

The complaint

Mr T complains that Moneybarn No.1 Limited (“Moneybarn”) provided him with a loan when he couldn’t afford the repayments on it.

What happened

Mr T entered into a conditional sale agreement with Moneybarn in December 2015 for a car.

He borrowed around £6,000 to be repaid over 60 months. The total amount repayable with interest was around £14,000 and the monthly repayments were around £230.

Mr T has said Moneybarn didn’t do enough to make sure he could afford the repayments on the loan. He said all it asked him for was identification and payslips. He said if it had asked him about his expenditure or looked at his credit file it would have seen he had defaults and late payments, would have seen he was in arrears with several lenders and would have seen he had recently failed an Individual Voluntary Arrangement (‘IVA’).

Mr T complained to Moneybarn in November 2021.

In response to Mr T’s complaint Moneybarn said it carried out appropriate affordability checks. It said it had run a credit check on Mr T which showed satisfactory results and it said it had verified his income by checking payslips. Moneybarn said it carried out an estimated calculation about Mr T’s outgoings which showed he had sufficient disposable income to make the repayments on the agreement.

I issued a provisional decision in February 2023 explaining why I planned to uphold Mr T’s complaint. I said, in summary:

- Moneybarn needed to carry out proportionate checks to be able to understand whether Mr T could afford to make the monthly repayments before bringing about this loan for him.
- Generally, the scope and extent of Moneybarn’s checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.
- Mr T was borrowing a not insignificant sum in absolute terms over a relatively long period of time. That suggested to me that the checks should have been relatively rigorous.
- Moneybarn hadn’t sent us the full results of the credit check, just its own, non-contemporaneous, summary of it. So, I couldn’t be sure what Moneybarn saw when it carried out the credit check in December 2015. On that basis, I couldn’t say Moneybarn had demonstrated it checked Mr T’s credit commitments.
- This was something it should reasonably have done in Mr T’s case given what I’d said about the sum he was borrowing, the monthly repayments and the duration of the agreement. So, without this information, I didn’t think Moneybarn had demonstrated that the affordability checks it did were proportionate.

- In trying to piece together what Moneybarn would most likely have seen on a credit check, I acknowledged that Mr T's current credit file was unlikely to show me everything I needed to know given the time that had passed. For example, records of defaults or insolvency made before Mr T's credit application might not have been present now as they often disappear from a credit file after six years.
- Mr T had provided persuasive evidence that he had an IVA that had likely failed sometime before he borrowed from Moneybarn. This included the initial set up paperwork from the insolvency practitioner, his bank statements showing the payments to the insolvency practitioner failing, and a letter from one of his creditors saying it had been told his IVA had failed.
- I thought it was likely a credit check would have identified this. And I thought this ought reasonably to have led Moneybarn to ask more questions about Mr T's level of indebtedness – given a failed IVA likely meant he still owed money to creditors.
- Even if it a credit check hadn't shown this, I thought it was likely it would have shown that Mr T hadn't been making payments in the months before his application to a number of creditors he'd likely defaulted with after the IVA failed. His bank statements showed he hadn't paid most of these creditors for at least the three months before his application. So, questions should still have been asked.
- Had reasonable enquiries have been made of Mr T, it's likely they would have uncovered that he still owed significant sums of money to as many as a dozen lenders as a result of the failed IVA. The IVA related to around £20,000 of debt.
- Mr T had provided evidence that at least some of those lenders were still pursuing him for the full repayment of his debts to them after the IVA had failed.
- Having considered what Mr T likely owed to these lenders in conjunction with the information Moneybarn obtained about his monthly income, and also having regard for Mr T's other outgoings I thought that proportionate checks would most likely have shown the monthly repayments were unaffordable for him.
- Mr T said that although he'd prioritised the repayments with Moneybarn and had not missed any of them (save for a payment holiday), this led to him having to take credit elsewhere to meet his other expenses.
- I thought therefore that Moneybarn had failed to carry out reasonable and proportionate checks and had lent to Mr T in circumstances where the repayments appeared to be unaffordable for him.
- In thinking about how to put things right I thought it was fair and reasonable that Mr T should repay the principal amount that he borrowed, because he had the benefit of that lending via the use of the car for the entirety of the agreement. But he had paid interest on a loan that shouldn't have been provided to him. So, I thought Mr T had lost out and Moneybarn should put things right for him by refunding all the interest he paid.
- I thought Moneybarn should remove all interest, fees and charges applied to the loan from the outset. I thought that any payments made by Mr T should then be deducted from the new starting balance. If the payments Mr T had made totalled more than the amount he was originally lent, I thought any surplus should be treated as overpayments and refunded to him with 8% simple interest calculated on any overpayments made, from the date they were paid by Mr T to the date the complaint is settled.
- Moneybarn had made some errors in respect of a payment holiday Mr T asked for during the Covid-19 pandemic but had paid him appropriate compensation for this already.

Mr T agreed with my provisional decision.

Moneybarn didn't provide a response before the deadline I set the parties.

The complaint has therefore been returned to me for 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.

As Mr T has agreed with my provisional decision and Moneybarn hasn't provided any new comments or evidence in response to it, I see no reason to change my findings.

So, for the reasons I have summarised above, I still find that Moneybarn provided lending that was unaffordable for Mr T and should refund the interest he paid on the loan.

My final decision

My final decision is that I uphold Mr T's complaint. To put things right Moneybarn No.1 Limited must:

- Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr T should then be deducted from the new starting balance. If the payments Mr T has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple interest calculated on any overpayments made, from the date they were paid by Mr T to the date the complaint is settled*, and;
- arrange for the removal of any adverse information about the loan that may have been recorded with the credit reference agencies.

*If Moneybarn No.1 Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 April 2023.

Michael Ball
Ombudsman