

The complaint

Mr Y complains that Moneybarn No. 1 Limited (Moneybarn) irresponsibly entered into a conditional sale agreement with him.

What happened

In May 2018 Moneybarn provided Mr Y with finance to purchase a used car. The car cost £7,300 and Mr Y paid a deposit of £300. He entered into a conditional sale agreement to finance the remaining £7,000. After interest and charges the total amount due was £13,424.55, repayable in 59 monthly instalments of £222.45. Mr Y missed repayments several times over the course of the agreement before it was fully settled in September 2023.

In June 2023 Mr Y complained to Moneybarn saying that they didn't undertake appropriate checks before lending to him. He said he was a zero-hours contractor and had Moneybarn checked his employment history they'd have seen he was out of work for long stretches in the five years prior to his application. Mr Y added that he wanted to take out a three-year agreement, but Moneybarn insisted on him taking a five-year agreement.

Moneybarn didn't agree with Mr Y's complaint. In their view they carried out reasonable checks which showed that the payments for this agreement were affordable for Mr Y, and they lent on this basis. They added that the agreement clearly set out the terms, and Mr Y had agreed to them.

Mr Y remained dissatisfied with Moneybarn's response and referred the complaint to our service, where it was considered by one of our investigators. Although our investigator didn't think Moneybarn's checks had been proportionate, it was her view that proportionate checks would have shown that the agreement was affordable for Mr Y. For this reason, she didn't think the complaint should be upheld.

Mr Y didn't agree with our investigator's view. He didn't think our investigator had fully taken into account what he'd told her about his situation at the time, including about his income. Mr Y added that he was gambling compulsively at the time. As no agreement could be reached Mr Y asked for an ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 11 June 2024, in which I said:

"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 inclined to uphold Mr Y's complaint. I agree with our investigator that Moneybarn didn't conduct proportionate checks when considering if the proposed agreement was affordable to Mr Y. But I think that even without further checks, Moneybarn had enough information to conclude they couldn't responsibly lend to Mr Y. I'll explain why.

In his application Mr Y told Moneybarn his net monthly income was £3,400. Moneybarn asked Mr Y for his bank statements to verify what he'd told them. Moneybarn said they were able to verify an income of £1,674. I couldn't reconcile this

figure with the information contained in Mr Y's bank statements, so I asked Moneybarn to explain how they reached it.

Moneybarn said they had looked at bank statements covering the period from late February 2018 to late April 2018. Notes taken during a review of the statements show Moneybarn took five receipts into consideration when calculating Mr Y's net income. Looking at Mr Y's bank statements I could see that of the five receipts, one came from a local council while the other two came from a gambling provider. I'd have expected Moneybarn to then have taken a closer look at the statements to get a better understanding of Mr Y's gambling transactions.

I say this because the information Moneybarn uncovered in their credit check ought to have led them to think Mr Y was likely struggling financially. Moneybarn didn't retain a copy of the credit search, but they kept notes of the information they saw and sent those to us. The notes show that at the time Moneybarn ran the search, Mr Y had six unsatisfied defaults with the two most recent around four months earlier. Both those defaults relate to utility accounts.

The total owed under the defaults had increased from £6,600 to £7,000, showing Mr Y wasn't making payments towards the outstanding balances. Moneybarn's notes further show two unsatisfied County Court judgments (CCJ) with a total value of £5,600. The most recent of the CCJs had been applied a year prior to Mr Y's application.

Mr Y sent us a copy of his credit report. Given the time that's passed since his application, it doesn't show all the information Moneybarn would have seen during their search. But some information remains – for example, I could see that Mr Y had several open accounts he was managing well. However, I could also see that Mr Y had missed three payments to a utility provider in the months leading up to his application.

So, there were clear signs of recent financial distress. Moneybarn knew Mr Y was gambling, as they took his winnings into consideration when assessing his income. Looking at Mr Y's statements, I note he didn't use that account to gamble every day. However, on the days he did gamble he spent significant amounts. Considering Mr Y's recent credit history, I think the gambling was significant here. It was sufficient to have indicated to Moneybarn there might have been a problem which was having an adverse effect on Mr Y's finances, and his credit report suggested that this was at a level where it stopped Mr Y paying his priority bills.

In summary, I think it should have been clear to Moneybarn that Mr Y was gambling compulsively and that it therefore wouldn't be responsible to lend to him.

Did Moneybarn act unfairly or unreasonably in some other way?

Mr Y said Moneybarn ought to have requested a copy of his curriculum vitae (CV) and this would have shown he'd been out of work for long stretches in the five years prior to his application. I've already explained why I'm inclined to say that Moneybarn made an unfair lending decision, so I don't propose to comment on this specific point.

Mr Y said he wanted a three-year agreement, but Moneybarn was only prepared to offer a five-year agreement. The rules in place in May 2018 allowed Moneybarn to decide the terms on which they were prepared to lend, including the term over which the loan needed to be repaid. And I'm mindful that a shorter term would have meant

higher monthly repayments, making them less affordable. So, I can't say Moneybarn acted unfairly in this respect."

Mr Y accepted my provisional decision. Moneybarn responded and said they had nothing further to add.

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.

As neither party has raised any additional arguments or provided further information for me to consider, I've got nothing further to add – my findings are unchanged from those set out above.

Putting things right

As I don't think Moneybarn should have approved the lending, I don't think it's fair for them to be able to charge any interest or charges under the agreement. But Mr Y's had use of the vehicle and it's fair he pays for that use.

Mr Y has already paid more than the cash value of the vehicle to Moneybarn, having settled the finance in full in September 2023. To settle the complaint, Moneybarn should do the following:

- Calculate how much has been paid in total under the agreement; including the deposit and final settlement.
- Deduct the cash price of the vehicle from the total paid.
- Pay Mr Y the difference, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr Y's credit file regarding the agreement.

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

My final decision

For the reasons given above, I'm upholding Mr Y's complaint. Moneybarn No. 1 Limited need to settle the complaint as set out above

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

Anja Gill
Ombudsman