

## **The complaint**

Miss K complains that Moneybarn No. 1 Limited (“Moneybarn”) irresponsibly granted her a conditional sale agreement she couldn’t afford to repay.

## **What happened**

In May 2021, Miss K acquired a used car financed by a conditional sale agreement from Moneybarn. Miss K was required to make 60 monthly repayments of £506.33, having paid a deposit of £250. The total repayable under the agreement was £30,123.47.

Miss K says that Moneybarn didn’t complete adequate affordability checks. She says if it had, it would have seen the agreement wasn’t affordable for her given her financial situation at the time. Moneybarn didn’t agree. It said that it carried out a thorough assessment which included income and credit checks.

Mrs K started getting into difficulty with her repayments to the account from around September 2021.

Our adjudicator recommended that the complaint be upheld. He thought Moneybarn ought to have realised the agreement wasn’t affordable to Miss K.

Moneybarn hasn’t agreed or disputed the findings but has asked for copies of bank statements. Our adjudicator has explained that these are not relevant to the complaint.

The case has therefore 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.

Dealing first with Moneybarn’s request to see copies of the consumer’s bank statements, Moneybarn will be aware that we do not routinely disclose these. I’ve seen that Moneybarn requested copy bank statements from around November 2022 because it had seen evidence of a joint account. But given that this post-dates the lending decision, this isn’t relevant to the findings in my decision. I am also satisfied that bank statements I’ve seen from the time immediately before the agreement have been sufficient for our adjudicator and also for myself to gain a good idea of Miss K’s financial situation at the time. That means we have seen enough to be able to determine what proportionate checks would have shown Moneybarn at the time of the application process for the agreement.

I’ve seen that Moneybarn asked Miss K to provide copy payslips so as to verify her income. Moneybarn also carried out a credit check. It hasn’t provided a copy of the credit check it

completed, but it's told us it used a credit reference agency before approving the finance. It says that based on its own checks, Miss K had a net income of around £3,100 per month, although Miss K disputes this. I've therefore reviewed and considered the credit files she has given us so as to gain an indication of what Moneybarn would likely have seen.

At the time of the application I can see that Ms K had been relying heavily on short-term lending in the past and I note she had taken out two such loans in February and March 2021. She was also paying a mortgage and a loan secured against her property that still had around nine years left on it. She also had at least three loan agreements in place and also agreements with phone providers. Moneybarn says it was aware that Miss K had defaulted on another loan account 23 months earlier, although I've also seen evidence of at least one other credit account going into default at around the same time and another one around 27 months earlier. I think this ought to have indicated that Miss K was likely to be struggling financially. It therefore would have been proportionate for Moneybarn to have got a more thorough understanding of Ms Mis K's financial circumstances before lending.

Moneybarn didn't ask Miss K about her expenditure. For example, the credit check it completed won't have indicated what Miss K's regular living expenses were. Without having a good indication of what Miss K's regular 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 Ms K's expenditure using statistical data which it says gives average household expenditure figures specific to a consumer's location and household. It says the regulator has approved this method as a standard approach for affordability assessments carried out by lending businesses such as Moneybarn. The regulator has said firms can estimate expenditure unless it knows or there are indicators to suggest an estimate is unlikely to be accurate. As I've explained, I think the credit check Moneybarn completed very likely showed that Miss K was likely to be struggling financially. In those circumstances I think it would have been reasonable and proportionate to have understood Miss K's specific financial circumstances, rather than relying on an estimate.

It follows that I also think it would have been proportionate for Moneybarn to have found out more about Miss K's monthly expenditure, such as her living expenses, her other credit and also non-credit commitments. I can't be sure exactly what Moneybarn 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 contained in her bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision as well as details Miss K has given us about her priority outgoings. I agree the statements show that Miss K receiving a monthly income of around £2,750 each month, based on her working income and child benefit. I've seen she was paying around £1,000 towards her mortgage and secured borrowing. Broadly speaking, I agree that the cost of her paying utilities, daily expenses and other credit commitments came to around £2,475, leaving her with a disposable income of around £275. I've also seen that Miss K was receiving 'one off' transfers into her account, but was also paying a large proportion of these sums back. I've also noticed that Miss K was making regular use of online gambling sites each month. These are factors that further indicate Miss K's finances were being stretched, making additional borrowing unaffordable. I therefore agree that had Moneybarn taken steps to verify Ms K's level of outgoings and committed expenditure, it would have recognised that she didn't have enough free disposable income to properly fund the agreement.

I think it follows that she wasn't in a position to afford the repayments towards the new agreement without financial difficulty or having to borrow further. Had Moneybarn completed

proportionate checks, I think it's likely it would have discovered this too. It therefore 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 Miss K has made, including any deposit. However, Miss K did have use of the car for around 21 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £506.33 a month as required under the agreement are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

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, Miss K's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Miss K should pay is £280 for each month she had use of the car. This means Moneybarn can only ask her to repay a total of £5,880. Anything Miss K has paid in excess of this amount should be treated as an overpayment.

To settle Miss K's complaint Moneybarn should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Miss K has made, less £5,880 for fair usage.
  - If Miss K 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 Miss K 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 Miss K's credit file regarding the agreement.

\*HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Miss K a certificate showing how much tax it's taken off if Miss K 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 Miss K to accept or reject my decision before 18 April 2023.

Michael Goldberg  
**Ombudsman**