybarn No.1 Limited (“Moneybarn”) irresponsibly granted him a conditional sale agreement he couldn’t afford to repay.

What happened

In December 2020, Mr P acquired a used car financed by a conditional sale agreement from Moneybarn. Mr P made an upfront payment of £4,250 and was then required to make 56 monthly repayments of £716.03. The total repayable under the agreement was £44,347.58.

Mr P 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 used credit reference agency and average expenditure statistics.

Our adjudicator recommended the complaint be upheld. She thought Moneybarn ought to have realised the agreement wasn’t affordable to Mr P. She recommended that Moneybarn end Mr P’s agreement, allow him to return the car and deduct a fair usage value. But Mr P says he wants to keep the car and have an arrangement with Moneybarn to make lower payments.

Moneybarn didn’t agree and so the complaint 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.

On his loan application Mr P declared his income to be £3,500. However, Moneybarn should have been able to see from checking information such as payslips or bank statements that Mr P was on furlough from his work with a monthly employment income of only £800 – and that the furlough had first started in April 2020. On that basis, without a stable source of income, I think there was a real risk that Mr P wouldn’t be able to afford the monthly repayments towards this agreement without difficulty or having to borrow further. I think this is further supported by the fact that it was necessary for Moneybarn to give Mr P a payment holiday of two months from January 2021 which continued up to June that year. Mr P provided payslips showing his furlough income in support of getting that payment holiday. Moneybarn recorded Mr P’s existing credit commitments as £1,541 per month. Moneybarn hasn’t provided a copy of the credit check it completed. I’ve therefore relied on a copy of the credit file supplied by Mr P. I think this gives a good indication of what Moneybarn would likely have seen. At the time of the application it shows that Mr P was generally managing his finances well, although I note he had a history of borrowing from short-term lenders.

However, I still think it would have been proportionate for Moneybarn to have verified Mr P's income in some way. Whilst I've seen that Mr P's declared his monthly income to be £3,500, his bank statements from around that time provide a fuller picture of his financial situation. I can see that his monthly employment earnings were only £800 per month with the balance coming for the most part from benefits and family members. Taking into account that Mr P would be required to maintain his loan repayments for 56 months, I think it's likely that he could soon get into difficulty and would be unable to afford to sustainably repay the new agreement as well as his existing commitments. I think Moneybarn would likely have found this out too if it had completed proportionate checks, and it therefore didn't act fairly by approving the finance.

The bank statements also show that Mr P's committed expenditure was averaging out at around £2,900 each month, made up of payments for rent, household bills and utilities as well as payment made back to friends and family members. Given that a large proportion of these payments appear to be paying back sums that were lent to him, I think it demonstrates that Mr P didn't have enough disposable income to afford the additional borrowing. I think it's likely proportionate checks would have revealed this to Moneybarn and so it didn't act fairly by approving the finance.

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 Mr P has made, including any deposit. However, Mr P has had use of the car for around 19 months so far, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £716 a month are a fair reflection of what fair usage would be.

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 P'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 agree with our adjudicator that a fair amount Mr P should pay is £450 for each month he had use of the car. This currently means Moneybarn can only ask him to repay a total of £8,550. Anything Mr P has paid in excess of this amount should be treated as an overpayment.

Mr P told our adjudicator that he wanted to be placed on an affordable repayment plan as he could only afford to repay £350 to £400 a month. Given that I'm in agreement with our adjudicator that the agreement should not have been granted in the first instance, it means I am now asking Moneybarn to terminate the agreement. I note that the cash price of the vehicle is £26,500. From the information provided, Mr P had repaid around £7,800 (including the deposit) as at March 2022, which represents about 30% of the cash price. But the purpose of our awards is to try as best as possible to place consumers like Mr P back in the position they would have been in had the unfair lending not taken place. Mr P doesn't own the car and as things stand he's a long way from paying off the cash price – and he doesn't appear to be in a position where it's likely he'd be able to own the car outright. So the 4-5 years it would take for him to make reduced payments isn't a reasonable time, given that it will put him in a much better position than he would have been in – getting the car interest free and spreading his repayments over a significant period of time.

To settle Mr P's complaint Moneybarn should therefore do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Mr P has made, less £8,550 for fair usage.

- If Mr P 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. Or;
 - If Mr P has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Moneybarn has received the fair usage amount, it should remove any adverse information recorded on Mr P's credit file regarding the agreement.

*HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr P a certificate showing how much tax it's taken off if Mr P 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 P to accept or reject my decision before 11 August 2022.

Michael Goldberg
Ombudsman