

The complaint

Mr N is complaining about Secure Trust Bank Plc trading as Moneyway. He says they were irresponsible in lending to him. Mr N's complaint was brought to our service by a representative but for ease I've written as if we've dealt directly with him.

What happened

In March 2018, Mr N took out a hire purchase agreement with Moneyway to finance the purchase of a car. He paid a deposit of £1,300, comprising £500 cash and £800 part-exchange allowance. He borrowed £5,200 - the cash price of the vehicle was £6,500. The agreement required Mr N to make 59 monthly repayments of £154.70 and a final instalment of £164.70 – so the total amount payable was £10,592. Mr N made his payments on time and settled the agreement early in September 2019.

In August 2023, Mr N complained to Moneyway, saying they hadn't conducted thorough, appropriate and reasonable checks, and as a result had acted irresponsibly in lending to Mr N.

Moneyway didn't uphold Mr N's complaint. They said Mr N had told them his monthly income was £1,132 and they'd used a payslip to confirm this. They didn't comment on the other checks they'd done at the time of Mr N's application but said they'd carried out a retrospective assessment at the time of his application, taking into account information from his credit file, statistical data, and Mr N's statement on his application that he was single and living with his parents. Moneyway estimated Mr N's total expenditure when he applied would have been around £676 per month and on that basis the agreement was affordable.

Mr N was unhappy with Moneyway's response so brought his complaint to our service. One of our investigators looked into it and upheld it. He said from the evidence he'd seen, he thought Moneyway hadn't conducted proportionate checks and when he looked at Mr N's bank statements from the time of lending, he thought these showed the agreement wasn't affordable for Mr N.

Moneyway disagreed with our investigator's view. They commented in particular that the figures our investigator used for Mr N's credit commitments at the time didn't reflect the information in his credit file. Because Moneyway and our investigator didn't reach an agreement the complaint's come 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 Mr N's complaint. My reasons are broadly the same as our investigator's – I'll explain 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.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Moneyway carry out proportionate checks?

Moneyway have provided very little information on the checks they did at the time of Mr N's application, saying they confirmed his income with a payslip and obtained his credit report which showed some historic defaults but excellent payment history on his active credit cards.

The rest of the information Moneyway have provided is about their findings from retrospectively estimating Mr N's expenditure using statistical data.

Given Mr N's stated income was only £1,132 per month and Moneyway don't appear to have made any efforts to estimate his expenditure at the time, I can't say Moneyway they carried out proportionate checks when deciding to lend to Mr N.

I've also thought about Moneyway's retrospective assessment. They've provided little detail but said they estimated Mr N's monthly cost of living including food, energy, commute, insurances, water, media, and council tax at £316. They said they used statistical data for his postcode and age to do this. Moneyway also said they included £133 per month for Mr N's rent, having adjusted the statistical estimate to take into account the fact that he was living with his parents.

Given Mr N's relatively low income, the five-year term of the agreement, and his previous (albeit historical) defaults, I don't think it would have been reasonable for Moneyway to rely solely on statistical estimates and assumptions about how much Mr N paid towards his living costs.

If Moneyway had carried out proportionate checks, what would they have found?

Proportionate checks would have involved Moneyway doing more to understand Mr N's expenditure so they could consider whether he'd be able to make the necessary repayments in a sustainable way.

Looking at Moneyway's copy of Mr N's credit report I can see he had revolving credit balances of over £2,500. CONC requires a business to assume revolving credit is repaid within a reasonable timeframe, and I don't think Moneyway's figure of £72 per month would have allowed that. Instead, I've estimated the payments against revolving credit at 5% of the balances – totalling £128.

Mr N also had a number of outstanding defaults on his credit report, with outstanding balances totalling over £1,650. Moneyway haven't made any allowance for Mr N making payments against these defaulted accounts, but his bank statements show he was paying around £20 per month for these and also around £24 per month to HMRC.

In addition, looking at Mr N's own copy of his credit report, I can see he took out an unsecured loan less than two weeks before the Moneyway agreement was signed. This loan required payments of £133 per month over several years. Whilst I appreciate Moneyway wouldn't have been aware of this loan from the data they were looking at, I think proportionate checks would have included asking Mr N if he had any other debts – and I'm inclined to say he'd have told them about this loan if he'd been asked.

So Mr N's credit commitments appear to have totalled around £305 per month. I've also looked at his bank statements to get an understanding of how much he paid towards rent and bills. The monthly amount fluctuated between £700 and £787 in the three months leading up to the lending decision, with the average being £740 per month. On top of this, Mr N was making regular payments totalling around £150 for his car insurance and road tax. So his total expenditure before taking out this agreement was around £1,195.

So, in summary, I think if Moneyway had carried out proportionate checks, they'd have estimated Mr N's total expenditure as around £1,195 per month before adding on the repayments due under this agreement. Given they'd verified his income as £1,132 per month, they couldn't have fairly decided the agreement was affordable for Mr N.

I appreciate Moneyway have pointed out that Mr N made all his payments on time and settled the agreement early. But I'm not satisfied that meant the agreement was affordable – his credit file shows he took out additional credit both shortly before and soon after this agreement, so it's likely he was borrowing elsewhere in order to maintain these payments and keep his car.

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 agreement. But Mr N has had the full benefit of use of the car so it's fair he pays the cash price of it.

In summary, Moneyway should do the following to settle Mr N's complaint:

- refund all the payments Mr N has made (including the part-exchange allowance) in excess of £6,500, adding 8% simple interest per year from the date of each overpayment to the date of settlement; and
- remove any adverse information recorded on Mr N's credit file regarding the agreement.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 11 June 2024.

Clare King
Ombudsman