

The complaint

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

What happened

In August 2019, Mr H acquired a used car financed by a conditional sale agreement from Moneybarn. Mr H was required to make 36 monthly repayments of £377.16. He also paid a deposit of £2,000. The total repayable under the agreement was £15,200.60.

The agreement was settled in November 2020.

Mr H says that Moneybarn didn't complete adequate affordability checks. He 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 agreeing to grant him the finance.

Our investigator recommended the complaint be upheld. He thought Moneybarn ought to have realised the agreement wasn't affordable to Mr H.

Moneybarn has not accepted our investigator's findings and has questioned what we've asked them to do to put things right.

The complaint has therefore been passed to me for a final 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.

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.

Moneybarn says the credit check it completed showed that Mr H had defaulted on borrowing in the previous 12 months, although there were also previous defaults. It also found that he'd had a county court judgment against him around 23 months earlier. Whilst Moneybarn says it was aware of these, given that there had been no further financial issues, it went ahead with the lending. I think, given the size and length of the lending it was considering offering to Mr H, Moneybarn ought to have recognised that there was a real risk that granting him this lending could easily contribute to a worsening of his financial situation. It therefore would have been proportionate for Moneybarn to have gained a more thorough understanding of Mr H's financial circumstances before lending.

Although Moneybarn obtained confirmation of Mr H's pay by checking several payslips, I can't see that it asked him about his expenditure. Although it had completed a credit check which included assessing his income and expenditure, this was based on statistical

information rather than specifically focused detail provided by Mr H himself. Without knowing more about Mr H's actual level of regular committed expenditure, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. This is another reason why I don't think it completed complete proportionate checks.

I therefore also think it would have been proportionate for Moneybarn to have verified Mr H's financial circumstances. One way Moneybarn could have done this was by requesting copies of his bank statements. I've reviewed three months of bank statements leading up to the lending decision.

The statements show details about Mr H's spending and committed expenditure at the time. I can see that Mr H was paying for rent, alongside his usual housing costs and other daily outgoings, plus his existing debt commitments. He was also making regular repayments of council tax arrears. Mr H has also shown us that his wife was helping to meet living costs with income from her part-time job. Similarly, Mr H was transferring funds to his wife for help with childcare costs. I see that our investigator has adopted a pragmatic approach in calculating what the household costs were likely to be by not including certain childcare costs, given the sums being contributed by Mr H's wife.

Having considered the available information, I broadly agree that Mr H would likely have been left with around £430 in disposable income, from which he would deduct the monthly payment due under the agreement. That means Mr H had around £90 left in disposable income. But that means there's little allowance for disposable income beyond having to pay for the new agreement. I think this is a serious omission that has a direct impact on the reasonableness of the lending decision.

My role in deciding whether a business makes a fair lending decision is to look at what was taken into account from evidence and information that was available at the time about Mr H's financial circumstances. If Mr H had only limited disposable income available once he was paying for the agreement, then it is difficult to see how the agreement was one that was capable of being repaid sustainably over the full term. I say this especially given that he would now have to bear the costs of running his newly acquired car, along with the incidentals that go with that, such as servicing and repairs. There's also no allowance for other unexpected expenditure which Mr H could have to find the funds for - and it's not unreasonable to assume Mr H might expect to have some money available for occasional leisure spending.

I think all this demonstrates that with the new agreement, Mr H would be unlikely to have enough disposable income to sustainably afford to repay the cost of the new finance. I think it's likely proportionate checks would have revealed this to Moneybarn. It therefore didn't act fairly by approving the finance.

Putting things right – what Moneybarn needs to do

Mr H settled the agreement when he acquired another car, taking out finance with a different lender. It appears the dealership settled the agreement on Mr H's behalf. The car he'd taken out under the agreement with Moneybarn was used in part exchange. Mr H has said it was still necessary for him to borrow money in order to fund the deposit for his new agreement. I am therefore satisfied that our usual approach to redress in these type cases still applies. Mr H has lost out as result of the lending decision and should only have to pay a sum equivalent to the cash price of the car.

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. Mr H should therefore only

have to pay the original cash price of the car, being £7,680. Anything Mr H has paid in excess of that amount should be refunded as an overpayment.

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

- Refund any payments Mr H has made in excess of £7,680, representing 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 Mr H's credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct Moneybarn No. 1 Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 July 2024.

Michael Goldberg
Ombudsman