

The complaint

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

What happened

In July 2020, Mr C acquired a used car financed by a conditional sale agreement from Moneybarn ("the first agreement"). Mr C paid a deposit of £500 and was required to make 60 monthly repayments of £337.13. The total repayable under the agreement was £20,390.67. This agreement was settled in full in February 2022.

In March 2022 Mr C took out a second conditional sale agreement for another used car ("the second agreement"). Under the terms of this agreement Mr C was required to make 60 monthly repayments of £178.42. The total repayable under the agreement was £10,526.79.

Mr C initially said that for both agreements Moneybarn didn't complete adequate affordability checks. He says if it had, it would have seen that each agreement wasn't affordable.

Moneybarn didn't agree with Mr C for the first agreement. It said that it carried out a thorough assessment which included requiring proof of income and running credit checks. But in its final response letter Moneybarn agreed to uphold Mr C's complaint about the second agreement and made an offer of compensation.

Our investigator didn't recommend that Mr C's complaint about the first agreement be upheld. They thought Moneybarn didn't act unfairly or unreasonably by approving the finance agreement.

Moneybarn recently raised a query due to an error in the original investigator's view relating to the first agreement which we have now clarified.

Mr C recently accepted Moneybarn's offer for the second agreement. But he remains of the view that Moneybarn ought to have carried out better checks before granting him the first agreement.

The case 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. Information about our approach to these complaints is set out on our website.

I will consider each agreement in turn.

The first agreement – July 2020

Before approving this agreement, I've seen that Moneybarn obtained proof of Mr C's income by way of payslip information. I also see that the credit check Moneybarn carried out showed that Mr C had had three defaulted accounts. It's right to say that the most recent of these was from 18 months before the application was made. But another relevant factor was that Mr C had three previous county court judgments. Whilst the most recent judgment was from 14 months before the application, I agree that considering these alongside the historical defaults suggests the possibility that Mr C may have been at risk of getting into further financial difficulties. And I consider this risk is further supported by Mr C having missed payments on at least three credit account in the previous 18 months.

Another concern is that Moneybarn didn't take steps to find out more about Mr C's level of committed expenditure for non-credit items as well as other day-to-day living costs. Without this, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. I don't think in this instance that relying only on statistical information based on national data is enough. Moneybarn needed to carry out a more borrower-focused set of checks to get a reasonable idea about Mr C's financial situation.

I also have to keep in mind that Mr C was taking on a significant financial commitment over a five year period. It follows that I think it would have been proportionate for Moneybarn to have got a more thorough understanding of Mr C's financial circumstances before lending.

I can't be certain what Mr C would have told Moneybarn had it asked about his regular expenditure. I don't think Moneybarn needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in the bank statements Mr C has sent us as an indication of what would most likely have been disclosed.

I've seen all the bank statements that were sent to our investigator. Looking at these alongside the payslips Mr C has provided, I agree that Mr C was earning an average of around £2,300 in net income each month, made up from income paid weekly. Our investigator reviewed the total household expenditure and made an allowance for the fact that Mr C's partner was also earning and that there were household expenses and other non-discretionary spending they were likely to share.

I think it's reasonable to work on the basis that Mr C and his partner would be sharing such costs and this appears to be broadly the basis on which the joint account was operating. I say this as I don't see any significant evidence of Mr C's financial situation worsening, which is what I'd expect to see if he was bearing sole responsibility for household outgoings from the joint account. I also agree that, once Mr C's spending on his personal account is factored in, he would still be left with around £650-£700 each month. So the payment of £337 required under the agreement appears to be affordable.

Overall, based on the evidence and information I've seen, I can't say that Mr C's financial situation looked likely to be at risk of deterioration. So I don't consider that Moneybarn granting him the finance would have been unfair.

I'm therefore not persuaded that Moneybarn acted unfairly in approving the finance.

The second agreement – March 2022

Moneybarn has agreed to uphold this part of Mr C's complaint. Given that Mr C has recently accepted Moneybarn's offer, it is not necessary for me to consider the merits of his complaint.

Putting things right for the second agreement – what Moneybarn needs to do

As I don't think Moneybarn ought to have approved the lending, it should therefore refund all the payments Mr C has made, including any deposit. However, Mr C has had the use of the car for around 27 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £178.42 a month as required under the agreement are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. Moneybarn has offered a fair usage amount of £116.65 for each month Mr C has had the car. I think that's fair. That means Moneybarn can only ask him to repay a total of £3,149.55. Anything Mr C has paid in excess of this amount should be treated as an overpayment.

In line with what Moneybarn set out in its final response letter, to settle Mr C's complaint Moneybarn should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Mr C has made, less £3,149.55 for fair usage.
 - If Mr C has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mr C has paid less than the fair usage figure, Moneybarn should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Moneybarn has received the fair usage amount, it should remove any adverse information recorded on Mr C's credit file regarding the agreement.

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

My final decision

For the reasons I've given above, I don't uphold Mr C's complaint about the first agreement.

For the second agreement, Moneybarn No.1 Limited has already made an offer to settle the complaint in line with our approach. My decision is that it should therefore compensate Mr C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 July 2024.

Michael Goldberg
Ombudsman