

The complaint

Mr L, who is represented by a third party, complains that Moneybarn No. 1 Limited (“Moneybarn”) irresponsibly granted him a conditional sale agreement he couldn’t afford to repay.

What happened

In January 2018, Mr L acquired a used car financed by a conditional sale agreement from Moneybarn. Mr L made an upfront payment of £1,000 and was then required to make 59 monthly repayments of £312.12. The total repayable under the agreement was £19,415.08.

The agreement was terminated on 12 April 2018.

Mr L says that Moneybarn didn’t complete adequate affordability checks. He says if it had, it would have seen the agreement wasn’t affordable and he already had a poor credit history. Moneybarn didn’t agree. It said that it carried out a thorough assessment which used credit reference agency information.

Our adjudicator recommended the complaint be upheld. She thought Moneybarn ought to have realised the agreement wasn’t affordable to Mr L.

Moneybarn accepted our adjudicator’s findings but pointed out that Mr L had failed to comply with a court order made in June 2018 requiring the return of the car. Moneybarn also said that the car had been sold on privately in March 2021. Moneybarn suggested that Mr L ought to be responsible for paying back the cash price of the car. Our adjudicator agreed.

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.

Moneybarn carried out a credit check that showed Mr L’s other credit commitments and it said that the checks didn’t raise concerns that meant the finance shouldn’t be provided. A credit check alone won’t necessarily show what his regular living expenses were, including those that wouldn’t have appeared on his bank statements. But I’ve seen that Moneybarn was aware that Mr L had previously had several defaults on his credit file but that these were sufficiently historical so as not to have an impact on its decision to grant him the finance.

From the bank statements Moneybarn reviewed as part of his application process, Mr L appeared to have an average monthly income of around £1,600, taking into account the variations in his self-employed income. However, Moneybarn should have seen that Mr L

was making sustained and heavy use of gambling sites. Moneybarn has acknowledged that excessive spending on gambling sites would be an issue of concern when opening new accounts.

I therefore agree with our adjudicator that there was a real risk that Mr L wouldn't have sufficient disposable income to be able to afford the monthly repayments towards this agreement without difficulty or having to borrow further. I say this given that the amount Mr L was spending on gambling sites, averaging around £1,200 each month, demonstrates that his varying income flow would be unlikely to leave him with another to pay his day-to-day expenses and other financial commitments. I've also seen that Mr L was regularly transferring funds to other accounts, including his own.

Taking into account that Mr L would be required to maintain his loan repayments for 59 months, I think it was likely that he would soon get into difficulty and would be unable to afford to sustainably repay the new agreement as well as his existing commitments. I think this ought to have been apparent to Moneybarn from the checks it carried out.

To summarise, given that such a significant proportion of the payments he was making relate to gambling, I think Mr L's spending pattern likely meant he wouldn't have enough disposable income to afford the new borrowing. I think had Moneybarn carried out better and likely proportionate checks this would have been clear. It follows that Moneybarn ought not to have approved this finance.

Putting things right

I understand that Mr L no longer has the vehicle and has not returned it, despite a court order having been made requiring him to do so.

As I don't think Moneybarn ought to have approved the lending, I would usually ask Moneybarn to refund all the payments made under the agreement, including the deposit, subject to a fair usage allowance for the amount of time that Mr L had use of the car.

But in this case it appears that Mr L sold the car privately in March 2021. That means there is no available asset to be returned and so Mr L is therefore liable to repay the cash price of the car.

It follows that Mr L is required to repay Moneybarn the cash price of the car, being £7,700, less the £1,000 cash deposit.

My final decision

I therefore uphold this complaint but do not require Moneybarn No.1 Limited to do anything further to put things right for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 December 2022.

Michael Goldberg
Ombudsman