

The complaint

Mr W complains that Moneybarn No. 1 Limited irresponsibly granted him a conditional sale agreement he couldn't afford to repay.

What happened

In May 2018, Mr W acquired a used car financed by a conditional sale agreement from Moneybarn. Mr W made an advance payment of £4,999 and was required to make 59 monthly repayments of £242. The total repayable under the agreement was £19,282.

Mr W says that Moneybarn didn't complete adequate affordability checks. He says if it had, it would have seen that he had other debts including payday loans and had defaulted accounts as well as a county court judgement on his credit file. He says adequate checks would have shown the agreement wasn't affordable. Moneybarn didn't agree. It said that it carried out a thorough assessment which included a credit check and reviewing Mr W's payslips from the months before the agreement. It said that although Mr W did have a defaulted debt and a county court judgment on his credit report its customers often have some adverse credit information and Mr W fell within its lending criteria. It says that Mr W's average income in the months before the agreement was around £3,000. It noted that there was a bonus payment included in one of his payslips but said that recalculating using just Mr W's basic income still resulted in Mr W falling within its lending criteria.

Our adjudicator didn't recommend the complaint be upheld. She thought Moneybarn didn't act unfairly or unreasonably by approving the finance agreement.

Mr W didn't agree and reiterated that a proper credit check would have shown he had other debts, defaulted accounts and a county court judgement. He provided details from his bank accounts and credit report. Our adjudicator considered the additional information but didn't think this was enough to say that the finance shouldn't have been provided.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- Before granting the finance, I thought Moneybarn gathered a reasonable amount of evidence and information from Mr W about his income. It reviewed two payslips. One month's payslip included a bonus payment. Moneybarn recalculated based on Mr W's basic salary and said the repayments were still within its lending criteria. I thought it was reasonable that the average of the two months' basic income was used in the assessment. This gave Mr W a monthly income of around £2,300.
- Moneybarn didn't provide a copy of the credit check it completed but noted that there was adverse information on this which was taken into account and Mr W still met its lending criteria. I looked through the additional information Mr W provided to understand what would likely have been seen in the credit check and this showed that he had several defaults, including accounts defaulting within 12 months of the agreement and a county court judgement. I thought this ought to have indicated that

Mr W was likely to be struggling financially and that it would have been proportionate for Moneybarn to have got a more thorough understanding of Mr W's financial circumstances before lending.

- Moneybarn didn't ask Mr W about his expenditure. Although it did complete a credit check, this wouldn't have indicated what Mr W's regular living expenses were. Without knowing what Mr W's regular committed expenditure was Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.
- In this case, given the adverse information on Mr W's credit file I thought it would have been proportionate for Moneybarn to have verified Mr W's expenditure. This could have been done by requesting copies of Mr W's bank statements. I reviewed the statements that were provided and these gave limited information about Mr W's committed expenditure. They showed expenses for items such as utilities, and other costs of around £400 a month. Additional to this there were large payments each month to another person. Mr W explained that due to his gambling at the time he would transfer part of his income to his partner to cover the costs of the mortgage, household bills and payments to other creditors such as payday lenders. Based on the information for the months leading up to the agreement, the amount Mr W paid varied from around £1,650 to over £3,800 but a reasonable assessment I thought would have been around £1,700. This combined with his other committed expenses of £400 gave monthly outgoings of around £2,100 or more. Mr W's income was around £2,300 which demonstrated that Mr W didn't have enough disposable income to afford the additional borrowing.
- As I thought it likely that proportionate checks would have revealed this to Moneybarn, I didn't think it acted fairly by approving the finance.

In my provisional decision I noted that Mr W incurred costs when the car was returned for refurbishment and a replacement key, and I said these were a separate issue and remained payable. This issue wasn't addressed in the provisional decision and I said if Mr W wished to dispute these this would need to be raised separately.

Mr W agreed with my provisional decision but asked that the cost of repairs be the loss of value cost of £1,209.14 not the original estimate for repairs as these were not completed. While I appreciate the point that Mr W has made as this issue isn't being addressed in this decision if he wishes to challenge the charges applied he will need to do so separately to allow Moneybarn an opportunity to respond directly to that issue.

Moneybarn said it had nothing further to add.

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.

As I set out in my provisional decision, I don't think that Moneybarn carried out proportionate checks. I think if it had done it would have realised that the lending wasn't sustainably affordable for Mr W. No new information regarding the affordability checks was provided in

response to my provisional decision and so my conclusions haven't changed and I am therefore upholding this complaint. I

Putting things right

As I don't think Moneybarn ought to have approved the lending, it should therefore refund all the payments Mr W has made, including any deposit. However, Mr W did have use of the car around 19 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £242 a month 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. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr W'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 Mr W should pay is £180 for each month he had use of the car. This means Moneybarn can only ask him to repay a total of £3,420. Anything Mr W has paid in excess of this amount (including the deposit) should be treated as an overpayment. As noted above Mr W incurred costs when the car was returned for refurbishment and a replacement key, these are a separate issue and not part of this decision so if Mr W wishes to dispute these this would need to be raised separately.

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

- End the agreement with nothing further to pay (see note regarding charges already incurred).
- Refund all the payments Mr W has made (including the deposit), less £3,420 for fair usage.
 - As Mr W has paid more than the fair usage figure, Moneybarn should refund any overpayments, adding 8% simple interest per year* from the date of each.
- As Moneybarn has received the fair usage amount, it should remove any adverse information recorded on Mr W's credit file regarding the agreement.

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

My final decision

My final decision is that I uphold this complaint. Moneybarn No. 1 Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 July 2022.

Jane Archer
Ombudsman