

Complaint

Mr S complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He's said that this agreement was unaffordable for him.

Background

In April 2022, Moneybarn provided Mr S with finance for a used car. The purchase price of the vehicle was £10,597.00. Mr S paid a deposit of £3,701.00 and took out a conditional sale agreement with Moneybarn for the remaining £6,896.00 he needed to complete his purchase.

The loan had interest and charges of £6,632.11 and a 60-month term. This meant that the total amount to be repaid of £13,528.11 (not including Mr S' deposit) was due to be repaid in 59 monthly instalments of £229.29.

Mr S complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr S' complaint was considered by one of our investigators. He didn't think that Moneybarn had done anything wrong or treated Mr S unfairly. So he didn't recommend that Mr S' complaint should be upheld.

Mr S 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 S' complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr 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 any lending was sustainable for Mr S before providing it.

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 S provided details of his monthly income, which it verified against copies of payslips which Mr S was asked to provide. It says it also carried out credit searches on Mr S which had shown that he didn't have any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") - recorded against him.

In Moneybarn's view, when reasonable payments to the amount Mr S already owed plus a reasonable amount for Mr S' living expenses were deducted from his monthly income the monthly payments for this agreement were still affordable.

On the other hand, Mr S says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

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

The first thing for me to say is that given the lack of adverse information on the credit check Moneybarn carried out, the significant advance payment that Mr S made and the low amount of outstanding debt Mr S had, there is a reasonable argument for saying that the checks Moneybarn carried out did go far enough.

In any event, even if I were to agree that they were not, at the absolute best, all Moneybarn would have had to do is find out about Mr S' actual regular living costs, rather than relying on estimates of this. And I don't think that obtaining further information on Mr S' actual living costs would have made a difference to Moneybarn's decision to lend in this instance.

I say this because the Mr S has said that he transferred funds to his partner in order for all the living expenses to be paid. But I've not seen any clear evidence of what these living costs were and crucially that they were actually more than the estimates that Moneybarn used in its income and expenditure assessment.

I accept that the real reason for Mr S' inability to make his payments to this agreement wasn't due to his existing credit commitments or his living expenses. And that this is readily apparent when the bank statements Mr S has provided are considered. It's also possible – but by no means certain – that Moneybarn might have taken a different decision had it seen these bank statements at the time.

But what I need to think about here is what did Moneybarn need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr S' actual regular living expenses (bearing in his income and credit commitments had already been validated against information from credit reference agencies)? – given this was a first agreement and Mr S was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for Moneybarn to have found out more about Mr S' actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr S has now provided.

Indeed, given that there aren't any identifiable payments towards bills and other living costs on these bank statements, I think it is unlikely that Mr S would have provided these particular statements even if he had been asked to provide further information.

Furthermore, I'm mindful that Mr S' submission is that he fell into arrears on the agreement after he lost his job in May 2023. While I sympathise with Mr S having lost his job, this was over a year after this agreement was taken out. I can't see how Moneybarn could have foreseen this or taken this into account when determining whether Mr S could make his payments when he applied for the finance.

Overall and having carefully considered everything, while there's an argument for saying that Moneybarn's checks before entering into this conditional sale agreement with Mr S did go far enough, I'm, in any event, satisfied that Moneybarn finding out more about Mr S won't have stopped it from providing these funds, or entering into this agreement with him.

In reaching this conclusion I've also considered whether the lending relationship between Moneybarn and Mr S might have been unfair to Mr S under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Moneybarn irresponsibly lent to Mr S or otherwise treated him unfairly. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint

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

Although I'm not upholding Mr S' complaint, I would remind Moneybarn of its continuing obligation to exercise forbearance and due consideration, given what Mr S has said about him having difficulty making his payments and the reason why this happened.

I would also encourage Mr S to get in contact with and co-operate with any steps that may be needed to review what he might be able to repay going forward. Mr S may be able to complain to us – subject to any jurisdiction concerns – should he be unhappy with Moneybarn's actions in relation to it exercising forbearance going forward.

My final decision

My final decision is that I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 September 2024.

Jeshen Narayanan
Ombudsman