

The complaint

Mr A complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement ("agreement") with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable. Mr A also complains that when he fell into financial difficulties Moneybarn failed to treat him fairly and reasonably.

What happened

In April 2021 Mr A entered into an agreement with Moneybarn for a used car costing £6,264. Under the terms of the agreement, everything else being equal, Mr A undertook to make 47 monthly repayments of £234.15 making a total repayable of £11,005.15 at an APR of 36.7%.

In May 2023 Moneybarn issued Mr A with a Notice of Default.

In May 2023 Moneybarn advised Mr A of his various options for ending the agreement.

In August 2023 Moneybarn issued Mr A with a Notice of Termination.

In September 2023 Mr A complained to Moneybarn.

In October 2023 Moneybarn issued Mr A with a final response letter in respect of his complaint.

In November 2023 Mr A referred his complaint to our service.

In February 2024 Mr A advised our service that a court hearing had been scheduled for March 2024 to consider Moneybarn's claim for repossession of the car, or clearance of his accrued debt.

In March 2024 Mr A advised our service that Moneybarn had agreed to an adjournment of the court hearing scheduled for later in the month.

Mr A's complaint was considered by one of our investigators. They came to the view that Moneybarn hadn't made an unfair lending decision and had treated Mr A, when he fell into financial difficulties, fairly and reasonably. In other words, they didn't uphold Mr A's complaint.

Mr A disagreed with our investigator and so his 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 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 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 Mr A has lost out due to Moneybarn failing to act fairly and reasonably in its dealings with him.

Finally I would like to make it clear that I've only considered in this decision Mr A's complaint that Moneybarn unfairly entered into an agreement with him and treated him unfairly and unreasonably when he fell into financial difficulties, not any other complaint he 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 Mr A's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr A'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 A could make his payments in a sustainable manner before agreeing to lend to him. 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 Mr A provided details of his monthly income which it verified with credit reference agencies. It also says that its credit search showed that although Mr A had defaulted on some previous borrowing (the most recent being three months old) he had no county court judgments or insolvency information recorded against him and his borrowing levels and credit commitments appeared affordable. It also said that it made a fair and reasonable estimate of Mr A's non-discretionary expenditure in line with common industry practices.

In Moneybarn's view, taking everything into account, the monthly payments for this agreement were affordable.

On the other hand, Mr A says the agreement was unaffordable from the outset and this could and should have been apparent to Moneybarn.

I've thought about what Mr A and Moneybarn have said.

The first thing for me to say is that like the investigator I'm not persuaded that the checks Moneybarn carried out went far enough. Given what the credit search carried out showed, the monthly payments, the term of the agreement and the total cost of the loan I think Moneybarn should have carried out further checks into Mr A's actual financial circumstances.

In these circumstances, I think that Moneybarn ought to have done more to ascertain Mr A's actual non-discretionary expenditure. That said, I don't think that Moneybarn obtaining further information on Mr A's actual non-discretionary expenditure would have made a difference to its decision to lend in this instance.

I say this because based on bank statements and other information provided by Mr A when his non-discretionary expenditure is deducted from the income he received he appears to have had enough left over to make the repayments to this agreement.

So I think that Moneybarn obtaining further information is likely to have led it to conclude that when Mr A's non-discretionary expenditure was deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

As pointed out by the investigator Moneybarn has a regulatory obligation to treat customers in financial difficulty with "*forbearance and due consideration*". And it's with this obligation in mind that I've considered whether Moneybarn's treatment of Mr A between September 2021 – when Mr A says he first got into financial difficulties – and August 2023 – when Moneybarn issued Mr A with a Notice of Termination – was fair and reasonable.

Based on substantial system notes and documentation provided by Moneybarn it's my understanding that Moneybarn agreed to several repayment plans with Mr A between September 2021 and January 2023 (all of which Mr A failed to keep to) and only issued a termination notice when Mr A's agreement was over £2,000, or 8 months, in arrears.

Now I don't underestimate Mr A's strength of feeling on this point, but with the above in mind I'm satisfied that Moneybarn treated him, when he was in financial difficulties, both fairly and reasonably and it need do nothing further in this respect, and that includes agreeing to longer repayment terms and/or an interest rate deduction.

Finally, and for the sake of completeness, I would add that the APR was clearly detailed on the agreement Mr A signed along with the monthly payments required from him and how much he would repay, everything else being equal, if the agreement ran full term. So although I can't say for certain that Mr A understood the agreement terms, I'm simply not persuaded that Moneybarn did anything wrong in this respect.

Overall I'm satisfied that Moneybarn didn't act unfairly towards Mr A when it lent to him or that it treated him unfairly or unreasonably when he fell into financial difficulties and I'm not upholding his complaint. I appreciate that this will be very disappointing for Mr A. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is I don't uphold this 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 Mr A to accept or reject my decision before 12 June 2024.

Peter Cook
Ombudsman