

The complaint

Miss S believes Secure Trust Bank Plc trading as Moneyway acted irresponsibly by agreeing a hire purchase agreement she'd applied for.

What happened

In May 2015, Miss S was supplied with a used car through a hire purchase agreement with Moneyway. She paid a deposit of £200, and the agreement was for £12,250 over 61 months; with 60 monthly payments of £299.98 and a final payment of £404.98. Miss S voluntarily terminated the agreement on 27 March 2018. She returned the car and, as she had paid £9,907.34, more than 50% of the amount owing under the agreement, she wasn't required to make any further payments.

Miss S has complained that Moneyway didn't act responsibly when approving the finance. She's said that they didn't carry out appropriate checks – she was continually in her overdraft and reliant upon short-term high-interest loans, otherwise known as payday loans. She also thinks that, because she'd been declined by other, lower interest, lenders, Moneyway capitalised on her situation by providing a high interest loan.

Moneyway didn't respond to Miss S's complaint, as they thought she had waited too long before she complained. Miss S wasn't happy with this, so she brought her complaint to us for investigation. An ombudsman reviewed the matter and issued a final decision saying this was something we had the jurisdiction to consider, so the matter was passed to an investigator to consider the complaint Miss S had made.

Our investigator didn't think the checks Moneyway had done were adequate, and they thought Moneyway should've taken further steps to verify Miss S's income and committed expenses. They also thought that, had Moneyway done this, it would've shown the finance wasn't affordable for Miss S. So, they thought Moneyway needed to do something to put things right.

So, our investigator thought Moneyway should refund the deposit Miss S paid, as well as any payments she'd made, over and above the amount of money she borrowed, plus statutory interest.

Moneyway initially didn't agree with the investigator. They said that, because Miss S hadn't paid more than the amount she borrowed when the agreement was terminated, then she wasn't due a refund of the deposit she paid. However, they subsequently agreed to refund this amount.

Miss S initially agreed with the investigator, but subsequently changed her mind. She wasn't happy that the interest was 'front loaded' and that she paid over £9,000, only to have nothing to show from it. She also said that she was under huge financial pressure when she had the loan, and Moneyway refused to allow her to defer any payments while she was struggling. And she thought Moneyway should refund the interest she was charged on the agreement.

I issued a provisional decision on 22 November 2023, where I explained my intention to uphold the complaint. In that decision I said:

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

- 1. Did Moneyway complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the credit in a sustainable way?*
 - a. if so, did Moneyway make a fair lending decision?*
 - b. if not, would reasonable and proportionate checks have shown that Miss S could sustainably repay the borrowing?*
- 2. Did Moneyway act unfairly or unreasonably in some other way?*

And, if I determine that Moneyway didn't act fairly and reasonably when considering Miss S's application, I'll also consider what I think is a fair way to put things right.

In this instance, by accepting the investigator's view, Moneyway agree they didn't make a fair lending decision, and that they shouldn't have approved the finance for Miss S. Miss S also agrees this is the case, but she doesn't agree with the remedy recommended by the investigator. As such, I'm satisfied I don't need to consider the merits of the issue within my decision. Instead, I'll focus on what I think Moneyway should do to put things right.

In circumstances where we don't think the finance agreement should've been approved, and where it's been fully repaid, it's our approach to say that the business should refund all payments made over and above the amount borrowed. This is to reflect the fact that the customer has possession of the car but, as the finance agreement should never have been approved, no interest or fees should've been charged.

While this is what the investigator has recommended, the above circumstances aren't applicable to Miss S. She's not in possession of the car, and she's still paid interest and fees on an agreement that shouldn't have been approved. So, in these circumstances, I think the fair approach is that Moneyway refund any payments over and above what would be considered fair usage. This reflects the fact that Miss S had use of the car while it was in her possession, so should pay for this usage; but a portion of the interest and fees are refunded to her, reflecting that the agreement should never have been approved in the first place.

There's no set formula for calculating fair usage. And things such as the deposit, payments, interest, and mileage done are all factors that need to be taken into consideration. I've reviewed the publicly available MOT information for the car supplied to Miss S and seen that the car did less than 10,000 miles in the period November 2015 to May 2018 – the car was in Miss S's possession from May 2015 to May 2018. So, I'm satisfied that Miss S used the car for substantially less than average mileage. As such, and having reviewed all the facts and circumstances, I'm satisfied that a reasonable fair usage figure is £200 a month. And Moneyway should refund anything Miss S has paid over and above this amount.

Therefore, my provisional view is that, if they haven't already done so, Moneyway should:

- end the agreement with nothing more to pay;*
- remove any adverse entries relating to this agreement from Miss S's credit file;*
- refund all payments Miss S paid, less £200 a month for fair usage, calculated from when Miss S was supplied with the car, to when the car was returned following voluntary termination;*

- *refund the £200 deposit Miss S paid, as this wouldn't have been payable if the agreement hadn't been approved; and*
- *apply 8% simple yearly interest on these refunds, calculated from the date Miss S made the payments to the date of the refund[†].*

[†]If HM Revenue & Customs requires Moneyway to take off tax from this interest. Moneyway must give Miss S a certificate showing how much tax they've taken off if she asks for one.

Responses

Moneyway didn't respond to my provisional decision.

Miss S agreed with my provisional decision. However, she said that, due to a number plate change on the car, the MOT mileage record wasn't correct. She said she had the car from May 2015 to May 2018, during which she did a total of 27,983 miles – less than 10,000 miles a year, not less than 10,000 miles overall.

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.

As Moneyway haven't said anything to the contrary, I'm taking their lack of comments to mean they don't object to my provisional decision.

I've considered Miss S's comments about the mileage. While she has done more miles than I originally believed, this is still below what could be expected as average mileage for the car. As such, I'm satisfied this doesn't affect what I consider to be fair usage.

As the comments I've received don't change my view, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision. And Moneyway need to do something to put things right.

Putting things right

For the reasons given, Moneyway should:

- end the agreement with nothing more to pay;
- remove any adverse entries relating to this agreement from Miss S's credit file;
- refund all payments Miss S paid, less £200 a month for fair usage, calculated from when Miss S was supplied with the car, to when the car was returned following voluntary termination;
- refund the £200 deposit Miss S paid, as this wouldn't have been payable if the agreement hadn't been approved; and
- apply 8% simple yearly interest on these refunds, calculated from the date Miss S made the payments to the date of the refund[†].

[†]If HM Revenue & Customs requires Moneyway to take off tax from this interest. Moneyway must give Miss S a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss S's complaint about Secure Trust Bank Plc trading as Moneyway. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 January 2024.

Andrew Burford
Ombudsman