

The complaint

Miss S is complaining about Secure Trust Bank Plc trading as Moneyway. She says they were irresponsible in lending to her.

What happened

In March 2012, Miss S took out a hire purchase agreement with Moneyway to finance the purchase of a vehicle. She borrowed £8,814 – the cash price of the vehicle. The agreement was 5 years and required Miss S to make monthly repayments of £245.08. Miss S had problems with her payments from the start, with direct debits rejected in April 2012 and May 2012. She then made a number of payments on time but by the following year, the account defaulted. In September 2013, Moneyway issued a termination notice and they collected the car at the beginning of October 2013.

In September 2022, Miss S complained to Moneyway, explaining that she hadn't had the capacity to do so before then. She said she didn't think Moneyway should have lent to her – at the time, she said, she had around £30,000 of debt already, more than her annual salary. She said she was in a debt management plan with 14 creditors and had numerous defaults and missed payments. And she said she'd had to return a previous car due to not being able to make repayments and was using payday loans to meet living expenses.

In response, Moneyway said Miss S had complained too late. When Miss S brought the complaint to our service one of our ombudsmen decided that Miss S's exceptional circumstances had prevented her from raising the complaint earlier and so we could investigate. Moneyway told us they no longer had any information available in relation to Miss S's agreement.

One of our investigators looked into Miss S's complaint and thought it should be upheld. He said he didn't think Moneyway had carried out proportionate checks before lending to Miss S, and if they had done so, they wouldn't have been able to fairly decide to lend to her. He said Moneyway should refund all payments Miss S had made over £2,610, with interest. Miss S accepted our investigator's view but Moneyway did not. They said they didn't have access to the payment history on the agreement and so couldn't confirm what payments Miss S had made.

Because the complaint hasn't been resolved, it's been passed to me for 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.

Having done so, I'm upholding Miss S's complaint for broadly the same reasons as our investigator – I'll explain why below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a

firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

Did Moneyway carry out proportionate checks?

Because of the time that's passed, Moneyway haven't been able to provide any evidence of the checks they carried out. Miss S says she told them at the time that she was in a debt management plan and had numerous defaults and 14 creditors. She said they didn't ask her for bank statements or ask for any information about her expenditure but they did ask her for two payslips.

It's not clear whether or not Moneyway carried out a credit check. If they had, they'd likely have seen Miss S had a number of defaults at the time. Although it appears Moneyway verified Miss S's income, I've seen no evidence they made any attempt to estimate her expenditure. In the context of the defaults, the size and term of the loan and the cost of credit, I'm not persuaded Moneyway carried out proportionate checks – they should have done more to understand her income and expenditure to assess whether the repayments were affordable for her.

What would Moneyway have found if they had done proportionate checks?

Again, due to the time that has passed, Miss S hasn't got complete records about her financial circumstances at the time. But on balance, I've seen enough to say Moneyway most likely wouldn't have been able to decide the loan was affordable for her.

The payslips Miss S says she provided to Moneyway show that her net pay for December 2011 and January 2012 averaged around £1,360. But they also showed that in both months the majority of this was sick pay. And this didn't include the most recent month, which would have been February 2012. Miss S said she disclosed that her health was making it difficult to work. She's sent us a letter dated early February 2012 which evidences Miss S being approved for Jobseeker's Allowance which she'd receive from the end of March 2012 and said she shared the letter at the time.

While I appreciate the finance broker or car dealership may not have passed on to Moneyway everything Miss S told them, I think if Moneyway had asked for her most recent payslip they'd have discovered that she would shortly be unemployed. And the level of sick pay on the payslips they had should have been a warning that her income may not be reliable.

Miss S hasn't told us much about her expenditure at the time. But it's clear from what she's sent us that she had significant debts, many of which were in arrears or defaulted. With the level of debt she had, I'm satisfied her existing credit commitments would have taken up the majority of Miss S's income each month. The number of defaults suggests Miss S wasn't able to meet her existing credit commitments and living expenses so it's highly unlikely additional credit payments were affordable for her. If Moneyway had carried out an income and expenditure assessment I'm satisfied on balance that they couldn't have fairly decided to lend to Miss S.

Putting things right

As Moneyway shouldn't have approved the loan, it's not fair for them to charge any interest or other charges under the agreements. But Miss S had the use of the vehicle, from the start of the agreement to when it was collected around 18 months later. I think it's fair Moneyway

retain an amount for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Miss S's case I've thought about the amount of interest charged on the agreement, her overall usage of the car, and what her costs to stay mobile would have likely been if she didn't have this car.

In doing so, I think a fair amount Mrs W should pay is £145 for each month she had use of the car, so a total of £2,610.

To settle Miss S's complaint therefore, Moneyway should do the following:

- End the agreement with nothing further to pay unless this has already been done and liaise with third parties to ensure the outstanding debt is written off.
- Refund all the payments Miss S has made in respect of the agreement, whether to Moneyway or debt collectors, less £2,610 for fair usage, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Where Moneyway are unable to obtain complete records, they should make a reasonable estimate taking into account the current balance at the debt collector and likely dates and amounts of payments made by Miss S.
- Remove any outstanding adverse information recorded on Miss S's credit file regarding the agreement.

If Moneyway consider tax should be deducted from the interest element of my award they should provide Miss S a certificate showing how much they've taken off so that Miss S can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained, I'm upholding Miss S's complaint. Secure Trust Bank Plc trading as Moneyway need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 February 2024.

Clare King
Ombudsman