

The complaint

Mr S complains through a representative that Moneybarn No.1 Limited trading as Moneybarn ("Moneybarn") entered into a conditional sale agreement without carrying out an affordability assessment.

Mr S also says that an undisclosed amount of commission was paid, which ought to have been declared, and this made the relationship between Mr S and Moneybarn unfair.

What happened

In July 2018, Moneybarn provided Mr S with finance for a used car. This was a conditional sale agreement for £5,495. The agreement had interest, fees and total charges of £4,530.28, the total amount to be repaid was £10,025.28. This was to be repaid in 59 monthly instalments of £169.92. Mr S exited the agreement early by way of voluntary termination on 14 October 2020.

Moneybarn didn't uphold the complaint and Mr S's representative then referred the complaint to the Financial Ombudsman.

Mr S's complaint was considered by one of our Investigators. He concluded Moneybarn ought to have carried out further checks before it advanced the loan, but had further checks been conducted Moneybarn would've still lent to Mr S.

Mr S disagreed and our Investigator wasn't persuaded to alter their assessment, the complaint was passed to me. I then issued a provisional decision explaining the reasons why I was intending to uphold Mr S's complaint. Both parties were asked for any further submissions as soon as possible, but in any event, no later than 25 July 2023.

Mr S's representative let us know that Mr S accepted the findings in the provisional decision. Moneybarn also responded to the provisional decision and it also didn't have any further comments.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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

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 Mr S's complaint. Having carefully thought about everything I've been provided with; I'm upholding Mr S's complaint. I'd like to explain why in a little more detail.

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

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.

Mr S declared he earned £1,500 per month and Moneybarn gathered wage slips from Mr S from May and June 2018. This showed Mr S's salaried income was £1,639 and so Moneybarn instead relied on this amount during its affordability assessment.

Moneybarn also carried out a credit search and it has explained that the full results it received are no longer available, but it has provided a summary document of what it was told. It says the checks showed that Mr S had a CCJ that was recorded 42 months prior to this application which still had a remaining balance of £1,900. On top of this there were also three defaulted accounts which Mr S owed £3,500 on and the most recent default had been recorded 35 months before the loan application.

Finally, the summary provided showed that Mr S hadn't opened any payday loans within the previous six months, zero home credit loans within the last three and didn't have any arrears with utilities. While, historically there had been some significant repayment problems, given the most recent issues had occurred around three years before the loan was approved, I don't think that this in itself meant that Mr S shouldn't have been lent to.

From Moneybarn's own information it doesn't appear that it took any details from Mr S about his living costs – as these have all been noted as being "null". Therefore, as I understand it before the loan was approved, Moneybarn didn't not know what Mr S's living costs were. Moneybarn did not have a reasonable understanding of what Mr S's monthly outgoings were at the time. I think that this combined with Mr S's previous difficulties with credit and the cost as well term of this agreement meant the Moneybarn needed to do more in order for its checks to have been proportionate.

I think that before the loan was approved, Moneybarn needed to understand at the very least what Mr S's monthly outgoings were. It could've gone about doing this a number of ways, it could've asked for evidence from Mr S about his bills or, as I've done here, used copies of his bank statements to work out what his living costs were.

I accept that had Moneybarn conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Moneybarn conducting a proportionate check I do think its entirely fair and reasonable to for me to consider the bank statements that I now have access to, for an indication of what his circumstances are likely to have been like at the time.

Had further checks been carried out I think Moneybarn would've likely discovered that on top of the income it had verified, Mr S also received further benefits and tax credits. The amount he received varied, but it was at least £1,400 per month – on top of his salary. So, I think it is fair to say that Mr S's income – according to his bank statements was around £3,000 per month.

I know that Mr S had another account, and I can see funds being moved between them, he says he can't now get bank statements for the other account. But I can see money being moved into it and then being fed back into the account I have statements for.

In addition, I also have the front pages of the statements which shows a summary of other accounts Mr S had at the time. Mr S says he didn't have savings but instead moved the funds into the account to prevent creditors claiming the funds. Having reviewed the

statements, I am persuaded by this argument.

Mr S was also renting, and the bank statements do show payments being made of between £1,400 and £1,500 per month so I think it's likely, that had Moneybarn conducted further checks than it would've likely discovered these rent payments.

On top of this, I can see payments towards various other creditors, mobile phones, TV subscription, food, petrol and insurances. Overall, In the months leading up to the loan being advanced Mr S's outgoings including his rent came to anything between £2,850 and £3,000 per month.

There are signs of financial difficulties as well, payments for what I believe to be pet insurance, car tax and energy were returned unpaid in both May and July 2018. Although not returned in consecutive months, what it does show, is that Mr S was now starting to have problems managing his existing debts – which CONC 1.3 does suggest is a sign of financial difficulties.

So, I'm satisfied that Mrs S's entire, or close to his entire, income was taken up servicing debts and paying his living costs. In those circumstances, there wasn't any spare money to afford to take on any new finance. As such, Mr S wasn't in any position to take on and make the repayments he was expected to.

Taking everything into account, I'm satisfied that had further checks been conducted, which in the circumstances would have been proportionate, Moneybarn would've likely discovered the loan wasn't afford to Mr S. I've therefore, at the end of this decision, set out what I propose Moneybarn needs to do in order to put things right for Mr S.

Mr S's complaint regarding any commission Moneybarn may have paid to the broker for bringing about this conditional sale agreement.

Mr S has also complained that Moneybarn paid an undisclosed commission to his broker for introducing him to Moneybarn.

I've thought about what Mr S has said. However, I have already found that Moneybarn shouldn't have entered into this agreement with Mr S as proportionate checks would more likely than not shown it was unaffordable for him. I'm satisfied that my proposed method of putting things right for Mr S, as a result of this, effectively places him in the position he would now be in had his agreement never existed. I think that this also unwinds the impact of any commission that Moneybarn might have paid to the broker for introducing Mr S.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome.

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 provided any new comments, I see no reason to depart from the findings I reached in the provisional decision, I still think had Moneybarn carried out further checks – which is what it needed to do before granting the loan than it would've likely thought Mr S wasn't able to afford his repayments. I've therefore set out below what Moneybarn needs to do in order to put things right for Mr S.

I've also considered whether Moneybarn acted unfairly or unreasonably in any other way and I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below

results in fair compensation for Mr S in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. In essence, in this case, this would mean Moneybarn putting Mr S in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr S did enter into the agreement and was, at least, given the car in question. He also had use of the vehicle for around two years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr S back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I've had to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

So, in this case, this would mean Mr S paying back the £5,495.00 originally lent and any extra he paid over this should be refunded as interest, fees and charges (along with interest at 8% simple a year). However, I don't think that such an approach would produce a fair and reasonable outcome in this case. I say this because Mr S voluntarily terminated his agreement in October 2020 and so limiting Mr S to repaying £5,495.00, would effectively place Mr S in the position he would be in having paid the full amount lent for a car in circumstances where he doesn't have ownership of the vehicle and therefore hasn't really had the benefit of £5,495.00.

That said I'm mindful that this was a 60 month agreement and Mr S had use of the vehicle for almost half this period. Voluntary termination limits the customer to paying half the total amount due under agreement. Furthermore, where a customer voluntarily terminates an agreement they do not retain possession of the car.

So given the circumstances here, I think that a settlement based around the voluntary termination amount doesn't seem unreasonable here. Mr S would have been required to repay £5,012.64 in total as a result of voluntarily terminating his agreement. However, I'm satisfied that a portion of this amount (£2,265.14) is made up of half the total interest Mr S was required to pay under this agreement.

Given I don't think that Mr S should have been lent to, I don't think that he should have to repay this interest component of the voluntary termination amount. This means that I think Mr S should be limited to repaying a total amount of £2,747.50 which is the voluntary termination amount of £5,012.64, less the interest portion of £2,265.14. I'm satisfied that limiting the amount Mr S has to pay in this way strikes a fair and reasonable balance between addressing the fact that Mr S shouldn't have been lent to and reflecting the fact that he had use of a vehicle for nearly two and a half years.

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

Overall and having carefully considered matters, I'm currently minded to conclude that it would be fair and reasonable for Moneybarn to put things right for Mr S by:

- Limiting the total amount that Mr S pays as a result of this agreement to £2,747.50. Any payments Mr S made over and above this amount should be refunded to Mr S as overpayments.
- Adding interest at 8% simple* from the date of each overpayment to the date of settlement.
- Removing any adverse information recorded on Mr S's credit file regarding the agreement.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr S's complaint.

Moneybarn No.1 Limited trading as Moneybarn should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 September 2024.

Robert Walker
Ombudsman