

The complaint

Miss S complains that Moneybarn No.1 Limited irresponsibly granted her credit.

What happened

Miss S entered into a credit agreement with Moneybarn in January 2019 to acquire a used car. The cash price of the car was £6,995 and the total amount owing under the agreement (including interest and fees) came to £14,040. This was to be paid with an advance of £1,647 followed by 59 monthly instalments of £210 (all figures rounded).

The credit to buy the car was granted by Moneybarn under a conditional sale agreement meaning Miss S would own the car when the credit owing had been repaid. Moneybarn was the owner until that point and Miss S was paying for the use of it.

Miss S had problems meeting her repayments and Moneybarn eventually terminated the agreement. The car was collected in February 2022 and sold. The proceeds of the sale were credited to Miss S's account leaving an outstanding balance.

Miss S complained to Moneybarn that the credit was unaffordable for her and should not have been agreed. Moneybarn accepted this and upheld Miss S's complaint. It offered to resolve things by paying Miss S an amount of £2,114.84. This was calculated by:

- Reducing the outstanding balance on the account to zero; and
- Refunding all payments Miss S made to the account, a total of £5,673.77; and
- Deducting a charge of £3,730.67 for Miss S's use of the car; and
- Applying 8% simple interest per annum to the refund of £1,1943.10 bring the total refund to £2,114.84.

Miss S was unhappy with this resolution and referred her complaint to us. She didn't think Moneybarn had offered her a fair amount as she'd paid £5,673.77 in total under the agreement and yet lost the car. She said "It doesn't seem fair that I paid that amount and still lost the vehicle when I had paid off what I initially borrowed which was £5,348.10."

One of our investigators looked into Miss S's complaint. They found that Moneybarn hadn't proposed a fair resolution and recommended that it kept only the capital lent to Miss S, in other words £5,348.10, and that it refunded everything else to her along with compensatory interest of 8% simple per annum. This included the proceeds from the sale of the car, an amount of £4,800.

Moneybarn didn't accept this recommendation. It said this went beyond putting Miss S back into the position she would have been in prior to the inception of the finance agreement. Moneybarn asked for the complaint to come to an ombudsman to decide and came to me.

I issued a provisional decision on 18 April 2023 explaining why I thought Miss S's complaint should be upheld but also why I thought Moneybarn's offer was a fair way to resolve things.

Miss S didn't agree with my proposed redress. This is my final decision on the matter and will be legally binding on both parties if Miss S accepts 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.

As I'd said in my provisional decision, Moneybarn has accepted that it shouldn't have entered into the agreement with Miss S so I won't revisit that lending decision as it's no longer in dispute. Having reconsidered everything, including what Miss S said in response to my provisional decision, I remain of the view that Moneybarn's offer to resolve things is fair. I'll set out again my reasons for this and will refer to Miss S's response where appropriate.

The agreement began in January 2019 and the car was recovered in February 2022. The car had covered almost 39,000 miles during the 35 months it was in Miss S's possession. Miss S paid a total of £5,673.77 to Moneybarn, including her deposit of £1,647. In other words she paid just over 80% of the cash price of the car.

Our usual approach to putting things right when credit has been irresponsibly agreed is that a borrower is generally liable to repay the money they borrowed as they've had the use of it. They shouldn't have to pay any interest or fees associated with the money borrowed.

In this case, by the time the agreement was terminated, Miss S hadn't yet repaid the cash price of the car, which was £6,995. I appreciate that Miss S feels it's unfair to have paid £5,673.77 and not have a car. However, at the time the agreement was terminated the car wasn't hers even considering that she shouldn't have had to pay any interest or fees under the agreement. I think it's fair that the car remained the property of Moneybarn and so I can't find it was inherently wrong of it to have recovered and sold it.

When Miss S complained to Moneybarn she said that it hadn't treated her fairly when she had problems meeting her repayments. It didn't, for example, stop charging interest under the agreement. I can see from Moneybarn's customer contact notes that Miss S first missed a payment in June 2019. Moneybarn then agreed several repayment plans (based on income and expenditure assessments) which Miss S didn't manage to keep to. In June 2021 Miss S signed a consent order which set out what she needed to pay each month in order to keep the car. When this failed, Moneybarn repossessed the car, having had several discussions with Miss S and, from what I've seen, sent her the required notices. Altogether, I haven't seen anything which suggests to me that Moneybarn treated Miss S unfairly when she had problems meeting her repayments.

As mentioned, Miss S has paid £5,673.77 to Moneybarn to hire the car for 35 months. I don't think it's fair that she's had to pay that much, given that the monthly payments included interest. However do think it's fair for her to pay something towards the use of the car for the time she had it. The car would likely have devalued in that time and Miss S managed to make considerable use of it. There isn't a specific calculation to work out what a fair usage charge would be and I've borne in mind the mileage Miss S covered and the interest charged under the agreement, for example.

In order to resolve the complaint, Moneybarn proposed that Miss S pays a total amount of £3,730.67 which amounts to less than £110 a month. This seems a fair and reasonable amount to me, bearing in mind Miss S would likely have paid something to stay mobile during this time if she didn't have the car.

Miss S said in response to my provisional decision that Moneybarn received the money she paid plus the amount of £4,800 from the sale of the car. If Moneybarn pays her a refund of £2,114.84 it retains £8,358.93 altogether and so gains £1,363.93. Miss S said that she doesn't think Moneybarn should be able to gain any profit when it's already agreed that it acted irresponsibly in the beginning. Miss S also said that when the car was recovered she was unable to work for several months and so lost out financially as she needed the car for work.

I can see from the statement of account that £4,800 were the gross proceeds from the sale and that Moneybarn incurred recovery and court costs. As I've explained, I haven't found that Moneybarn got something wrong in when it recovered and sold the car. The compensation Moneybarn offered is in recognition of its error in entering into the agreement in the first place, irrespective of whether it made an overall profit or loss in this matter. I can accept that the loss of the car caused some difficulty for Miss S as she'd have had to put other arrangements in place. But I don't know enough about her circumstances to find that any loss of income was due solely to her not being able to work because of a lack of transport.

I appreciate that this will be very disappointing for Miss S but having looked at everything again, I've come to the final conclusion that in this case Moneybarn made a fair offer to resolve her complaint and I am not asking it to do anything more.

Putting things right

In order to put things right for Miss S, Moneybarn should now carry out its offer if it hasn't already and:

- Reduce the outstanding balance on the account to zero; and
- Refund all payments Miss S made to the account, a total of £5,673.70, and deduct a fair usage charge of £3,730.67; and
- Apply 8% simple interest per annum* to the balance of £1,943.10 to bring the total refund owed to Miss S to £2,114.84; and
- Pay this amount to Miss S and remove any adverse information from her credit file relating to this account and report it as settled.

* If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss S how much it's taken off. It should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

My final decision

For the reasons I've set out above, I'm upholding Miss S's complaint and require Moneybarn No. 1 Limited to put things right for her as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 6 June 2023.

Michelle Boundy
Ombudsman