

The complaint

Mrs J, via a third party, complains that Moneybarn No.1 Ltd ("Moneybarn") unfairly entered into a conditional sale agreement with her. She says the agreement was unaffordable and this would have been obvious and apparent to Moneybarn had it undertaken "*suitable affordability checks*".

What happened

In June 2017 Moneybarn provided Mrs J with finance for a used car. The purchase price of the car was £7,649.00. Mrs J didn't make an advance payment and entered into a conditional sale agreement, which had a 60-month term, with Moneybarn for the entire purchase price.

The loan had interest and charges of £7,613.12 over the course of the 60-month term. This meant that the total amount to be repaid was £15,262.12 repayable in 59 monthly instalments of £258.68.

In January 2023 Mrs J complained to Moneybarn that it shouldn't have lent to her in June 2017. Moneybarn looked at the complaint and didn't uphold it. It said that it was satisfied it hadn't been irresponsible in its decision to lend.

Mrs J's complaint was considered by one of our investigators. He didn't think that Moneybarn had done anything wrong or treated Mrs J unfairly. So he didn't recommend that Mrs J's complaint should be upheld. Mrs J disagreed and so her complaint has been passed to me for review and decision.

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.

In this decision I've focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument (including those submitted by Mrs J in response to the investigator's view) to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add, especially in the light of Mrs J's response to the investigator's view, I've not carried out a form of compliance check or sought to enforce the regulator's rules. What I've done is looked at everything provided and decided whether Mrs J has lost out due to Moneybarn failing to act fairly and reasonably in its dealings with her.

Finally, and for the avoidance of any doubt, I would like to make it clear that I'm only considering in this decision Mrs J's complaint that Moneybarn acted irresponsibly in lending to her, not any other complaint she might have against it.

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 Mrs J's complaint.

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 Mrs J could make her payments in a sustainable manner before agreeing to lend to her. 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.

Having carefully thought about everything I've been provided with, I'm not upholding Mrs J's complaint. I'd like to explain why in a little more detail.

Moneybarn says it agreed to lend after it completed an income and expenditure assessment on Mrs J. During this assessment, Mrs J provided details of her monthly income. Moneybarn says it also carried out a credit search on Mrs J which showed low borrowing levels, no county court judgements, no defaults and no insolvencies.

Moneybarn says when the amount Mrs J already owed plus a reasonable amount for her living expenses were deducted from her monthly income the monthly payments were affordable.

On the other hand Mrs J says that given her personal and financial circumstances the monthly repayments were unaffordable from the outset.

I've thought about what Mrs J and Moneybarn have said.

The first thing for me to say is that like the investigator I don't think that the checks Moneybarn carried out did go far enough. In my view, Moneybarn needed to take further steps to verify Mrs J's actual living costs, rather than rely on statistical data, in order for its checks to have been proportionate.

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 Mrs J. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Moneybarn to have had a reasonable understanding about Mrs J's regular living expenses as well as her income and existing credit commitments.

I've considered the information Mrs J has provided us with – including her bank statements for the months of March, April, May and June 2017. And having done so, this information does appear to show that when Mrs J's committed regular living expenses and existing credit commitments (including overdraft charges and interest) are deducted from her monthly income (which I accept in respect of earned income commenced in May 2017), she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

What I'm required to think about here in order to determine whether Moneybarn acted fairly and reasonably towards Mrs J, is whether Mrs J had sufficient disposable income to enable her to make the monthly payments to this agreement. And having considered everything, I'm satisfied that the available information indicates that Mrs J did have sufficient funds left over to make her monthly payments in a sustainable manner.

So overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this agreement with Mrs J 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 her. I'm therefore satisfied that Moneybarn didn't act unfairly towards Mrs J when it agreed to provide the funds and I'm not upholding her complaint.

I appreciate that this will be very disappointing for Mrs J. 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

My final decision is that I don't uphold Mrs J's complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 May 2024.

Peter Cook
Ombudsman