

Complaint

Mr M and Miss R complain that Moneybarn No.1 Ltd (“Moneybarn”) unfairly entered into a conditional-sale agreement with them. They’ve said the agreement was unaffordable and so they shouldn’t have been accepted for it.

Background

In November 2019, Moneybarn provided Mr M and Miss R with finance for a used car. The cash price of the vehicle was £7,000.00. Mr M and Miss R paid a deposit of £20 and entered into a conditional sale agreement with Moneybarn for the remaining £6,980.00. The loan had interest, fees and total charges of £5,311.91 and the total amount to be repaid of £12,291.91 (excluding Mr M and Miss R’s deposit) was due to be repaid in 47 monthly instalments of £261.53.

Mr M and Miss R’s complaint was considered by one of our investigators. She didn’t think that Moneybarn had done anything wrong or treated Mr M and Miss R unfairly. So she didn’t recommend that Mr M and Miss R’s complaint should be upheld. Mr M and Miss R disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

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 Mr M and Miss R’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr M and Miss R’s complaint. I’d like to explain why in a little more detail.

Moneybarn needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether Mr M and Miss R could make their payments in a sustainable manner before agreeing to lend to them. And if the checks Moneybarn carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower’s ability to repay.

Moneybarn says it agreed to this application after it completed an income and expenditure assessment on Mr M and Miss R. During this assessment, Mr M and Miss R provided details of their monthly income. Moneybarn says it also carried out credit searches on Mr M and Miss R which showed some low outstanding balances on existing credit and some adverse information.

But when the amount Mr M and Miss R already owed plus a reasonable amount for Mr M and Miss R's living expenses, based on statistical data, were deducted from their monthly income the monthly payments were still affordable. On the other hand, Mr M and Miss R say that these payments were unaffordable.

I've thought about what Mr M and Miss R and Moneybarn have said.

The first thing for me to say is that much like our investigator I don't think that the checks Moneybarn carried out did go far enough. In my view, bearing in mind it will have seen a number of defaults registered against Mr M and Miss R as a result of its credit search. I'm satisfied that Moneybarn needed to take further steps to verify Mr M and Miss R's actual living costs, rather than rely on statistical data, in order for its checks to have been proportionate.

But a lender failing to carry out sufficient checks doesn't on its own mean that a complaint should be upheld. I still need to be satisfied that a lender carrying out such checks would have shown the payments to be unaffordable. So as Moneybarn didn't carry out sufficient checks, I've gone on to decide what I think Moneybarn is more likely than not to have seen had it obtained further information from Mr M and Miss R.

Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Mr M and Miss R's regular living expenses as well as their income and existing credit commitments. I've considered the information Mr M and Miss R have provided us with – including their bank statements.

Having done so, this information does appear to show that when Mr M and Miss R's committed regular living expenses, existing credit commitments and a reasonable amount for their defaulted accounts are deducted from their joint income, they did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

So overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr M and Miss R did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Moneybarn from providing these funds, or entering into this agreement with them. As this is the case, I also think it is unlikely that a court would conclude that the relationship between Moneybarn and Mr M and Miss R was unfair to Mr M and Miss R under section 140A Consumer Credit Act 1974.

As this is the case, I'm therefore satisfied that Moneybarn didn't act unfairly towards Mr M and Miss R when it lent to them and I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr M and Miss R. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr M and Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss R

to accept or reject my decision before 27 November 2023.

Jeshen Narayanan
Ombudsman