

## The complaint

Mr B complains that Moneybarn No. 1 Limited (Moneybarn) failed to complete sufficient affordability checks prior to approving a Conditional Sale agreement for him. He says by them not doing so, they failed to act fairly and reasonably. He also complains about the way Moneybarn handled his complaint.

Mr B is represented in this complaint by a professional representative but, for ease, I'll refer to Mr B directly throughout my decision.

## What happened

- In September 2017, Mr B acquired a used vehicle, financed through an agreement with Moneybarn.
- The cash price of the vehicle was £16,800. Mr B made an advance payment to Moneybarn of £5,800 with the remaining £11,000 provided as finance through the agreement.
- Mr B was required to repay 59 monthly payments of £357.39 starting one month after the date of the agreement. The total amount repayable was £26,880.11.
- Mr B fell behind with his repayments soon after his agreement started. Mr B sold the vehicle to a third party in September 2021. The funds from the sale were sent directly to Moneybarn, settling the outstanding finance.
- In February 2023, Mr B complained to Moneybarn that the finance had been agreed unfairly and unreasonably, and that had they undertaken sufficient affordability checks the lending wouldn't have been provided to him.
- Moneybarn didn't agree they'd acted irresponsibly and said they were satisfied the checks they completed were adequate and proportionate to determine the lending was affordable.
- One of our Investigators looked into things and said he didn't think Moneybarn had completed reasonable and proportionate checks prior to agreeing the finance. He said had they done, he thought it would've likely shown the lending wasn't affordable or sustainable for Mr B, so he didn't think Moneybarn should've lent to him.
- Our Investigator said to put things right Mr B should only pay the original cash price of the vehicle so any payments made in excess of £16,800 should be refunded to him. He also said Moneybarn should add interest to any amount refunded and remove any adverse data from Mr B's credit file.
- Both Mr B and Moneybarn accepted our Investigators view however disagreed on the amount of redress due to be paid. Moneybarn said the funds from the sale of the vehicle were received from a third party rather than directly from Mr B and as such could not be considered to form part of the redress.

- Our Investigator disagreed and said had Mr B still had possession of the vehicle, he'd be instructing Moneybarn to refund anything Mr B paid over the cash price of the vehicle and to transfer ownership of it to him.
- As such, our Investigator said he thought the proceeds from the sale of the vehicle should be included in the overpayments refunded to Mr B.

Because both parties remained unhappy, this complaint has been passed to me to decide.

### **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 Investigator's view that Moneybarn shouldn't have approved the agreement has been accepted by all parties, so I won't comment further on any of the complaint points raised.
- Instead, it is what Moneybarn should do to put things right that remains in dispute and it's this I'll focus on in my decision.

### **Putting things right**

First, I consider it beneficial to explain my reasoning as to what I've decided Moneybarn should do to put things right. Then I'll set out exactly what Moneybarn should do:

Where a business has made an error, our service would usually aim to put the consumer back in the position they would've been in had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible as the lending can't just be undone.

As both parties have accepted Moneybarn ought not to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges for the borrowing. So, Mr B should therefore only have to pay the original cash price of the vehicle, £16,800.

Payments to Mr B's agreement exceeded the cash price of the vehicle so Moneybarn should refund to him any amount received over this amount, adding interest as set out below.

Had Mr B still been in possession of the vehicle, I would be instructing Moneybarn to also transfer ownership of the vehicle to him. But here, prior to the agreement being settled, Mr B sold the vehicle to a third-party dealership with the funds to settle the agreement, £7,591.38, being sent directly to Moneybarn.

But ultimately, however those funds were received, Moneybarn still received them, and I'm satisfied this amount should be considered as an overpayment they received above and beyond the cash price of the vehicle. As such it should be included in the refund to Mr B.

Moneybarn have noted the terms of the agreement which say the ownership of the goods, in this case the vehicle, will remain their property until the total amount payable under the agreement in addition to any other sums due have been paid and that the vehicle was sold prior to the agreement being settled.

But as it's been found Moneybarn shouldn't have approved the lending, I don't consider the terms of the agreement to change my mind here.

Moneybarn also say by refunding the proceeds from the sale of the vehicle, it would place Mr B into a better position than he would've been in had he not taken the lending out. But at the same time, I don't consider it fair Moneybarn should benefit by receiving more than the capital it lent, simply because the funds were transferred directly to them by the dealership and not by Mr B himself.

I'm satisfied the redress I've set out puts Mr B back into the closest position as it is possible to put him in considering the circumstances of this case. As I've explained, Mr B has paid in excess of the cash price of the vehicle. Had he still been in possession of it, ownership would be transferred to him and should he then go on to sell it, he would benefit from the proceeds of that sale.

In this case, while not ideal, Mr B sold the car prior to the agreement being settled and used those funds to clear the outstanding finance. And I find it fair and reasonable the amount of £7,591.38 is included in any overpayment amounts refunded to Mr B.

So, for the reasons I've explained, to put things right Moneybarn should:

- Refund to Mr B any payments received to the agreement in excess of £16,800. Moneybarn should add 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr B's credit file regarding the agreement.

For these reasons, I uphold this complaint and I'm satisfied the redress set out reaches a fair and reasonable resolution to this complaint.

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

### **My final decision**

My final decision is that this complaint should be upheld. In order to resolve Mr B's complaint, Moneybarn No. 1 Limited should action the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 May 2024.

Sean Pyke-Milne  
**Ombudsman**