

Complaint

Mr S complains that Moneybarn No. 1 Limited charged him a higher interest rate than he had agreed and the car had a faulty heater. He also complained the dealer had charged him £200 for a service but it closed down without carrying it out.

Background

In July 2018 Mr S acquired a second hand car funded by a conditional sale agreement with Moneybarn. He says the dealer told him the agreement was for three years with an APR of 26%. He says the dealer told him his printer wasn't working and he could sign an electronic contract. The dealer said he would need to pay a deposit of £400, but when Mr S said he could only afford £200 he was told the balance could be put on to the finance agreement. The dealer said he could have the car immediately if he agreed to pay £200 when his next salary came in.

However, when the paperwork arrived it was for five years with an APR of 55.4%. He tried going back to the dealer, but he was fobbed off and shortly after it closed down. A few weeks after buying the car he complained to Moneybarn and it said he had signed the contract and rejected his complaint.

Mr S brought his complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld. He didn't consider the business had misrepresented the agreement and suggested Mr S take it up with the dealer. He noted Mr S had complained about the heater and Moneybarn had offered to have this diagnosed, but Mr S hadn't responded to that offer.

Mr S didn't agree and set out in some detail what had happened when he bought the car. He said he had originally intended buying another car, but it turned out not be suitable. He had signed some paperwork for that which he was told was a consent form. He said the electronic documentation didn't work and he believed what he had been told by the salesman that he had entered into an agreement with an interest rate of 26% payable over three years.

I issued a provisional decision as follows:

I asked Moneybarn about the dealer. It confirmed the dealer had ceased trading and it had financed four agreements with it in 2018. Moneybarn said it had carried out a check on the dealer when it started some nine years previously. It said it also monitors brokers and it added that Mr S was in considerable arrears having only made two payments yet he was making use of the car.

While I appreciated the position taken by the business I said I found Mr S's detailed testimony persuasive. He had told us in some detail what happened and he had done so on several occasions without variation. I thought there was some confusion at the very least and I accepted that Mr S was led to believe that he would only be paying a rate of 26%. He had explained that he thought this was excessive, but he needed a car and recognised his credit history meant he would have to pay a higher rate.

I said it was unfortunate the dealer disappeared so soon after the sale and we were unable to obtain any information from him. Although I couldn't say for certain, it was quite possible

he was keen to clear his stock prior to going out of business and that he rushed the process as Mr S had said.

I noted that the onus was on the broker to ensure that the information about the agreement was made clear to the customer and I couldn't be satisfied that the one signature on the form was sufficient to show that due diligence was followed in this case.

I said that Mr S has had use of the car and it was only right that he should pay for that, but I believed the agreement should be revised to use an interest rate of 26%. I thought it only right that Moneybarn amend the agreement from its inception and recalculate the monthly sums due based on a rate of 26%.

It was unfortunate that Mr S hadn't kept up payments and I recognised he is in significant arrears and would be even after the proposed revision of the agreement. He would need to agree a regular monthly payment to clear his debt. I thought it would be appropriate for the business to forgo any interest arising out of Mr S's failure to make regular payments while the complaint remained unresolved given I considered his complaint should be upheld.

Finally, I didn't consider that Moneybarn could be held responsible for the service which the dealer failed to provide.

Moneybarn didn't agree and said the decision was unprecedented. It said he had signed the agreement and his verbal testimony was in complete contradiction to the signed document. Moneybarn said the rates it offered were higher than mainstream lenders as its customers generally had a lower credit score. It said that initially Mr S had raised concerns about the quality of the car and the issue of the interest rate wasn't raised until later. It said he had arrears of over £4,000 and had been driving the car while not making payments. It said it would work with him to assist dealing with his financial difficulties.

My findings

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

I appreciate the position taken by Moneybarn and I have some sympathy with it, but after due consideration I have concluded my provisional decision should remain unchanged. I will explain why. I would add that I have given this decision much thought and I appreciate the forbearance of both parties while I did so.

The process of offering and agreeing finance is important and goes beyond a single signature. The dealer was acting for Moneybarn and it is reliant on the dealer following due process and making it clear to the customer the terms and conditions of the agreement. According to Mr S's testimony the process was rushed and he was told he would only pay £200 per month for three years. The key to this complaint is what happened when the loan was being offered and accepted. I remain unpersuaded that the due process was followed correctly.

Mr S has supplied credible testimony which has remained unchanged over the course of this complaint. He says that he signed the back of the form without seeing the details of the interest rate and other terms as he relied in the information provided by the dealer. Shortly afterwards he realised he was paying more than he had expected. It would have been helpful if we could have the dealer's testimony, but it disappeared a few days after the sale

and failed to provide the free service which it offered as part of the sale. Its behaviour in this regard gives cause for concern and it is reasonable to conclude it may have been less than diligent in its handling of the agreement.

Moneybarn has indicated that it carried out checks on the dealer some nine years ago when it began working with it. I have no other information about the dealer and whether the same personnel remained in place over the nine years or what training they received. I can see that in the light of all the circumstances it is reasonable to conclude that they may have been cavalier in their handling of the agreement as has been claimed by Mr S.

I agree it is for Moneybarn to set the interest rates for its lending and it may be that its rates are higher than other mainstream lenders. Indeed, it seems to me that the rate charged was particularly high. That said, I believe Mr S understands his financial situation was such that he would pay a higher rate and he presumed the rate of 26% he thought he was getting was reasonable. It is certainly higher than mainstream lending rates. He has made it clear that he didn't consider a rate of over 55% to be fair or took into account his ability to pay the monthly instalments.

I have noted Moneybarn's final response letter dated 28 November 2018 in which it refers to three areas of complaint, the missing service, a problem with the heater and the higher than expect interest rate. It would seem that he raised the interest rate at the same time as the other issues or very soon thereafter.

On balance I remain of the view that Mr S was misled about the interest rate and the loan should be recalculated using the rate he was told he would be charged. I appreciate that Mr S may not be in a position to repay his arrears and I recognise Moneybarn's offer to help insofar as it can. I consider beginning the loan afresh with the rate of 26% would allow both parties to reach an equitable income. I consider my decision is sufficiently clear to allow both parties to reach a fair resolution and I have allowed some leeway so that a fair agreement can be reached.

I would remind the bank of its obligation to deal with Mr S positively and sympathetically in helping him resolve his financial difficulties. If Mr S does not consider the bank to have met its obligations in the future, he may be entitled to bring a fresh complaint.

My final decision

My final decision is that I direct Moneybarn No. 1 Limited to recalculate the loan using an interest rate of 26% from inception and that it forgo any interest arising out of his failure to maintain regular payments. It should also work with Mr S to arrange a payment plan to address his arrears. It should also remove any adverse entries it has placed on Mr S's credit file. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 November 2020.

Ivor Graham
ombudsman