DRN-5236132

The complaint

Mr M complains that the conditional sale agreement he entered into with Moneybarn No. 1 Limited trading as Moneybarn was unaffordable. He wants 50% of the remaining repayments to be waived for the distress he has been caused.

What happened

Mr M entered into a conditional sale agreement with Moneybarn in January 2023 to acquire a car. The agreement had a term of 36 months and a total amount repayable of £13,174.09. Mr M made an advance payment of £2,156.79 and was required to make monthly repayments of around £315.

Mr M explained that he contacted Moneybarn on several occasions about the affordability of the agreement and the financial difficulty he was facing and he noted that there were issues with the car that he had to pay to fix. He said that when he contacted Moneybarn he was asked to complete an income and expenditure form which he did. However, he was then told that Moneybarn couldn't help him. He said that Moneybarn hadn't provided the service it should have in response to his concerns, and he felt the lending was irresponsible.

Moneybarn issued a final response letter dated 8 October 2024. It said that when Mr M had contacted it about how a payment break or reduction would affect his credit file he had been provided with the correct information.

Moneybarn said that before the lending was provided it carried out reasonable and proportionate checks using information provided by Mr M and the credit reference agencies. It said that Mr M met its lending criteria.

Our investigator noted the outcome of Moneybarn's credit checks and thought that Moneybarn should have realised that the repayments under this agreement along with Mr M's existing credit commitments would result in him paying a significant amount of his income for his credit commitments. He thought in this case relying on estimates of Mr M's expenses wasn't reasonable and said that further checks should have taken place.

As our investigator didn't think that proportionate checks had taken place, he looked at the additional evidence provided to understand what would likely have been identified had proportionate checks happened. He found that Mr M's average monthly income in the months leading up to the agreement was around £2,300. His monthly living costs were around £1,012 and his payments for his financial commitments were around £921. Adding the payments due under the Moneybarn agreement would leave disposable income of around £52 which he didn't think was a sustainable amount. He also noted that Mr M had taken out payday loans in the months leading up to the finance being provided which would have increased his outgoings further. Based on this he thought that had Moneybarn carried out proportionate checks it would have realised the lending wasn't sustainably affordable for Mr M.

Our investigator also considered the other issues Mr M had raised. He considered Mr M's complaint about not receiving the support he should have. He noted that Mr M had contacted

Moneybarn in August 2024 to say he had moved, and his costs had increased, and he had a reduced income and was struggling to make his repayments. An income and expenditure assessment was carried out and Mr M was told that a reduced payment plan could be put in place but this would affect Mr M's credit file. He thought that Moneybarn had provided correct information about how a repayment plan would be reported with the credit reference agencies. While Mr M wasn't happy with this, our investigator thought that Moneybarn had tried to support him.

As our investigator upheld this complaint in regard to the irresponsible lending, he recommended that Mr M's agreement be ended, the car collected, Mr M's deposit be refunded along with interest and for Mr M to only be required to pay an amount to reflect his fair usage of the car. He noted the monthly repayments of around £315 and said that as this included interest a lower amount should be used for the fair usage calculation. He said that Mr M should be required to pay £239 for each month he had use of the car.

Moneybarn accepted our investigator's view.

Mr M asked for an outcome that allowed him to keep the car. He said he needed the car for his day to day living and that he had paid for work to be undertaken on the car. Moneybarn noted the amount still owed on the agreement and that the complaint had been upheld on affordability grounds. It didn't agree to Mr M being allowed to keep the car.

As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue 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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Before the finance was provided, Moneybarn asked Mr M about his net monthly income and verified this as £2,200. It identified Mr M's existing credit commitments through a credit check. This showed he had total unsecured lending of £7,605 with monthly repayments of £433. The credit check didn't show any defaulted accounts, county court judgements or payday lending. Moneybarn then used third-party data to estimate Mr M's housing and other living costs. Moneybarn's calculation showed Mr M to have disposable income of around £398. While this was more than the repayments due under the Moneybarn agreement, it left limited funds once these were included.

Considering the size and term of the finance being provided by Moneybarn and the cost of the repayments additional to Mr M's existing credit commitments, I think that further checks should have been undertaken. In this case I think that Moneybarn should have got a clear understanding of both Mr M's actual income and expenses to ensure the lending would be affordable for him over the term of the agreement.

Mr M has provided copies of his bank statements for the months leading up to the lending being provided. While Moneybarn wasn't required to request copies of these, as I think further questions should have been asked, I have considered the information the statements contain to assess what Moneybarn would likely have identified had proportionate checks taken place.

In the months leading up to the finance being provided, Mr M's average monthly income was around £2,300. His statements show he had substantial, credit commitments including several loans from short term lenders. His total monthly repayments were around £920 which was around 40% of his monthly income (before the Moneybarn lending). His general living costs for expenses such as rent, council tax, insurance, communications contracts, food and transport averaged around £1,012. After deducting the repayments due under the Moneybarn agreement, this would leave Mr M with around £52 to cover any additional costs or unforeseen expenses.

Given the limited disposable income available to Mr M, the level of his credit commitments including short term loans and the size of repayments due under this agreement, I find that had proportionate checks taken place, Moneybarn would have found this agreement to be unaffordable.

Mr M has raised other concerns about the information provided in regard to how a reduced payment plan would be reported to the credit reference agencies and the support he received when he raised his concerns. But having looked at the information provided, I find that Mr M was given clear information about how the credit reporting would happen. When he contacted Moneybarn about his financial circumstances, I find it reasonable that an income and expenditure assessment was undertaken. Mr M was offered a payment reduction which I find fair. I understand that Mr M was concerned about the impact on his credit file and raised a complaint, but I find that Moneybarn did try to support him at that time.

For the reasons set out above, I am upholding this complaint in regard to the affordability of the agreement. Our investigator set out his recommendations to remedy this complaint and I agree these are fair. I note Mr M's comment about wanting to keep the car and I can understand his reasons. But as this complaint has been upheld due to the agreement being unaffordable, and as Mr M hasn't paid the cost of the car that was subject to the agreement, I find that the reasonable outcome to this complaint is for the car to be returned, Mr M's deposit refunded and Mr M to only be liable for an amount to reflect his fair usage.

Mr M entered into the agreement in January 2023 and has had use of the car until now, January 2025. This is around 24 months. Based on a fair use cost of £239 as our investigator set out, this would mean Mr M is only liable for £5,736 and any payments over this amount should be refunded to him.

I've also considered whether Moneybarn acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether its relationship with him might have been viewed as unfair by a court under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr M 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

As I don't think Moneybarn ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. But Mr M did have use of the vehicle for around 24 months, so I think it's fair he pays for that use.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr M's usage. But in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, Mr M's likely overall usage of the car, and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount for Mr M to pay is £239 per month for each month he had use of the car. As Mr M used the car for around 24 months, this means Moneybarn can only ask him to repay a total of £5,736.

So, to settle Mr M's complaint, Moneybarn should do the following: -

- End the agreement with nothing further to pay and arrange collection of the vehicle at no cost to Mr M.

- Refund the deposit paid by Mr M, adding 8% simple interest per year* from the date of payment to the date of settlement.

- Calculate how much Mr M has paid in total and retain up to £5,736 to reflect fair usage. If Mr M has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.

- Remove any adverse information related to the agreement recorded on Mr M's credit file.

- If there are any arrears after the settlement has been calculated, Moneybarn should arrange an affordable repayment plan and treat Mr M with forbearance and due consideration.

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

My final decision

My final decision is that Moneybarn No. 1 Limited trading as Moneybarn should carry out the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 February 2025.

Jane Archer
Ombudsman