

complaint

Mr H is complaining that he was mis-sold a conditional sale agreement to acquire a car which he entered into with Moneybarn No. 1 Limited (Moneybarn).

background

In October 2016 Mr H entered into a conditional sale agreement with Moneybarn to acquire a car. He took out the finance through a credit broker. The total amount Mr H needed to repay was around £18,000 to be repaid over 60 months. And he had to repay £309.42 per month. When Mr H called to confirm the finance he asked the broker how much of the monthly repayment was to pay off the capital and how much of it was to pay off the interest and he was told around £160 of each repayment would be used to pay off the capital.

Mr H later got into financial difficulties and in September 2017 he contacted Moneybarn to say that he thought the loan might become unaffordable and was considering handing the car back. He enquired how much he still owed on the agreement and discovered that the information he was given initially was incorrect as, under the terms of the agreement, more of each monthly payment goes towards paying off the interest in the earlier stages of the loan term.

Mr H stopped making his monthly repayments in November 2017 and Moneybarn has charged £18 for each missed payment and added the charges to his loan account.

Moneybarn agreed that he was given incorrect information initially. And it said that it would honour what the call handler told him. So it said that, if Mr H decides to settle the finance early, it would ensure his early settlement figure takes into account the information provided at the beginning.

Mr H says that he wouldn't have entered into the finance agreement if he hadn't been given incorrect information. He also says that, when he tried to return the car, the early settlement figure was more than what he borrowed to acquire the car. Mr H says that he made it clear he wanted to end the finance agreement in September 2017. And he says he could have repaid the finance at the time had Moneybarn given him the settlement figure in line with what he was told at the outset. He said his sister had enough credit on her credit card to repay the finance.

He also says that he could have sold the car at the time. But he says that his car has lost value since that point so he says he'll be worse off if he hands the car back now than he would have been in September 2017.

Mr H also thinks that Moneybarn has taken advantage of his credit history to charge a very high rate of interest. He says he was working at the time and the loan repayments did fit within his budget. So he thinks it's unfair he's been charged so much interest.

Mr H wants Moneybarn to offer the following in settlement of this complaint:

1. Waive the amount he still owes on the finance and allow him to keep the car;
2. Refund all the administration charges its applied to the finance plus 8% simple interest;
3. Pay compensation for the distress and inconvenience this matter has caused him.

Our investigator didn't uphold the complaint. She didn't think the incorrect information given at the outset induced Mr H into entering into the contract. She said that he was calling to enter into the agreement when he raised his query. So she didn't think he would have chosen to not take it out if he'd been given correct information. She also thought that the loan was affordable to Mr H when he took it out.

The investigator noted Mr H's comments that he could have repaid the finance. But she said that, even after the settlement figure was adjusted in line with what he was initially told, he still would have owed around £8,000 on the finance. And she said the available credit on his sister's credit card was only around £5,500 so she didn't think he could have repaid the finance at the time.

Because of this the investigator thought Moneybarn's offer to adjust the settlement figure owed if he decides to end the agreement early in line with what he was told initially was fair.

Mr H didn't agree with the investigator and raised a number of submissions about why he didn't agree. But in particular he said he always intended to repay the finance early and he says he would not have entered into the agreement had he'd been given the correct information at the beginning. He says that he asked Moneybarn to freeze the interest on the agreement to allow him to only repay £160 per month, but it didn't allow him to do so. He thinks this is unfair. He also maintains that the interest Moneybarn has charged is unfair and he says Moneybarn has exploited him because of his poor credit history.

As Mr H didn't agree with the investigator's opinion, the complaint's been passed to me to decide.

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've decided to not uphold this complaint and I'll now explain why.

Mr H entered into a conditional sale agreement with Moneybarn to acquire a car. He's unhappy that the broker who arranged the finance gave him incorrect information which induced him into entering into the agreement. Moneybarn is responsible for any incorrect statement of facts that the credit broker makes during the sales process.

First of all I want to assure Mr H that I've reviewed everything he has said and sent to us carefully and I've taken it into account. Mr H has raised a number of issues that he wants this service to consider. For ease of clarity, I've considered each point separately.

misrepresentation of how the payments were broken down.

There's no dispute that the credit broker gave Mr H incorrect information. He was told that £160 of each of the monthly repayments he made would be used to repay the capital. But that wasn't true. It's common practice that, in the earlier stages of a loan term, more of each monthly payment goes towards paying off the interest. So the amount of capital repaid from each repayment will change each month throughout the loan term.

But even though Mr H was given incorrect information, I need to think about whether this has induced him into buying the car. I don't think it has. Mr H has told us that he acquired the

car because his wife's car had broken down and they needed a car to take their children to school. I don't dispute that Mr H may have intended to settle the finance early. But I think his priority was getting a car.

I've also listened to the telephone call where the broker gave Mr H the incorrect information and it's clear that he'd already chosen to buy the car and take out the finance agreement. And I don't think he would have changed his mind had he been given the correct information about how the monthly payments would be broken down between interest and capital.

Moneybarn has agreed to honour what the credit broker said if Mr H chooses to settle the finance early. Mr H says that he could have settled the finance in September 2017 had Moneybarn applied the payments to his account in line with what the credit broker had said. But the settlement figure he was given was correct in line with the terms of his finance agreement. So Moneybarn didn't do anything wrong in this respect. But, irrespective of this, I'm not persuaded that Mr H would have been able to pay off *all* of the outstanding finance. Mr H still owed around £9,000 on the finance in September 2017. He's said that his sister could have paid off the finance on her credit card. But, from what I've seen, I don't think she had sufficient credit to do so. And I haven't seen anything to show that Mr H had other means to pay it off.

I appreciate Mr H was under the understanding that £160 of each monthly repayment would be used to repay the capital on the finance. But, as I said, I'm satisfied Mr H would have still entered into the finance agreement had the credit broker not made a misrepresentation. So, while I can understand why Mr H is unhappy about what's happened, he's still in the same position he would be in if the misrepresentation hadn't happened. So I don't think it's fair and reasonable to require Moneybarn to compensate him for this. And I think its offer to honour what the credit broker said if Mr H decides to end the finance agreement early is more than fair.

I naturally sympathise with the situation that Mr H has found himself in due to no fault of his own. It appears he's unfortunately got into financial difficulties due to having to give up work to look after his children. But I can't hold Moneybarn responsible for this.

affordability

In considering whether to lend money to Mr H, Moneybarn needed to carry out reasonable and proportionate checks to assess whether Mr H was able to repay the loan. Moneybarn says that it asked Mr H to provide proof of his income and he provided two payslips. It said that this showed Mr H had an average weekly income of around £355.20. It said that it also did a credit check to assess affordability, indebtedness and payment history. It said that it ensured all appropriate checks were carried out prior to agreeing to offer finance to Mr H.

I'm satisfied that Moneybarn did carry out reasonable checks to assess Mr H's average monthly income. But Mr H was applying for finance of around £18,000 (including interest) with monthly repayments of around £300 which I don't think is an insignificant amount. Given this I would have expected Moneybarn to also review Mr H's monthly expenditure to ensure he could keep up his monthly repayments. However, Mr H has provided us with a copy of his bank statements for the three months before he took out the finance. And I don't think the repayments were unaffordable to him. Mr H also hasn't given me anything to make me think otherwise.

Mr H also thinks that Moneybarn has taken advantage of his credit history to charge a very high rate of interest. He says he was working at the time and the monthly loan repayments did fit within his budget. So he thinks it's unfair he's been charged so much interest.

It's at the credit provider's discretion how much it wants to charge in interest. But it – and the credit broker where relevant – must clearly explain to the consumer how much interest it's charging so that the consumer can make an informed choice as to whether they want to take out the finance given the amount of interest being charged.

Moneybarn has charged around £9,000 in interest with an APR of 36%. But the credit agreement clearly sets these charges out. I'm also satisfied, from listening to the call with the credit broker that Mr H was aware of how much interest he had to pay. And he chose to take out the finance. So I don't think Moneybarn needs to waive any interest.

Moneybarn's response to Mr H being in financial difficulties

Mr H is unhappy that Moneybarn wouldn't freeze the interest being charged on the loan. But it didn't have to as it was contractually entitled to charge it. However Mr H hasn't made any repayments since November 2017 because he says the finance has become unaffordable. Arrears have built up on the finance since this time and Mr H has incurred charges for each missed payment. I'm also conscious that the car would have lost value during this time.

I can see that Moneybarn did send letters to Mr H asking him to contact it to try and find a solution so that he could keep the car. It also agreed to suspend the payments he had to make while we looked into this complaint. And I don't think it was unreasonable for it to give him a period of time to allow him to get back on track. But I think it should have been clear by April 2018 that Mr H wasn't going to be able to get the finance back on track.

So I think Moneybarn should have explained all his options clearly then – i.e. allow him to either voluntarily surrender the car or terminate the agreement – and what each option would mean for him. However, I can also see that Moneybarn made a fair offer to Mr H for him to return the car and it would honour what he was initially told by the dealership – i.e. assume he paid £160 of each repayment towards the capital and the rest towards the interest. And I think this would put Mr H in a better position that he would usually be in. Moneybarn has said that this offer is still available to Mr H. I can also see that Moneybarn hasn't charged any late payment charges on his account since June 2018.

So, taking everything into account, I don't think it has treated him unfairly in this case.

my final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 December 2018.

Guy Mitchell
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