

The complaint

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

What happened

In July 2021 Mr M acquired a used car costing £10,995 financed by an agreement from Moneybarn.

Under the terms of the agreement, everything else being equal, Mr M undertook to make 1 advance payment of £300 followed by 55 monthly repayments of £386.39. The total repayable under the agreement was £21,551.45 at an APR of 39.9%.

Mr M says that Moneybarn didn’t complete adequate affordability checks before agreeing to lend to him. He says if it had, it would have seen the agreement wasn’t affordable.

Moneybarn didn’t agree. It said it had performed several different checks before agreeing to lend which included:

- a full credit search (with a credit reference agency) which provided details of Mr M’s current borrowing levels and repayment history (including any arrears and defaults)
- an independent check of Mr M’s declared net monthly income of £1,550 (with a credit reference agency)
- the use of statistical data from the Office for National Statistics (“ONS”) to estimate Mr M’s level of non-discretionary expenditure (including housing, council tax utilities and vehicle costs)
- the use of information (from a credit reference agency) to assess Mr M’s ongoing monthly borrowing commitments

Moneybarn said that from the above checks it was able to establish:

- Mr M’s existing borrowing was low
- Mr M hadn’t missed any ‘credit’ repayments
- Mr M had defaults registered against him
- Mr M had no county court judgements registered against him
- Mr M hadn’t been declared bankrupt or insolvent
- Mr M’s net monthly income was £1,550 as declared by him
- Mr M’s non-discretionary expenditure had been estimated at £783.43
- Mr M’s current borrowing commitments were £12 a month
- Mr M had a disposable income of £714.70 (being £1,550 less £783.43 less £12 less £39.87 [an additional allowance for any variations in the figures of £783.43 and £12])
- its lending, at a monthly cost of £386.39, equated to 54.06% of Mr M’s calculated net disposable income

Moneybarn also pointed out that Mr M signed to say that his net monthly income was no less than £1,550 and his non-discretionary expenditure was no more than £783.43.

One of our investigator's looked into Mr M's complaint and concluded it should be upheld. He said that Moneybarn could and should have undertaken further checks into Mr M's financial position and personal circumstances before it agreed to lend. And had it done so it would have, or should have, concluded it wasn't (on the grounds of affordability) appropriate to lend to him. He then went on to explain what Moneybarn should do to fairly and reasonably compensate Mr M.

Moneybarn responded to the investigator's view to say it accepted it. Mr M responded to say that although he was pleased that his complaint had been upheld he would possibly like to keep the car rather than having to return it.

Because Mr M didn't accept the investigator's compensation proposal his complaint has been passed to me for review and 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.

Given what the investigator concluded and given what Mr M and Moneybarn have said in response to that conclusion, all I need to decide in this case is what, if anything, Moneybarn should have to do to fairly and reasonably compensate Mr M.

But for the avoidance of doubt, I would like to make it clear that I agree with the investigator (and for the same reasons) that Moneybarn could and should have undertaken further checks into Mr M's financial position and personal circumstances before it agreed to lend to him. And had it done so, it would have, or should have, concluded it wasn't appropriate to lend.

The investigator said that to fairly and reasonably compensate Mr M Moneybarn should:

- end the agreement and collect the car with nothing further to pay.
- refund the deposit together with interest
- calculate how much Mr M has paid in total and deduct £3,610.00 from this sum for fair usage
- if Mr M has paid more than the fair usage figure, it should refund any 'excess' together with interest

- if Mr M has paid less than the fair usage figure, it should arrange an affordable repayment plan for the 'shortfall', treating Mr M with forbearance and due consideration
- remove any adverse information recorded by it with any third party credit reference agencies

Moneybarn agreed with the above, but Mr M says he would like to keep the car – giving reasons for wanting to do so.

Now I can understand the reasons Mr M has given for possibly wanting to keep the car. But given how much he needs to pay Moneybarn to get to the point where he will be in the position of having paid it £10,695 (the capital sum borrowed at 0%) I'm simply not persuaded that this is appropriate, fair or reasonable. And when deciding what is fair and reasonable I need to have regards to what is fair and reasonable to Moneybarn as well as Mr M. I would also point out that if Mr M accepts this final decision although he will no longer be in possession of the car he is currently in possession of, he should be in the position of being able to purchase (whether in cash or on credit) another one.

So, in summary, I can confirm that I'm in agreement with the investigator's view that this complaint should be upheld and, subject to what I say below, I can confirm that I'm in agreement with what the investigator concluded Moneybarn should have to do to fairly and reasonably compensate Mr M. And for the avoidance of any doubt, I would like to confirm that I agree with the investigator (and for the same reasons) that £190 represents an appropriate sum to be used for 'fair usage'.

Putting things right

To fairly and reasonably compensate Mr M Moneybarn must:

- end the agreement with nothing further for Mr M to pay
- collect the car at no cost to Mr M
- refund Mr M the deposit he paid, adding 8% simple interest per year* from the date of payment to the date of settlement
- calculate how much Mr M has paid under the agreement and deduct £190 a month for fair usage for each month Mr M has had the car, or continues to have the car between the date of this (final) decision and the car being collected from him
- if Mr M has paid more than the fair usage figure, it should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement
- if Mr M has paid less than the fair usage figure, it should arrange an affordable repayment plan for the 'shortfall', treating Mr M with forbearance and due consideration
- remove any adverse information it has recorded in respect of the agreement with any third party credit reference agencies

**HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mr M a certificate showing how much tax it's taken off if Mr M asks for one*

My final decision

My final decision is I uphold this complaint and direct Moneybarn No. 1 Limited to compensate Mr M as outlined by me above under the heading "Putting things right".

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

Peter Cook
Ombudsman