

## **Complaint**

Miss Y is unhappy with what Moneybarn No.1 Limited (trading as “Moneybarn”) has agreed to do to put things right after it agreed it shouldn’t have entered into a conditional-sale agreement with her without first carrying out a proper financial check to ensure that the finance was affordable.

## **Background**

Miss Y also initially complained about the quality of the car she purchased as a result of being provided with her conditional-sale agreement. However, we’ve looked at Miss Y’s concerns about that matter separately. And this decision solely concerns Moneybarn’s decision to agree to lend to her.

In May 2020, Moneybarn provided Miss Y with finance for a used car. The cash price of the vehicle was £10,995.00. Miss Y paid a deposit of £345 and applied for finance to cover the remaining £10,650.00. The conditional-sale agreement had interest, fees and total charges of £9,949.85 and the total amount to be repaid of £20,595.85 was due to be repaid 59 monthly instalments of £349.15.

In July 2023, Miss Y complained that the payments to this conditional-sale agreement were unaffordable and so the finance should never have been provided to her. Moneybarn upheld Miss Y’s complaint and it agreed to remove all of the interest, fees and charges applied effectively leaving Miss Y in the position where she’d only have to repay the remainder of the amount she was lent and then ownership of the vehicle would revert to her.

Miss Y was dissatisfied at this and referred her complaint to our service as a result.

Miss Y’s complaint was considered by one of our investigators. Initially she thought that Miss Y should only have to pay an amount for usage for the period that she had the vehicle. But she eventually reached the conclusion that what Moneybarn had agreed to do was fair and reasonable in all the circumstances of this complaint.

Miss Y was unhappy with this and asked for an ombudsman to review her complaint.

## **My findings**

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 Miss Y’s complaint.

As Moneybarn has already accepted that it shouldn’t have lent to Miss Y in the circumstances that it did, I do not need to consider whether Miss Y’s complaint should be upheld. I merely need to consider whether what Moneybarn has already to do to put things right for Miss Y is fair and reasonable in all of the circumstances of the complaint.

### *Our typical approach to putting things right*

It might help for me to explain that 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 Miss Y in the position she'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. This is especially the case where goods are involved. In this case, Miss Y did enter into the conditional-sale agreement and was given the car in question.

There is also no dispute that she has been in possession of and has had the use of the vehicle for some time. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss Y back in the position she would be in if she hadn't been sold the car in the first place.

As this is the case, I have 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. I've taking this into account in determining what it would be fair and reasonable for Moneybarn to do given the circumstances here.

### *The position in Miss Y's case*

It's worth noting that in circumstances where goods are involved – i.e. such as where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, like here - it is usually appropriate for the car to be returned and the agreement ended.

So this would lead to Miss Y returning the car. But that wouldn't mean that she shouldn't pay anything at all, or that what's been paid so far is sufficient. I would need to consider that Miss Y has had use of the car for almost four years. And Miss Y simply returning the car at this stage is unlikely to reflect this, in circumstances where it would be fair and reasonable to take account of the fact that Miss Y had the use of a vehicle of her choosing for a period of time.

Our investigator considered this matter and thought that a monthly figure of £200 adequately reflected Miss Y's usage of the vehicle. And given that Miss Y has had the vehicle for 46 months (it was 42 at the time of the investigator's assessment) that would now mean that she should pay £9,200.00 for having had use of the vehicle for this period. Moneybarn accepts that this is fair and reasonable notwithstanding its alternative offer. But Miss Y does not as she says that this is too much.

Nonetheless, as the investigator has explained, there isn't an exact formula for working out fair usage. And in deciding what would be fair and reasonable here, I've thought about the amount of interest charged on the agreement, Miss Y's usage of the car and what sort of costs she might have incurred to stay mobile if she didn't have this particular vehicle.

In doing so, I'm mindful that Miss Y doesn't appear to have had a car when she entered into this agreement. For example, I can't see a part-exchange or anything else to indicate that this was the case. Bearing this in mind and there isn't anything plausible here that indicates Miss Y would have been able to stay mobile with a vehicle of the type funded by Moneybarn

for less than £200 a month, I'm satisfied that a monthly usage figure of £200 month is a fair and reasonable amount in this instance.

As I understand it (and this is confirmed by the statement of account), Miss Y has paid slightly more than this. Furthermore, Miss Y also paid a £345 deposit to the motor dealer which she purchased her vehicle from, which Moneybarn would ordinarily be expected to refund to her as a result of the complaint being upheld.

So this means that Miss Y would receive a small refund should she decide to return the vehicle to Moneybarn at this stage. However, given the amount of the refund, which is unlikely to allow her to purchase another vehicle at this stage, I don't think it would be fair and reasonable for Miss Y to return the vehicle to Moneybarn for a small refund.

*Why Miss Y repaying the capital amount Moneybarn lent would result in a fair and reasonable resolution given the particular circumstances of this case*

When it comes to irresponsible lending cases, we typically say the borrower should repay the amount lent and that the lender should refund 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 is 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 Miss Y paying back the £10,650.00 originally lent and any interest, fees and charges she actually paid being refunded (along with interest at 8% simple a year) to her. It is usually the case that it would not be fair and reasonable for this to be done in cases involving car finance because the customer will not have had the full benefit of the amount borrowed, as ownership of the vehicle will not pass to the borrower unless and until the full amount is repaid.

However, in this case, Moneybarn has said that as Miss Y has already paid a significant majority of the amount she borrowed and any refund would not be sufficient for her to purchase another car to keep her mobile, it is prepared to allow her to keep the car and pay the remaining amount outstanding through an affordable payment plan.

I understand that Miss Y has disputed paying the full amount borrowed as she says that she had to make repairs to her vehicle. But we've already given Miss Y an answer on that part of her complaint and told her what she needs to do if she is unhappy at that. As far as I can see, Miss Y did not challenge that answer. And I don't think that it would be fair and reasonable for me to now further consider this same matter as part of this complaint and I think that Miss Y should pay the amount she was lent to begin with.

As this is the case, I'm satisfied that that it would be fair and reasonable for Miss Y to repay the remaining amount left on her agreement once all of the interest, fees and charges added to the agreement from the outset are removed. Moneybarn should contact Miss Y to arrange a suitable repayment plan for this amount. I would encourage Miss Y to get in contact with and cooperate with Moneybarn to reach a suitable agreement for this. And once Miss Y has repaid the outstanding amount Moneybarn should transfer ownership of the vehicle to Miss Y.

*Miss Y's credit file going forward*

Finally, I turn to Miss Y's credit file going forward. Miss Y may argue that any adverse information regarding this agreement should be removed from her credit file as Moneybarn has upheld her complaint. I've thought about matters and I fully appreciate why it's possible Miss Y could be unhappy with adverse information being recorded on her credit file.

But I have to take account of the fact that a balance will remain outstanding here. Asking Moneybarn to remove all adverse information here will effectively see it needing to record that this balance no longer needs to be repaid (in circumstances where I've already explained why it would be fair and reasonable for it to be), or that Miss Y is up-to-date with her payments.

This would see Moneybarn recording information that doesn't reflect the position that Miss Y is in and is wholly inaccurate. In my view, recording such information would not only be inaccurate but it would also arguably be counterproductive and not in Miss Y's interests or that of any future lender, as a future lender would not be able to factor this balance owing into any decision on whether to lend to Miss Y.

So I'm satisfied it is fair and reasonable for any adverse information to be recorded about Miss Y's conditional-sale agreement to remain for the period an outstanding balance remains. Although Moneybarn should ensure that it is not reflecting that Miss Y owes more than she now will as a result of the outcome of her complaint. Should Miss Y consider that it would be fair for any adverse information to be removed, if and when she repays the outstanding balance, this is a matter that she should take up with Moneybarn at that point.

Overall and having considered everything, I'm satisfied that what Moneybarn has already agreed to do to put things right for Miss Y is fair and reasonable in all the circumstances of his complaint. So I'm not requiring Moneybarn to do anything more or anything further. I now leave it to Miss Y to decide whether she wishes to accept the resolution put forward.

I appreciate this will be very disappointing for Miss Y. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Moneybarn No.1 Limited has agreed to do to put things right for Miss Y is fair and reasonable in all the circumstances of this complaint. So I'm not requiring it to do anything more, or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 15 April 2024.

Jeshen Narayanan  
**Ombudsman**