

The complaint

Mr C has complained about a conditional sale agreement he had with Moneybarn No.1 Ltd. He says he shouldn't have been given the agreement.

Mr C has had representation throughout but, to keep things simple, I'll refer to Mr C.

What happened

Mr C entered into a conditional sale agreement with Moneybarn in June 2016 to acquire a car. The car cost £12,500. Mr C made an advance payment of £170. So there was £12,330 credit and Moneybarn charged £10,992.11 interest. Mr C was due to pay back the agreement over five years with payments of around £400.

Repayments were made to the agreement without issue for a few months, but Moneybarn sent a default notice in February 2017 because of missed repayments. It sent a termination notice in March 2017. In order to keep the car, Mr C entered into a consent order in May 2017 that had been drawn up via the court. The consent order said Mr C could keep the car under certain conditions.

Mr C was required to make 12 payments of around £600 followed by 36 payments of around £400. He made payments towards the debt, but some were missed. And in January 2020 Moneybarn recovered the car. It was sold for £6,200 and Mr C was left with a balance of around £3,000.

Mr C complained the agreement was unaffordable and that Moneybarn shouldn't have granted him the finance.

Moneybarn didn't agree, and Mr C referred the complaint to the Financial Ombudsman. One of our investigators looked into things and upheld the complaint. He didn't think Moneybarn's affordability checks were reasonable or proportionate. And he thought that if it had carried out proportionate checks, it wouldn't have lent to Mr C. To resolve the complaint, our investigator said Moneybarn could keep £12,330 – the amount of credit. He said it should refund what it had received above this amount together with interest. And that it should remove adverse information from Mr C's credit file regarding the agreement.

Moneybarn responded to ask if we would reconsider the redress because it didn't think it fair the auction proceeds were also added to the refund.

As things couldn't be resolved, the complaint has been passed to me to make a 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.

When considering what is, in my opinion, fair and reasonable, I've taken into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.

Mr C acquired the car under a regulated conditional sale agreement and our service is able to consider complaints relating to these sorts of agreements.

Affordability

I think there are two key questions I need to consider in order to decide what's fair and reasonable in the affordability circumstances of this complaint. These questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the borrowing in a sustainable way?

- a. If so, did it make a fair lending decision?
- b. If not, would reasonable and proportionate checks have shown that Mr C could sustainably repay the borrowing?

2. Did Moneybarn act unfairly or unreasonably in some other way?

If I think Moneybarn's actions disadvantaged Mr C in any way, I'll go onto consider what I think is a fair way to put things right.

The Financial Conduct Authority (FCA) sets out rules and guidance that Moneybarn is required to follow. When deciding to offer finance to Mr C, Moneybarn was required to carry out a reasonable and proportionate assessment of whether he could sustainably repay the borrowing.

The checks that Moneybarn were required to carry out had to be 'borrower focused'. So instead of seeing how statistically likely Mr C was to repay the borrowing, it needed to assess whether he could sustainably repay the borrowing, taking into account his personal circumstances. And it needed to base its creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors such as (but not limited to):

- The type, amount and duration of the credit.
- The frequency and size of the repayments.
- The total amount payable and total charge for credit.
- The interest rate and any other costs which may be payable.
- Any other potential adverse consequences for the customer arising from a failure to make payment.

So I think the checks needed to take into account Mr C's personal circumstances.

In this case, Mr C was asked to pay back over £23,000 over five years with payments of nearly £400. So this is a significant commitment.

Moneybarn tells us it carried out a full credit search before deciding to lend to Mr C. It said the search detailed Mr C's borrowing levels, the repayment history, and details of arrears and past defaulted accounts. Moneybarn also verified Mr C's monthly income of around £2,900 by reviewing payslips. It reviewed his income against his employment type and was satisfied it was in line. It also said it applied a calculation to allow for non-discretionary expenditure.

Moneybarn says Mr C's borrowing levels were within its lending criteria. It said there were no recent missed payments. It said it could see Mr C had defaulted on previous borrowing, the

most recent of which was entered into 21 months prior to the application, and that these had been repaid at the point of application. Moneybarn also said there were two County Court Judgments (CCJs) on file, the most recent having been entered 22 months prior to application. It said it calculated Mr C's maximum affordable repayment at £721.89. It also highlighted Mr C had signed the agreement that said he could afford the repayments.

We've not been provided the evidence of the credit search that was carried out. But I've thought about what Moneybarn has said and what it's likely to have seen. I'm mindful that around the time he entered into the agreement with Moneybarn Mr C was paying towards short term lending, which is indicative that he might have been struggling to meet his commitments. And although the default and CCJs had happened more than a year before Moneybarn offered the agreement, on balance I think there was enough of an indication that further checks would have been appropriate. As I've said above, this was a significant commitment over a moderately long term. Moneybarn didn't have much information about Mr C's expenditure. So I'm not persuaded the checks it carried out were proportionate.

I've thought about what would have happened had Moneybarn carried out proportionate checks. Mr C has provided us with his bank statements from around the time he applied for the agreement. These provide some detail about his income and expenditure. I appreciate different checks show different things and that Moneybarn may have chosen to look at something else, but I think the statements are fair for me to consider when weighing up Mr C's financial circumstances at the time he entered into the agreement.

Like our investigator has pointed out, Mr C's average income for the two months preceding the Moneybarn agreement was around £2,900. And I can see he had regular expenditure of around £2,500, which doesn't include everything he paid for. So I don't think it's shown he had enough disposable income to sustainably pay off the agreement. So I don't think Moneybarn should have granted the finance. Moneybarn hasn't disagreed with this.

I've gone on to think about whether Moneybarn acted unfairly or unreasonably in another way, and to decide what it needs to do to put things right.

As I don't think Moneybarn ought to have granted the loan, I don't think it fair for it to be able to recover interest or charges. But I think it fair Moneybarn is able to recoup the credit it granted. I also agree with our investigator that it doesn't seem fair Moneybarn is able to profit from an unfair lending decision where Mr C is left without an asset. So I agree Moneybarn should refund everything it's received – including from the auction proceeds – over and above the credit it lent, together with interest. Moreover, for the reasons given above, I also think it fair Moneybarn remove any adverse information about the agreement from Mr C's credit file.

Moneybarn has indicated it thinks the redress has been calculated incorrectly and that it should only have to refund what Mr C paid over and above an amount for fair usage, which I think it to mean the purchase price in this case. It's referred to other upheld car finance lending cases at our service where the redress has involved cars being handed back to the finance company (where the consumer hadn't already paid up to the purchase price), and the consumer only being held liable for fair usage – without having to pay interest or charges. It's also referred to cases where consumers keep the car but get reimbursed everything they've paid over and above the purchase price.

I've thought about what Moneybarn has said. While we look at each case individually, I do want to point out that the scenarios it's mentioned aren't reflective of what happened here. Mr C had paid over and above the purchase price of the car, but Moneybarn recovered it from him. The car has now been sold on, so I'm unable to direct its return *and* direct Moneybarn to refund the interest and charges. He's left without an asset he otherwise would have had. So I find the refund of the auction proceeds to be fair.

Moneybarn's statement says that, less the deposit, it received £21,161.62 – including from the auction proceeds. Deducting the credit it granted (£12,330) from that amount leaves an 'overpayment' of £8,831.62. So, in all the circumstances, I think it fair Mr C is reimbursed this amount to resolve the complaint.

My final decision

My final decision is that I uphold this complaint and direct Moneybarn No.1 Ltd to:

- Refund all payments received (including the auction proceeds) above the amount of credit provided in line with the above calculation.
- Interest* should be added to the above amounts at a rate of 8% a year simple, from the date they were paid to the date of settlement.
- Remove any adverse information about the agreement from Mr C's credit file.

*If Moneybarn considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C 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 C to accept or reject my decision before 25 May 2023.

Simon Wingfield
Ombudsman