

The complaint

Miss H, who is represented by a third party, complains that Moneybarn No. 1 Limited ("Moneybarn") irresponsibly granted her a conditional sale agreement she couldn't afford to repay.

What happened

In August 2018 Miss H acquired a used car financed by a conditional sale agreement from Moneybarn. The purchase price was £9,739. Miss H was required to make an initial payment of £200 followed by 59 monthly repayments of £306.36. The total repayable under the agreement was £18,275.24.

The agreement was terminated in January 2023 and fully settled in February 2023.

Miss H says that Moneybarn didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. Moneybarn didn't agree. It said that it carried out a thorough assessment before granting the credit.

Our investigator recommended the complaint be upheld. She thought Moneybarn ought to have realised the agreement wasn't affordable to Miss H. Essentially, this was because from looking at Miss H's financial circumstances it looked likely that payments under the agreement wouldn't be affordable to Miss H as she wouldn't be left with enough funds to manage her day to day living costs sustainably.

Moneybarn accepted our investigator's merits findings. But an issue remains in relation to the redress calculation. I understand that the car was in a road traffic accident and as a result was written off by the motor insurer. Moneybarn says Miss H isn't entitled to a refund because she has paid less than the total cash price of the car, the balance having been paid by her motor insurer.

The complaint has therefore been passed to me for a final decision. For the avoidance of doubt, since the merits of the complaint are no longer in issue between the parties, I will confine my decision to dealing with the redress issue that has so far delayed settlement of the complaint.

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.

Moneybarn will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

As Moneybarn has accepted the merits of the complaint being upheld, I don't consider it would be fair for it to charge interest or other fees on the amount Miss H borrowed. This is because it should never have granted the borrowing at the outset.

Our approach to redress in cases like this requires Moneybarn to refund any sums paid by the consumer that are over and above the cash price of the car. This would typically include all interest and fees that were added during the course of the agreement and would be subject to 8% interest.

Moneybarn says it won't refund the part of the payments made towards the settlement of the agreement that were made by the insurance provider. It has therefore excluded the sum of £3,641.79 from its redress calculation.

This service takes the approach that money paid by an insurer in part or full payment of a claim should be treated in the same way as if it was money paid by a consumer – in this case Miss H. This is because it was paid to Moneybarn by the insurer on Miss H's behalf. The consumer was required to have insurance in place. The insurance payment made as a result of the car being written off reflects the cash price valuation of the car. Had the car not been written off Miss H would have had the benefit of being able to continue using it.

Our investigator set out our standard redress for this type of complaint which states that Miss H is entitled to a refund of all sums received over the original cash price of the car. Moneybarn is however already aware of our approach regarding payments made by an insurer and I am therefore surprised that it has raised an objection to making the full refund due to Miss H.

Moneybarn is entitled to receive back the original cash value of the car. But it isn't fair for it to retain funds over and above that sum. It is for this reason that we require interest at 8% to be added when such sums are refunded – calculated from the date when any overpayment was made. So in this case, that part of the insurance payment that represents an overpayment will be subject to interest.

Moneybarn suggests that Miss H is benefitting from a payment made by a third party due to the car being written off. But, as I have said, Miss H no longer has the use of the car as a result of the car being written off. So, given that the agreement has now been settled to the extent that the original cash price has been paid, she's entitled to a refund of any payments made above that sum, be it by her or by her own insurer in paying the car's write-off value.

Putting things right – what Moneybarn needs to do

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss H should therefore only have to pay the original cash price of the car, being £9,739. Anything Miss H or her motor insurer has paid in excess of that amount should be refunded as an overpayment.

To settle Miss H's complaint Moneybarn should do the following:

- Refund to Miss H any payments Miss H or her motor insurer have made in excess of £9,739, being the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss H's credit file regarding the agreement.

*HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Miss H a certificate showing how much tax it's taken off if Miss H asks for one.

My final decision

I uphold this complaint and direct Moneybarn No. 1 Limited to put things right in accordance with the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 23 April 2024.

Michael Goldberg

Ombudsman