

## **Complaint**

Mr S complains that Moneybarn Limited ("Moneybarn") unfairly entered into a conditional-sale agreement with him. He's said that the agreement was unaffordable and based on an assessment which relied on estimates of his earnings as he was self-employed.

Mr S is also unhappy that Moneybarn is pursuing him for an outstanding debt even though the car was returned.

## **Background**

In March 2020, Moneybarn provided Mr S with the finance to purchase a used car. The cash price of the vehicle Mr S purchased was £7,495.00, a deposit of £884 (which I understand was made up from Mr S part exchanging his previous vehicle) was paid and Moneybarn lent the remaining £6,611.00 to Mr S. The loan had interest, fees and total charges of £6,176.07, and the total amount to be repaid of £12,787.07 was due to be repaid in 59 monthly instalments of just over £215.

In March 2022, after Mr S had already exercised the Voluntary Termination option in the conditional-sale agreement, Mr S complained that the finance was unaffordable and so should never have been provided to him. Moneybarn didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr S' complaint was considered by one of our investigators. She didn't think that Moneybarn had done anything wrong or treated Mr S unfairly when entering into the agreement but she also thought that it needed to reduce the outstanding amount Mr S had left to pay. So she recommended that Mr S' complaint should be partially upheld.

Moneybarn disagreed with our investigator and the complaint was passed to an ombudsman for review.

## **My provisional decision of 20 December 2022**

I issued a provisional decision – on 24 June 2022 - setting out why I wasn't intending to uphold Mr S' complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by looking at Moneybarn's decision to lend to Mr S.

I explained that we've set out how we handle complaints about irresponsible and unaffordable lending on our website. And that I used this approach to help me decide this part of Mr S' complaint.

I then went on to confirm that Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this meant was that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn said it agreed to Mr S' application after he provided the details of his monthly income. It went on to say that it also carried out credit searches on Mr S which did show a couple of defaulted accounts and some outstanding balances which were being repaid. But when the amount owing plus a reasonable amount for Mr S' living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr S said the payments to his agreement were unaffordable and there was no way he was going to be able to maintain them.

I thought about what Mr S and Moneybarn said.

The first thing for me was that much like our investigator, I didn't think that the checks Moneybarn carried out went far enough. In particular, I didn't think it was reasonable to rely on an estimate of Mr S' living costs given there was some adverse information on his credit file, even if payments were being made to the defaulted accounts.

As I thought that Moneybarn didn't carry out sufficient checks, I would have normally gone on to think about what Moneybarn would more likely than have seen had it obtained further information from Mr S. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Moneybarn to have had a reasonable understanding about Mr S' regular living expenses as well as his income and existing credit commitments.

However, the limited information Mr S has provided us with didn't clearly show that when his committed regular living expenses and existing credit commitments were deducted from his monthly income, he didn't have the funds, at the time at least, to sustainably make the repayments due under this agreement. I did appreciate that Mr S was unhappy that estimates of his earnings were used for Moneybarn's assessment. But given Mr S was self-employed at the time, I didn't think that using an estimate here was unreasonable – especially as I hadn't been provided with anything to suggest that the estimate Moneybarn arrived was wholly out of kilter.

Furthermore, I thought that the real reason Mr S' for inability to make his payments to this agreement was because he ended up being unable to work as a result of the pandemic. I didn't think anyone could reasonably have foreseen the effect that the pandemic would have, in advance of it and therefore I didn't think that I could reasonably say that Moneybarn ought to have realised that this would have impact on Mr S' finances in the way that it did.

So overall and having carefully considered everything, while I didn't think that Moneybarn's checks before entering into this conditional-sale agreement with Mr S did go far enough, I was satisfied that carrying out reasonable and proportionate checks wouldn't have stopped Moneybarn from providing these funds, or entering into this agreement. This left me intending to conclude that Moneybarn didn't act unfairly towards Mr S when it agreed to provide the funds for him to purchase his vehicle.

I then went on to consider that Mr S was also unhappy at the amount Moneybarn was asking him to pay even though he exercised the voluntary termination option on his agreement.

I started this section of my provisional decision by explaining that a customer doesn't have an automatic right to an interest rebate in the event that they return a car and it is subsequently sold. So while Mr S believed that he shouldn't owe anything further on his agreement because the car was returned, it didn't automatically follow that this was the case.

Nonetheless, I did go on to look at whether Moneybarn ought to have done more to help Mr S given he said he couldn't afford to repay the outstanding balance. I saw that Mr S got in touch with Moneybarn in February 2022 asking whether it would be prepared to refinance his agreement as he wished to purchase a 7 seater vehicle. This was the first time Mr S got in contact with Moneybarn to enquire about the possibility of settling his existing agreement. But I couldn't see that Mr S ever told Moneybarn that he wanted to end his agreement because he was struggling to make his payments, this was something that he first mentioned as part of his complaint. So I didn't think that Moneybarn acted unfairly when presenting Mr S' options or when treating his request as a voluntary termination of the agreement.

However, Moneybarn had since become aware that during the course of this complaint Mr S said that his inability to repay was down to ongoing financial difficulties. And once a lender is told that a borrower is experiencing financial difficulties, I would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. Ultimately, I'd expect a lender to listen to a borrower, get an understanding of their circumstances and then assess the most appropriate way to move forward.

As I understood it, Moneybarn tried to get Mr S to complete an income and expenditure assessment to ascertain what if anything he was able to pay towards the amount outstanding. I was satisfied that this represented a reasonable first step to what Mr S said about his circumstances and Moneybarn did try to find an appropriate way of moving forward.

However, as far as I could see, Mr S hadn't engaged with the process - instead he refused to provide the required information. And, in those circumstances, it was difficult for me to say that Moneybarn was failing to exercise forbearance and due consideration or that it needed to take any further action in relation to the outstanding balance when Mr S was refusing to comply with reasonable requests.

As this was the case, I thought that Moneybarn had reacted fairly and reasonably to what Mr S said about his financial circumstances and I wasn't minded to uphold this part of Mr S' complaint either.

So overall and having carefully considered everything Mr S had said, I was left minded to conclude that Moneybarn hadn't acted unfairly or unreasonably towards him either in relation to its initial decision to lend, or seeking payment of the outstanding balance. And this meant that I wasn't intending to uphold this complaint.

### **Responses to my provisional decision**

Moneybarn didn't respond to my provisional decision or ask for any additional time to do so.

Mr S' didn't provide anything further or request any additional time to do so either.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision, I set out in some detail why I wasn't intending to uphold Mr S' complaint. And as neither party has provided any further evidence or arguments for me to consider, I've not been persuaded to alter my conclusions.

So I remain satisfied that Moneybarn didn't treat Mr S unfairly or unreasonably either in relation to its initial decision to lend, or seeking payment of the outstanding balance. And I'm not upholding Mr S' complaint. I appreciate this is likely to be very disappointing for Mr S. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

## **My final decision**

For the reasons I've explained above and in my provisional decision of 20 December 2022, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 February 2023.

Jeshen Narayanan  
**Ombudsman**