

The complaint

Mr J complains that Moneybarn No. 1 Limited irresponsibly granted him finance (under a conditional sale agreement) he couldn't afford to repay.

Mr J is represented in this complaint by a third party. But for ease I will simply refer to Mr J in this decision rather than Mr J and his appointed representative.

What happened

In September 2018 Mr J entered into a conditional sale agreement for a used car costing £7,900.

Under the terms of the agreement, everything else being equal, Mr J undertook to make an advance payment of £400 followed by 59 monthly payments of £294.59 making a total repayable of £17,780.81 at an APR of 48.9%.

Mr J made the first six payments required of him totalling £1,872.95 (£400 plus £1,472.95 [5 x £294.59]) but made no further payments after this.

In April 2019 Moneybarn sent Mr J an arrears notice for £294.59 (1 monthly payment of £294.59 for March 2019).

In April 2019 Moneybarn sent Mr J an arrears notice for £589.18 (2 monthly payments of £294.59 for March and April 2019).

In June 2019 Moneybarn sent Mr J a letter to say that his arrears were now standing at £883.77 (3 monthly payments of £294.59 for March, April and May 2019) and if contact wasn't made it would need to send a default notice. It also outlined the various options available to Mr J including the option of voluntary termination at a cost of £7,017.46.

In June 2019 Mr J advised Moneybarn that he was seriously ill.

In July 2019 Mr J's partner advised Moneybarn that Mr J was seriously ill.

In July 2019 Moneybarn sent Mr J a default notice. Under cover of this notice Moneybarn confirmed arrears of £1,178.36 (4 monthly payments of £294.59 for March, April, May and June 2019). Moneybarn also confirmed under cover of this notice that if the arrears weren't cleared before 8 August 2019 it would terminate the agreement and seek recovery of the sum of £8,874.80 (£15,907.86 sum outstanding less £7,033.06 rebate) less any net proceeds received by it from the sale of the car.

In August 2019 Moneybarn sent Mr J a termination notice.

In August 2019 the agreement was terminated by Moneybarn with a sum outstanding and owing to it of £15,907.86.

In October 2019 Moneybarn, having sold the car, reduced the sum outstanding and owing to it (of £15,907.86) by £3,003 (£3,600 sale proceeds less £597 fees/costs) to £12,904.86.

In June 2020 Moneybarn contacted Mr J to say that it was prepared to accept, in full and final settlement of the agreement, £6,452.43 rather than £12,904.86 – a reduction of £6,452.43 (50%).

In December 2020 Moneybarn contacted Mr J to say he still owed it £12,904.86.

In January 2022 Mr J complained to Moneybarn that it had acted irresponsibly when it granted him finance in September 2018.

In March 2022 Moneybarn issued Mr J with a final response letter ("FRL"). Under cover of this FRL Moneybarn said it that it couldn't agree that it acted irresponsibly in granting the finance that it did.

In April 2022, and unhappy with Moneybarn's FRL, Mr J referred his complaint to our service.

Mr J's complaint was considered by one of our investigators who came to the view that Moneybarn should have carried out more checks to assess affordability of the finance it was looking to grant, but such checks wouldn't have caused it to conclude that finance was unaffordable. In other words, the investigator concluded that Moneybarn hadn't done anything wrong in approving the finance that it did.

However, he also concluded that due to a significant change in Mr J's circumstances in June 2019 Moneybarn should reduce the sum it was seeking the recovery of to £4,294.33.

Moneybarn wasn't prepared to reduce the sum it was seeking the recovery of to £4,294.33, (although it said it was prepared to reduce it to £7,017.46) so Mr J's complaint was passed to me for review and decision.

In April 2023 I issued a provisional decision. In summary I said:

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

It's my understanding that Mr J accepts that Moneybarn didn't act irresponsibly in approving the finance. But for the avoidance of doubt, I would like to make it clear that I'm satisfied this is the case and satisfied for the same reasons as those given by the investigator in his view.

I will now turn to what, as I understand it, is the point in dispute, which is how much should Moneybarn reduce the sum it's looking to seek the recovery of from Mr J given the personal circumstances he now finds himself in and which he has been in since June 2019.

Based on what both parties have said and submitted I'm satisfied that Mr J wasn't in the position to make any payments towards his agreement liability after he stopped doing so, at least any material payments.

So, with this in mind, given when I think Moneybarn should have reasonably understood this was the case, Moneybarn's various regulatory obligations and ultimately what I think is both fair and reasonable in all the circumstances of this case, I find myself in agreement with the investigator that Moneybarn should recalculate Mr J's liability as follows;

- | | |
|--|------|
| 1. capital sum advanced | less |
| 2. payments made towards the agreement by Mr J | less |
| 3. the gross (car) sale proceeds | plus |
| 4. costs incurred in selling the car | plus |
| 5. interest payable under the agreement between September 2018 and July 2019 | |

The investigator calculated this sum to be £4,294.33. However, I calculate it to be £5,484.76 broken down as follows:

- | | |
|---|------|
| 1. £7,500.00 | less |
| 2. £1,472.95 (£294.59 x 5) | less |
| 3. £3,600.00 | plus |
| 4. £597.00 (£455.00 plus £117.00 plus £25.00) | plus |
| 5. £2,460.71 (£252.99 plus £251.58 plus £250.14 plus £248.63 plus £247.09 plus £245.48 plus £243.83 plus £242.11 plus £240.35 plus £238.51) | |

However, although I've found that Moneybarn can seek recovery of the sum of £5,484.76 from Mr J, I would remind it of its obligations to treat Mr J fairly and with due consideration and forbearance.

Both parties responded to my provisional decision to say they accepted it.

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 that both parties have accepted my provisional findings I see no good reason to depart from them and I now confirm them as final.

My final decision

My final decision is that Moneybarn No. 1 Limited must reduce the sum it's seeking the recovery of from Mr J to £5,484.76.

And when seeking recovery of this sum it has regards to its obligations to treat Mr J fairly and with due consideration and forbearance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 May 2023.

Peter Cook
Ombudsman