

The complaint

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

What happened

In December 2019, Mr C acquired a used car financed by a conditional sale agreement from Moneybarn. He made an advance payment of £250. Mr C was required to make 57 monthly repayments of £394.01. The total repayable under the agreement was £22,314.56.

Mr C started missing payments within a few months of starting the agreement. It was later necessary for him to agree at least two payment holidays. In July 2021 he agreed a payment plan with Moneybarn which was cancelled soon after. In February 2022 Mr C started another payment plan which was also cancelled.

Mr C 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 which included credit and affordability checks.

Our adjudicator at first didn’t recommend the complaint be upheld. But having received further information about Mr C’s daily expenses and committed expenditure, he thought Moneybarn had acted unfairly in approving the finance agreement.

As Moneybarn doesn’t agree with our adjudicator’s finding 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. Information about our approach to these complaints is set out on our website.

Moneybarn didn’t verify Mr C’s income before approving the finance. Given the overall size of the borrowing, the monthly repayments and the term of the agreement, I think it would have been proportionate for Moneybarn to have done so to ensure it was affordable. Moneybarn had noted that Mr C had had a default on a debt 16 months before the agreement. I think this ought to have put Moneybarn on notice that there was a real likelihood that Mr C could find himself in financial difficulty given the length of the loan and the relatively large monthly payments he’d need to make. It therefore would have been proportionate for Moneybarn to have got a more thorough understanding of Mr C’s financial circumstances before lending.

I've seen that Mr C told Moneybarn at the time of his application for the agreement that he was earning around £4,700 per month. After making allowance for his daily living expenses and his borrowing commitments, Moneybarn estimated he had a disposable income of around £2,100. But Moneybarn didn't ask Mr C about his expenditure. Although Moneybarn had completed a credit check, this won't have indicated what his regular living expenses were. Without knowing what Mr C's regular committed expenditure was Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

Moneybarn says it calculated Mr C's expenditure using statistical data which it says gives average household expenditure figures specific to his location and household. It says this is a standard method for checking household, utility and vehicle costs. The regulator has said firms can estimate expenditure unless it knows or there are indicators to suggest an estimate is unlikely to be accurate. The credit check Moneybarn completed showed there was a real risk that Mr C could be struggling financially as he was borrowing significantly, with £959 going out each month by way of monthly repayments. In those circumstances I think it would have been reasonable and proportionate to have taken steps to better understand Mr C's specific financial circumstances, rather than relying on an estimate.

I also think it would have been proportionate for Moneybarn to have found out more about Mr C's committed expenditure, such as his living costs. I can't be sure exactly what it would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in the bank statements Mr C has sent us as a good indication as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. These show that Mr C was already having to find on average around £5,000 each month to cover his mortgage, household bills, daily expenses, and paying towards other existing debt and committed expenditure. This demonstrates that he didn't have enough disposable income to afford the additional borrowing. I therefore consider Moneybarn 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, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr C should therefore only have to pay the original cash price of the car, being £11,740.

Mr C has told us he wishes to keep the car and is able to pay the total cash price figure by borrowing from relatives. I have seen from Moneybarn's statement of account dated 13 February 2023 that Mr C has made payments that total £9,711.09. That means there is currently a total of £2,028.91 left to pay in order to meet the original cash price of the car of £11,740.

In the specific circumstances of this complaint, I think Mr C's offer to pay what is a relatively small outstanding sum in order to have paid the total cash price of the car is reasonable, provided it is done within a definite and short period of time.

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

1. Calculate how much Mr C has paid in total which should then be set off against the total cash price figure of £11,740.
2. Allow Mr C 60 days from the date of this decision to pay off the shortfall between the total cash price figure and what Mr C currently owes. If he is unable to pay off all of the cash shortfall within 60 days Moneybarn doesn't need to do anything further.

3. When Mr C has paid off the shortfall as above, end the agreement with nothing further to pay
4. Remove any adverse information recorded on Mr C'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 Mr C to accept or reject my decision before 27 March 2023.

Michael Goldberg

Ombudsman