

Complaint

Mrs W complains that Moneybarn No.1 Ltd (“Moneybarn”) unfairly entered into a conditional sale agreement with her.

She’s said the monthly payments were unaffordable and she struggled to meet the repayments, having to borrow from friends and family and taking out payday loans in order to do so.

Background

In November 2017, Moneybarn provided Mrs W with finance for a used car. The cash price of the vehicle was £8,978.00 and Mrs W applied for finance to cover the entire purchase price. The conditional sale agreement had interest, fees and total charges of £8,789.85 and the total amount to be repaid of £17,767.85 was due to be repaid in 59 monthly instalments of £301.15.

In August 2022, Mrs W complained that the payments to this hire purchase agreement were unaffordable and so the finance should never have been provided to her. Moneybarn looked at the complaint and didn’t uphold it. Moneybarn said that the checks completed before the agreement was entered into confirmed that the finance was affordable and so it was reasonable to lend.

Mrs W’s complaint was considered by one of our adjudicators. He didn’t think that Moneybarn had done anything wrong or treated Mrs W unfairly. So he didn’t recommend that Mrs W’s complaint should be upheld. Mrs W disagreed with our adjudicator and the complaint was passed to an ombudsman for review.

My provisional decision of 16 June 2023

I issued a provisional decision – on 16 June 2023 - setting out why I intended to uphold Mrs W’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And that I’d used this approach to help me provisionally decide Mrs W’s complaint.

Moneybarn needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether Mrs W could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneybarn carried out weren’t sufficient, I then needed to consider what reasonable and proportionate checks were likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn said that it agreed to Mrs W's application after it completed an income and expenditure assessment on her. During this assessment, Mrs W provided details of her monthly income and payslips to verify what she'd declared.

Moneybarn said it also carried out credit searches on Mrs W which showed some outstanding balances. But when the amount Mrs W already owed plus a reasonable amount for living expenses, based on statistical data, were deducted from her monthly income the monthly payments were still affordable. It was also satisfied that the monthly payments were less than the maximum amount it had determined to be affordable for her based on her income.

On the other hand, Mrs W said she was already struggling at the time and that these payments were unaffordable.

I carefully thought about what Moneybarn had said. But I pointed out that simply obtaining information about a borrower didn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

I was concerned that Moneybarn appeared to have assumed an affordable monthly payment amount based on Mrs W's monthly income. And even then the payments to this agreement were close to the maximum it had assumed Mrs W could pay each month.

Given the proportion of Mrs W's income being taken up by these payments, and Mrs W was being expected to pay over £300 a month for five years, I thought that Moneybarn needed to do more to verify Mrs W's expenditure before lending. I didn't think that relying on statistical data in these circumstances was fair and reasonable.

I thought that what Moneybarn did obtain about Mrs W's circumstances meant that it wasn't reasonable to proceed with the payments being affordable simply on the basis that they took up less than 25% of her income. So as well as asking Mrs W about the details of her income and carrying out credit checks, I thought that Moneybarn needed to do more to verify Mrs W's expenditure.

It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mrs W did have enough funds to be able to make the payments.

As I couldn't see that Moneybarn did do anything further to verify Mrs W's expenditure, I found that it didn't complete fair, reasonable and proportionate affordability checks before entering into this conditional sale agreement with her.

As proportionate checks weren't carried out before this agreement was provided, I couldn't say for sure what they would've shown. So I needed to decide whether it was more likely than not that a proportionate check would have told Moneybarn that it was unfair to enter into this agreement with Mrs W.

Mrs W had provided us with evidence of her financial circumstances at the time she applied for the finance. I accepted that different checks might show different things. And just

because something showed up in the information Mrs W had provided, it didn't mean it would've shown up in any checks Moneybarn might've carried out.

But in the absence of anything else from Moneybarn showing what this information would have shown, I thought that it was perfectly fair and reasonable to place considerable weight on it as an indication of what Mrs W's financial circumstances were more likely than not to have been at the time.

I made it clear that I didn't look at Mrs W's bank statements and the other information she had provided because I thought that Moneybarn ought to have obtained this before lending to her. I consulted this information because it was readily available at this stage and it contained the information I now needed to reconstruct the proportionate check Moneybarn should have but failed to carry out.

Mrs W's bank statements showed that she was receiving the salary set out on the requested payslip. However, she also provided other information showing that she was in rent arrears, had council tax arrears and also had other credit accounts that were in arrears and with debt collection agencies. So having considered the information provided it was clear to me that Mrs W was already struggling.

I acknowledged that Moneybarn may have questioned why Mrs W sought to purchase the vehicle she did at the time she did given what she said about her circumstances and what the information she had provided to support this shows. I wasn't wholly unsympathetic to this argument. However, the fact remained that irrespective of the wisdom of Mrs W's decision to enter the conditional sale agreement she entered into on the terms that she did and at the time that she did, Moneybarn nonetheless needed to take reasonable steps to ascertain her ability to make the monthly payments of £301.15 over five years.

Given that what I had been provided with indicated Mrs W was already struggling to meet her existing commitments, I was satisfied that Mrs W simply wasn't in a position to make the monthly payments to this agreement, let alone other reasonable associated running costs for the vehicle such as petrol, tax and insurance. In these circumstances, I was satisfied that Mrs W simply didn't have the funds necessary to make the monthly payments to her agreement, without her borrowing further or it having a significant adverse impact on her financial position.

So having carefully considered everything, I was minded to conclude that reasonable and proportionate checks would have alerted Moneybarn to the fact that Mrs W wasn't in a position to sustainably make the payments to this agreement.

And I therefore intended to issue a final decision which concluded that Mrs W wasn't in a position to take on this commitment and Moneybarn shouldn't have lent to her. I then set out a method of compensation which I thought addressed Moneybarn's shortcomings and Mrs W's resulting loss.

Responses to my provisional decision

Mrs W confirmed that she agreed with my provisional decision and that she had nothing further to add.

Moneybarn didn't provide anything further for me to consider or ask for any additional time to do so.

My findings

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

I set out in some detail why I intended to uphold Mrs W's complaint in my provisional decision of 16 June 2023. As I've not been provided with anything further to consider by the parties, I've not been persuaded to alter my conclusions. So I'm still upholding Mrs W's complaint. And I remain satisfied that Moneybarn needs to put things right.

Fair compensation – what Moneybarn needs to do to put things right for Mrs W

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Moneybarn putting Mrs W in the position she'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mrs W did enter into the agreement and *was*, at least, given the car in question. She also had use of the vehicle for four and a half years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs W back in the position she would be in if she hadn't been sold the car in the first place.

As this is the case, I've had to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

So, in this case, this would mean Mrs W paying back the £8,978.00 originally lent and any interest, fees and charges she paid being refunded (along with interest at 8% simple a year). I do think that a refund of the interest, fees and charges Mrs W paid (plus interest) is useful starting point. However, I don't think that a such refund alone goes far enough here given the particular circumstances of this case.

In this case, Moneybarn took possession of the vehicle in May 2022. And a refund of the interest, fees and charges alone, would effectively place Mrs W in the position she would be in having paid the full amount lent for a car in circumstances where she doesn't have ownership of the vehicle and therefore hasn't really had the benefit of £8,978.00.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mrs W bearing in mind she has paid significantly more than the amount she was lent and doesn't have ownership of the vehicle. There is no exact science to doing this and I have therefore taken a broad-brush approach to doing so weighing up all the factors at play here.

Having considered at the statement of account it looks to me that Moneybarn sold the vehicle for £3,300.00 in June 2022. This was around five months before ownership would have transferred to Mrs W had she made all the payments on her agreement.

I appreciate that the vehicle was sold at auction and it's possible Mrs W might have been able to obtain a higher price selling the vehicle privately had ownership been transferred to her in November 2022. But I'm also mindful that the vehicle would have had a further five months use had it not been sold in June 2022. And as this is the case, I think that the amount that the vehicle was sold for, is a reasonable proxy for the value of the asset Mrs W would have had, had Moneybarn not taken possession of the vehicle in May 2022.

Therefore, given all the circumstances and having weighed up everything, I'm intending to tell Moneybarn that it should not only refund all the interest fees and charges Mrs W paid, plus interest at 8% simple per year, as a result of this conditional sale agreement, it should also pay Mrs W a further £3,300.00 to compensate her for not having ownership of the vehicle. I'm satisfied that a further payment of this amount adequately reflects Mrs W not having had the full benefit of the £8,978.00 she was lent.

The statement of account makes reference to a credit note of £732.75 being issued. It is unclear whether this was an amount paid to Mrs W or an amount credited to any outstanding balance on the account. But if Moneybarn is able to evidence having already paid Mrs W £732.75, it can deduct this from the additional £3,300.00 I'm directing it to pay her.

I now turn to Mrs W's credit file. Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of any credit they shouldn't have been given. I've not seen anything in this case which leads me to think such a direction would be unfair here.

As this is the case, I'm directing Moneybarn to put things right for Mrs W by:

- refunding all interest, fees and charges Mrs W paid as a result of her conditional sale agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mrs M to the date of settlement†;
- paying Mrs W a further £3,300.00 (minus £732.75 if it can be evidenced Mrs W has already been paid this) to reflect the fact that she doesn't have ownership of the vehicle;
- removing any adverse information recorded on Mrs W's credit file as a result of this agreement.

† HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Mrs W a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given above and in my provisional decision of 16 June 2023, I'm upholding Mrs W's complaint. Moneybarn No.1 Limited should put things right for Mrs W in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 July 2023.

Jeshen Narayanan
Ombudsman