

The complaint

Mr S complains about Moneybarn No.1 Limited trading as Moneybarn's ("Moneybarn") decision to lend him.

What happened

Mr S entered into a conditional sale agreement with Moneybarn in August 2021 to acquire a used car. The car cost £17,995. Mr S paid a deposit of £516.83 and under the agreement, Mr S was required to make 59 monthly payments of £585.47. The car was acquired from a dealership I'll refer to as "D".

In December 2021, no payment was made towards the agreement. Mr S told Moneybarn he missed the payment due to a change in date of when he received payments into his account. Moneybarn changed Mr S's payment date but as a result of this, Mr S was required to make two payments under the agreement in the same month.

Mr S complained to Moneybarn. In February 2022, Moneybarn issued its response to Mr S's complaint. It accepted it didn't make it clear that Mr S was required to make two payments in the same month. By way of compensation, it reduced Mr S's outstanding balance by £50.

Following this, in March 2022, Moneybarn received a Direct Debit Indemnity claim ("DDIC") for all the payments made by Mr S under this agreement. Mr S said Moneybarn had lent to him irresponsibly and so, he made the DDIC. He also cancelled his monthly Direct Debit instruction. Mr S also later told Moneybarn he was experiencing issues with the car. So Moneybarn told Mr S about the available options to allow him to end his agreement. Moneybarn also raised a complaint for Mr S.

In April 2022, Moneybarn issued its response to Mr S's complaint. It upheld Mr S's complaint about the lending decision it had made and said it had evidence to suggest Mr S's income may have been insufficient at the time he made the lending application. It said it should have undertaken further investigations before agreeing to lend to Mr S. To put things right, Moneybarn said it would amend Mr S's credit file, reduce his outstanding balance to £0 and then apply a fair usage charge. It said Mr S's final balance would be dependent on the date he returned the car.

Unhappy with this, Mr S referred his complaint to this service. He said whilst collecting the car from D, he was told he would need to return the car to D to have the engine serviced. He said whilst driving home, warnings appeared on the dashboard of the car and he had to pull over to inflate two of the tyres. He said he called Moneybarn but it referred him back to D. Following this, it was established there were a number of issues with the car which needed repairing. Mr S took D to the small claims court to decide these issues. After mediation through the court, D paid him £600 in full and final settlement of his complaint.

Mr S also said the agreement was unaffordable and Moneybarn shouldn't have lent to him. He said his DDIC was reversed in April 2022, which left his account overdrawn. Mr S said whilst Moneybarn had upheld his complaint, it wouldn't allow him to keep the car. Mr S said the car was essential for him and he wouldn't leave the house without it. He also said Moneybarn had affected his mental health, as it said it would remove the car from him.

To put things right, Mr S said he wanted Moneybarn to rectify his overdraft, allow him to keep the car, clear his credit file, compensate him for the trauma caused, cover any costs incurred in the process and apologise.

Since Mr S referred his complaint to this service, Moneybarn issued a default notice in May 2022 and told Mr S it would collect the car from him. However, Mr S told Moneybarn he wouldn't return the car.

Mr S also made a number of further complaints to Moneybarn. He referred one of these complaints to this service in June 2022. In this complaint, Mr S said that due to his vulnerabilities, he didn't understand the agreement he had entered into. He said Moneybarn should end the agreement but allow him to keep the car. In response, Moneybarn said Mr S had signed the conditional sale agreement before he was supplied with the car. It said it only became aware of Mr S's vulnerability when he told it about this in his complaint about the lending decision Moneybarn had made. It didn't uphold Mr S's complaint.

Mr S said Moneybarn was made aware about his vulnerabilities before making its lending decision. He said the car needed repairing and he had spent money trying to make some repairs. He said Moneybarn had impacted his mental health and said there were calls which would demonstrate this.

Our investigator looked into the complaint but thought the resolution Moneybarn had offered was fair and reasonable and so, he said Mr S would need to return the car to Moneybarn. He said if Moneybarn continued to allow Mr S to keep the car, it would put him in a worse financial position and this isn't something that this service would recommend. Our investigator also said he didn't think Moneybarn should allow Mr S to take out another agreement for this car with reduced payments.

Our investigator said the evidence Mr S had sent concerning the repairs he had carried out didn't suggest that the issues with the car were present or developing at the point the car was supplied to Mr S; and they appeared to be issues caused due to wear and tear which Mr S would be responsible for. He also noted that Mr S had received relief through the courts and so, our service would be limited in making findings about the quality of the car. He also said that he had listened to a number of calls and reviewed emails between Mr S and Moneybarn. He said he didn't think Moneybarn had provided poor service during this correspondence.

Our investigator said that Moneybarn was entitled to charge Mr S for fair usage once he returned the car to it. He also said that Moneybarn had an obligation to treat Mr S with forbearance and due consideration and so, Moneybarn should arrange a suitable repayment plan with Mr S for any outstanding balance he owed.

Mr S said he didn't think the issues that had occurred were due to wear and tear and that Moneybarn had been selective in the calls it had sent this service. He said he didn't think he should incur any costs for the use of the car and that our investigator didn't consider the stress and trauma caused to him.

Our investigator said Mr S should contact Moneybarn in the first instance to complain about a specific call, if he was unhappy in the way he had been treated. He said he had considered the impact to Mr S, but he didn't think Moneybarn had acted unfairly. He also said that Moneybarn was entitled to charge Mr S for fair usage, as he had access to the car since August 2021, despite not making all the payments for it.

Since then, Moneybarn has said Mr S has said he will only return the car if Moneybarn guarantees that it will reimburse him for any replacement parts and if not, he'll send the car back with the parts missing. Moneybarn said it declined this and told Mr S it will review his costs once the car had been returned to it. It said Mr S refused and said he would place the car on private property so it couldn't be recovered.

Mr S has also made a further complaint to Moneybarn about the repairs he's had carried out and the parts he's had replaced. He's also complained about the calls he had with Moneybarn, the impact of the failed DDIC to his overdraft and the information it has provided this service. Mr S also told Moneybarn he would be taking legal action.

Mr S remains unhappy, so the complaint has been passed to me to decide.

Mr S has made a number of complaint points after referring his complaint to this service. However, this decision will only focus on the lending decision made by Moneybarn and whether Moneybarn was aware of Mr S's vulnerabilities at the time it made its lending decision. This is because Mr S has recently referred his other outstanding complaint points to Moneybarn. If Mr S remains unhappy with Moneybarn's response to these complaint points, he'll be entitled to refer a separate complaint about these issues to this service.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr S has raised a number of different points. I've concentrated on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of our service allow me to do this.

In this case, Moneybarn has accepted that it shouldn't have lent to Mr S. As there is no dispute about this, I haven't considered whether Moneybarn made a fair lending decision. Instead, this I'll focus on whether Moneybarn's offer to put things right is fair and reasonable.

In April 2022, Moneybarn said it would do the following to settle Mr S's complaint, following the termination of the agreement and return of the car:

- *"Initially, we will reduce your current outstanding balance to zero.*
- *Then we will apply a fair usage charge to your balance. This is dependent on the date of the return of the vehicle. Fair usage is applied as a reasonable cost for the use of a vehicle and the depreciation that occurs.*
- *This will leave a final balance owed by you dependent of the return date of the vehicle."*

Moneybarn also said it would amend Mr S's credit file to show no negative impact caused by this agreement.

Mr S disagrees with this offer and says Moneybarn should allow him to keep the car. However, I'm satisfied that what Moneybarn has said it will do upon the car being returned by Mr S is fair and reasonable. Had Moneybarn not made this offer and I had determined that the lending decision made by Moneybarn was unfair, my decision would be along the same lines.

Mr S doesn't want to return the car and thinks a fair usage figure shouldn't be applied. He says that if Moneybarn had declined to lend to him, he wouldn't have made any payments towards this agreement.

I've thought about this carefully. But having done so, I'm satisfied Money is entitled to recover the car from Mr S and that it is entitled to charge Mr S for fair usage. I'll explain why.

All parties agree that Moneybarn shouldn't have provided lending to Mr S. So, I'm satisfied that in light of this, the agreement should be ended and the car should be returned to Moneybarn. Mr S has also been in possession of the car since August 2021 and he has had access to the car to make use of it. Currently it's unclear how much use Mr S has had as there isn't any up to date mileage or a report to confirm the condition of the car. But I think Mr S should pay for use of the car he's had. I don't think it would be fair or reasonable for Mr S to be allowed to drive the car without making any payments to Moneybarn, given he has currently been in possession of it for around 16 months.

I appreciate that Mr S feels very strongly that he should be able to keep the car and he has told us about the impact of the lending decision on him. However, I think it would be harmful to allow Mr S to keep the car, as he would have a substantial financial obligation for an extended period of time, as per the terms of the agreement. In light of this, it would be fair for Moneybarn to collect the car to limit any further financial obligation upon Mr S. I note Mr S has asked Moneybarn to allow him to make reduced payments and allow him to keep the car. But there is no obligation upon Moneybarn to do this in the circumstances and I don't think it would be appropriate for Moneybarn to do this, given the arrears owed under the agreement and Mr S's financial circumstances.

I also accept that Mr S has been caused considerable stress after Moneybarn told him that it would need to collect the car. But I don't think Moneybarn did anything wrong when it told him this. Moneybarn also agreed to end the agreement in April 2022, but Mr S didn't allow it to collect the car. So, I don't think Mr S has mitigated his loss by continuing to keep hold of the car and I think in doing so, this has contributed to the ongoing stress he's suffered.

It follows that I think the offer made by Moneybarn in April 2022 is fair and reasonable. Having said this, if Mr S returns the car and is unhappy with the fair usage figure applied by Moneybarn, he can refer a complaint about this to this service. I'd also take the opportunity to remind Moneybarn of its obligations to treat Mr S with forbearance and due consideration if there is an outstanding balance payable by Mr S, once the car is returned to it.

Did Moneybarn act unfairly or unreasonably in some other way?

I've also considered that Mr S has said he didn't understand the agreement. Mr S says Moneybarn was aware of his disability and his vulnerability, but it still agreed to lend to him.

I've looked at the conditional sale agreement and I can see that the agreement clearly explains the cost of the finance, the deposit, the monthly amount repayable and how Mr S can exit the agreement. And so, I think the agreement is clear and explains Mr S's obligations.

Mr S has mentioned his disability as a reason to why Moneybarn shouldn't have lent to him. However, I wouldn't consider that a lender acted fairly and reasonably if it declined a lending application solely on the basis of a prospective borrower's disability. Indeed, such a lending policy is likely to be unlawful. So, I'm satisfied that Moneybarn didn't act unfairly when it refused to decline Mr S's application, on the sole basis of his disability at the time he entered into the agreement.

The Financial Conduct Authority's Consumer Credit Sourcebook ("CONC") provides guidance on things a firm needs to consider when thinking about whether a customer has the mental capacity to enter into an agreement. CONC 2.10.4 says: *"A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity."*

In this case, Mr S says he told Moneybarn about his vulnerabilities when he took out the agreement. However, Mr S made the lending application remotely. He says the lending decision was made and he was told he could go and choose a car, so he did this and visited a dealership to collect the car. Mr S said he told the dealership about his vulnerabilities when

he went to collect the car. It's unclear whether this happened. But even if I accept it did, this was after the lending decision had been made. So, I don't think Moneybarn would have been likely aware that Mr S had a disability or that he had any vulnerabilities at the time it approved the lending application.

In addition, the guidance set out in CONC 2.10.4 states that Moneybarn should assume Mr S had mental capacity at the time the decision had to be made. Mr S hasn't provided any supporting information to suggest that his vulnerabilities or disability mean that he lacked the capacity to enter into this agreement. And I think it's unlikely Moneybarn was aware or suspected that Mr S lacked capacity to enter into the contract. So I don't think Moneybarn acted unfairly when it assumed Mr S had mental capacity to enter into the agreement.

In addition, even if I thought Moneybarn should have reasonably been aware that Mr S may lack the capacity to enter into the contract at the time it made the lending decision and so, it shouldn't have lent to him, my decision would remain the same. This is because I'm satisfied the overall offer Moneybarn made to Mr S in April 2022 to put things right is fair and reasonable.

My final decision

Moneybarn No.1 Limited has already made an offer to settle the complaint. I think this offer is fair in all the circumstances.

So my decision is that Moneybarn No.1 Limited should settle the complaint in line with its offer made in April 2022, after the car is returned to it by Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 January 2023.

Sonia Ahmed
Ombudsman