

The complaint

Mr L, who is represented by a third party, complains that Secure Trust Bank Plc, trading as Moneyway ('Moneyway'), irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In August 2019, Mr L acquired a used car financed by a hire purchase agreement from Moneyway. Mr L was required to make 37 monthly repayments of £104. He then needed to make a final payment of £114 plus a £10 option to purchase fee payable with the final payment. The total repayable under the agreement was £3,977.

Mr L briefly got into difficulty with meeting his repayments towards the end of the agreement under the agreement which meant it ended later than otherwise would. But he was able to repay and settle the agreement and purchase the car in March 2023.

Mr L says that Moneyway didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable and was likely to worsen his financial situation.

Moneyway didn't agree. It said that it carried out a thorough assessment at the time. It also said that from recently checking his credit file the credit looked to have been affordable.

Our investigator on the other hand recommended the complaint be upheld. He thought Moneyway ought to have realised the agreement wasn't going to be affordable to Mr L.

Moneyway doesn't agree. It says Mr L was managing his existing debt well enough at the time he applied for the agreement and his subsequent difficulties were due to the impact of the pandemic on his circumstances.

The complaint has therefore 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.

Moneyway 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.

Moneyway says the credit check it completed showed that Mr L was holding eight credit cards plus a secured loan – although I think the correct figure for those cards he was actively using was seven. He owed around £6,000 on his cards and was also having to find monthly repayment for his loan. He'd missed some credit payments on the loan over the previous 12 months. But apart from that Moneyway took the view that Mr L was generally managing

his credit debt well. However, as noted by our investigator, Mr L had incurred credit defaults in 2013 and 2014.

I've also seen that during the application process Mr L told Moneyway that he was earning around £1,100 per month from his employment. But I can't see that Mr L was asked about his regular monthly expenditure. Instead it relied on statistical data based on where Mr L lived and his age, with the aim of working out what his key monthly living costs might be. Moneyway says it adjusted these based on what he put in his application about his circumstances. It then ran a check via a credit reference agency to ensure his income was more than his likely expenditure.

My concern is that the credit check Moneyway carried out won't have indicated what Mr L's actual living costs were each month for things like rent, food, utility payments and of course is transport costs. This would be particularly relevant given the relatively modest income he was receiving and the level of credit he already held and was having to repay each month. Without knowing more about Mr L's regular and committed expenditure, Moneyway wouldn't have been in the position to gain a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

Mr L sent us some bank statements to review. Bank statements are certainly one way of gaining an indication of what a consumer's financial circumstances would have been like during a given time. I think it would have been proportionate for Moneyway to have taken steps to verify Mr L's financial circumstances at the time in order to better understand his living costs. I can't be sure exactly what Moneyway would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr L's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. The statements show details about Mr L's spending and committed expenditure at the time. The level of his salary payments from the two separate jobs he'd taken suggests that he was in fact earning significantly less than he'd told Moneyway – close to an average of £670 per month. On that basis, given that he had monthly direct debits of just under £400 plus monthly non-credit essential spending of typically around £250, he was only just able to meet his usual monthly outgoings.

In addition, Mr L was making regular use of his overdraft. Any overdraft use is usually a potential issue of concern. But in Mr L's case I think it very much points to him being financially stretched and that there was a real risk that his financial situation would deteriorate further if he took on more borrowing.

It follows that I agree with our investigator that Mr L didn't have enough disposable income to afford the additional £104 he'd have to pay each month under the agreement with Moneyway. I think appropriate and proportionate checks would have revealed this to Moneyway. I therefore don't consider it acted fairly by approving the finance.

Putting things right – what Moneyway needs to do

As I don't think Moneyway ought to have approved the lending, I don't think it's fair for it to be able to benefit from any interest or charges under the agreement. Mr L should therefore only have to pay the original cash price of the car, being £2,995. Anything Mr L has paid in excess of that amount should be refunded as an overpayment.

To settle Mr L's complaint Moneyway should do the following:

- End the agreement with nothing further to pay, if it hasn't already.
- Refund any payments Mr L has made in excess of £2,995, 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 L's credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct Secure Trust Bank Plc, trading as Moneyway, to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 May 2024.

Michael Goldberg
Ombudsman