

## The complaint

Miss G complains that Secure Trust Bank Plc – trading as Moneyway (“Moneyway”) unfairly entered into a hire purchase agreement (“agreement”) with her. She says that due to her personal and financial circumstances at the relevant time the agreement was unaffordable.

## What happened

In May 2022 Miss G entered into an agreement with Moneyway for a used car costing £17,799. Under the terms of the agreement, everything else being equal, Miss G undertook to pay a deposit of £100 followed by 59 monthly repayments of £449.84 and 1 monthly repayment of £459.84 making a total repayable of £27,100.40 at an APR of 19.6%.

Miss G complained that the agreement was unaffordable and so should never have been provided to her. Moneyway didn’t uphold the complaint. It said that it was “*unable to locate any evidence to suggest that at point of sale the finance was not affordable*” and therefore it couldn’t agree that it had acted “*inappropriately*”.

Miss G’s complaint was considered by one of our investigators. They came to the view that Moneyway hadn’t made an unfair lending decision. In other words, they didn’t uphold Miss G’s complaint.

Miss G disagreed with our investigator and so her complaint was passed to me for review and decision.

In May 2023 I issued a provisional decision on this case. In summary I said:

*I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*In this decision I’ve focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument (including those submitted by Miss G in response to the investigator’s view) to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.*

*I would also add I’ve not carried out a form of compliance check or sought to enforce the regulator’s rules. What I’ve done is looked at everything provided and decided whether Miss G has lost out due to Moneyway failing to act fairly and reasonably in its dealings with her.*

*We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss G’s complaint.*

*Having carefully thought about everything I’ve been provided with I’m currently minded to uphold Miss G’s complaint. I’d like to explain why in a little more detail.*

*Moneyway needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneyway needed to carry out proportionate checks to be able to understand whether Miss G could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneyway carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.*

*Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.*

*But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.*

*Moneyway says it agreed to this application after Miss G provided details of her monthly income (£1,990) and details of her personal circumstances and after it had undertaken a credit check (with one or more credit reference agencies) and calculated/estimated her credit and living expenses (£1,785).*

*In Moneyway's view, taking everything into account, the monthly payments for this agreement were affordable.*

*On the other hand, Miss G says the agreement was unaffordable from the outset and this could and should have been apparent to Moneyway.*

*I've thought about what Miss G and Moneyway have said.*

*The first thing for me to say is that unlike the investigator I'm not persuaded that the checks Moneyway carried out went far enough.*

*Having looked at the credit check undertaken by Moneyway I can see that although Miss G had less than £1,000 of debt in May 2022 she had 7 defaults registered against her totalling over £3,000, the most recent of which (£615) was less than two years old.*

*This together with the fact the agreement monthly payments (£449.84) represented over 20% of Miss G's declared income (£1,990), the term of the agreement (5 years) and the total sum repayable (£27,100.40) I think Moneyway should have carried out further checks into Miss G's actual financial circumstances, in particular her non-discretionary expenditure.*

*Based on everything that has been said and submitted I'm satisfied that further (and proportionate) checks by Moneyway would have, or should have, caused it to conclude that approving Miss G's application would be irresponsible on the grounds of affordability.*

*In coming to this conclusion I've had regards, amongst other things, to what Miss G says her actual non-discretionary expenditure in May 2022 was, what her provided bank statements suggest her non-discretionary expenditure in May 2022 was, that in May 2022 (and prior) she was relying on financial support from her mother to avoid going overdrawn and the likely running and maintenance costs of the car (subject to the agreement) after May 2022.*

*Having found that Moneyway shouldn't have approved Miss G's application what I now need to decide is what it should have to do to fairly and reasonably compensate her.*

*I note that the cash price of the car was £17,799. From the information provided Miss G appears to have repaid £6,847.60 (£100 deposit and 15 monthly payments of £449.84) which represents about 38% of the cash price.*

*The purpose of our awards is to try as best as possible to place consumers like Miss G back in the position they would have been in had the unfair lending not taken place. Miss G doesn't own the car and as things stand, she's a long way from paying off the cash price, so I think Moneyway should collect the car from her and end the agreement.*

*As I don't think Moneyway should have granted the finance, it should refund all the payments Miss G has made, including any deposit. However, Miss G has had use of the car and I think it's only fair that she pays for that use. But I'm not persuaded that the monthly repayments of £459.84 a month are a fair reflection of that usage.*

*There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss G's overall usage of the car, the nature of the goods and what Miss G's costs to stay mobile would likely have been if she didn't have the car.*

*Having regards to all these factors I think Miss G should have to pay £300 for each month she has had the car or continues to have the car.*

*So taking everything into account I currently find, to fairly and reasonably compensate Miss G, that Moneyway should:*

- end the agreement and collect the car from Miss G*
- refund Miss G's deposit of £100 plus 8% simple interest per year\* from the date of payment to the date of settlement*
- refund all the payments Miss G has made less £300 a month for each month she has had the car, or continues to have the car*
- if Miss G has paid more than the fair usage figure, Moneyway should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement, or*
- if Miss G has paid less than the fair usage figure, Moneyway should arrange an affordable and sustainable repayment plan for the outstanding balance*
- once Moneyway has received the fair usage amount, it should remove any adverse information recorded on Miss G's credit file regarding the agreement*

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

*Miss G responded to my provisional findings to say she was grateful I had found that Moneyway had been irresponsible in its decision to lend to her, but that she disagreed with what I said Moneyway should have to do to fairly and reasonably compensate her.*

*Moneyway didn't respond to my provisional findings by the date I gave it for a response.*

## **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.

In response to my provisional decision Miss G made a number of points in support of her view that what I said Moneyway ought to do to fairly and reasonably compensate her was insufficient.

I don't intend any discourtesy, but I've not commented on every single point Miss G has raised. Instead, I've restricted my comments to the points Miss G has raised that in my view are key to my findings. However, and for the avoidance of doubt, I want to assure Miss G that I've considered every point she has made.

Miss G says she was pressured into purchasing the car. Now I accept I can't say for certain that Miss G is wrong in her submission in this respect or make a finding on precisely what was or wasn't discussed between her and the dealership/intermediary before she agreed to the purchase. But unfortunately for Miss G, based on what has been said and submitted by the parties, I'm simply not persuaded, on the balance of probabilities, that I can reasonably conclude she was pressured into purchasing the car as she submits.

Miss G says that the insurance arranged by the dealership/intermediary in respect of the car was mis-sold to her and at an annual cost of over £3,000 was unaffordable. However, this isn't something I can hold Moneyway responsible for because in respect of this 'sale' the dealership/intermediary wasn't acting as an 'agent' of Moneyway but as an 'agent' of the insurer. Furthermore, Moneyway didn't lend anything to assist in Miss G's purchase of this insurance.

Miss G says that since she purchased the car it's had several issues that she has had to have repaired at her own cost. As the supplier of the car under the agreement, Moneyway are responsible for complaints about the quality of the car. The Consumer Rights Act 2015 sets out that any goods should be of satisfactory quality.

However, Miss G hasn't provided anything to demonstrate what might have caused these issues. This means it isn't possible for me to determine whether the issues with the car made it of unsatisfactory quality when it was supplied to her. It may, especially in light of the invoices Miss G has supplied to our service, just as likely been issues that were normal age related wear and tear for a used car, which is something Moneyway wouldn't be responsible for putting right.

So on the balance of probabilities, I'm satisfied that the car was of satisfactory quality when it was supplied to Miss G.

Miss G says she was advised, by the dealership/intermediary, that she could swap cars after 12 months. Again I can't say for certain whether Miss G was told this, but even if she was this statement isn't incorrect. In fact there is nothing stopping a consumer, in principle at least, from swapping cars at any point in time after the date of their initial purchase.

It's unfortunate that Miss G wasn't in the position to swap cars after 12 months due to her personal and financial circumstances, but this isn't the same as the option to do so not being available.

Miss G says that had her finance application been declined, rather than accepted, she would have simply used her mother's car at an additional insurance cost of £41 a month. Now I can't say for certain that this isn't what Miss G would have done. But given the number of car's Miss G appears to have considered purchasing and the number of applications for credit made on her behalf, before she ultimately purchased the car that she did and before she entered into the agreement that she did, I'm simply not persuaded this is what she would have done.

As I said in my provisional decision there isn't an exact formula for calculating a fair usage figure. But given the miles Miss G has added to the car's odometer since she acquired it, how much the car has depreciated in value since she acquired it and given what Miss G would have been required to pay Moneyway had it lent her the same sum over the same term (but at an APR of 0% rather than 19.6%) I remain of the view that £300 constitutes a fair figure for Miss G to have to pay for each month she has been in possession of the car or continues to be in possession of it.

Finally, and for the sake of completeness, I would add that I don't dispute that after May 2022 Miss G had to borrow from her mother and ended up in debt with other creditors. But I'm not persuaded that this is grounds for me to find that Moneyway should have to compensate Miss G more than I found it should have to compensate her in my provisional decision.

I appreciate Miss G will be disappointed but given what I say above and given that Moneyway didn't respond to my provisional findings I can confirm that I see no reason to depart from those findings and I now confirm them as final.

### **My final decision**

My final decision is that I uphold this complaint and find that Secure Trust Bank Plc – trading as Moneyway must:

- end the agreement and collect the car from Miss G
- refund Miss G's deposit of £100 plus 8% simple interest per year\* from the date of payment to the date of settlement
- refund all the payments Miss G has made less £300 a month for each month she has had the car, or continues to have the car
- if Miss G has paid more than the fair usage figure, Moneyway should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement, or
- if Miss G has paid less than the fair usage figure, Moneyway should arrange an affordable and sustainable repayment plan for the outstanding balance
- once Moneyway has received the fair usage amount, it should remove any adverse information recorded on Miss G's credit file regarding the agreement

*\*HM Revenue & Customs requires Secure Trust Bank Plc trading as Moneyway to take off tax from this interest. Secure Trust Bank Plc trading as Moneyway must give Miss G a certificate showing how much tax it's taken off if Miss G asks for one*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 11 July 2024.

Peter Cook  
**Ombudsman**