

The complaint

Mr W, via a third party, complains that Moneybarn No. 1 Limited (“Moneybarn”) unfairly entered into a conditional sale agreement with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable.

What happened

In May 2022 Mr W entered into a conditional sale agreement with Moneybarn for a used car costing £7,630. Under the terms of the agreement, everything else being equal, Mr W undertook to make an advance payment of £400 followed by 59 monthly repayments of £283.98 making a total repayable of £17,154.82 at an APR of 48.9%.

Mr W complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn didn’t uphold the complaint. It said that the finance provided was assessed fairly and the amount offered was affordable.

Mr W’s complaint was considered by one of our investigators. She came to the view that Moneybarn had completed reasonable and proportionate checks to satisfy itself that Mr W would be able to repay the agreement in a sustainable way and it hadn’t acted unfairly or unreasonably in any other way. In other words, she didn’t uphold Mr W’s complaint.

Mr W disagreed with our investigator and so his complaint was passed to me for review and decision.

In April 2024 I issued a provisional decision on this case. In summary I said:

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 W’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 Mr W 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.

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

Moneybarn says it agreed to this application after it completed a number of checks, including carrying out a credit search, verifying Mr W's income and estimating his expenses. And these checks showed the agreement was affordable. On the other hand, Mr W says that due to his personal and financial circumstances this agreement was simply unaffordable and from the outset.

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

The first thing for me to say is that I don't think that the checks Moneybarn carried out did go far enough, in part because its checks showed that Mr W had three defaults and one county court judgement registered against his name and numerous late or missed payments noted.

In my view, Moneybarn needed to take further steps to verify Mr W's actual living costs, rather than relying 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 would have seen, more likely than not, had it obtained further information from Mr W. 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 Mr W's regular living expenses as well as his income and existing credit commitments.

I've considered the information Mr W has provided us with in respect of his income and expenditure for the months of February, March and April 2022. And having done so, this information does appear to show that when Mr W's committed regular living expenses and existing credit commitments are deducted from his monthly income at the time, he 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 Mr W is whether Mr W had sufficient disposable income to enable him to make the monthly payments to this agreement. And having considered everything, I'm satisfied that the available information indicates that Mr W did have sufficient funds left over to make his 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 Mr W 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 Mr W. I'm therefore satisfied that Moneybarn didn't act unfairly towards Mr W when it agreed to provide the funds and I'm not upholding his complaint.

I appreciate that this will be very disappointing for Mr W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Moneybarn didn't respond to my provisional findings by the date I gave for a response.

Mr W responded to say he didn't agree with my provisional findings and to share some information about his current and past health.

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.

I'm sorry to hear about Mr W's current and past health and would like to thank him for sharing this information with us, which I appreciate wouldn't have been easy. But unfortunately for Mr W this doesn't, in itself, persuade me that his complaint should be upheld. I say this because of I've seen no evidence, based on contact notes provided, that Mr W has ever shared what he has now shared with our service with Moneybarn, at least before June 2023.

In his response to my provisional decision Mr W says he can't see how I was able to conclude that further and proportionate checks by Moneybarn wouldn't have prevented it from lending to him and provided figures in support of that belief. But having reviewed, for a second time, a summary of Mr W's bank account activity for the period February, March and April 2022 I see no reason to depart from this finding.

Based on my review of Mr W's bank account activity I think it's reasonable to conclude that he had:

- a monthly 'income' of approximately £1,750 made up of universal credit, personal independence payments and bank credits from an apprenticeship scheme
- monthly expenditure on what, in my view, could be considered essential and non-discretionary items (such as food and bills) of approximately £1,000
- monthly expenditure on what, in my view, could be considered essential and non-discretionary car running costs (such as road tax, insurance and petrol) of approximately £200
- rarely gone overdrawn and when he did it was never by more than £100

And with the above in mind it's my view, on the assumption:

- that post April 2022 Mr W would be incurring similar car running costs to those he incurred pre May 2022
- that Mr W potentially had non-discretionary commitments, not identified in the bank account activity supplied, of £200
- transfers made by Mr W to and from an account ending ..27 are ignored

...that Mr W had sufficient funds left over to make his monthly payments to the agreement in a sustainable manner.

Furthermore, whilst this isn't always indicative that an agreement was affordable at the outset, I can see that Mr W made the first 13 repayments required of him under the agreement on time (based on the latest agreement statement) and made the first 18 repayments required of him under the agreement on time (based on his credit file). And this isn't normally consistent with a borrower being unable to afford the monthly repayments.

What this means, in summary, is that I remain of the view that in the particular circumstances of this case Moneybarn made a fair and reasonable lending decision.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 June 2024.

Peter Cook
Ombudsman