

Complaint

Miss H complains that Moneybarn No.1 Ltd ("Moneybarn") unfairly entered into a conditional-sale agreement with her. She's said the agreement was unaffordable for her.

Background

In November 2018, Moneybarn provided Miss H with finance for a used car. The cash price of the vehicle was £5,300.00. Miss H paid a deposit of £210 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £5,090.00 she needed to complete her purchase.

The loan had interest, fees and total charges of £4,755.33 and the total amount to be repaid of £9,845.33 (not including Miss H's deposit) was due to be repaid in 60 monthly instalments of £166.87.

Miss H's complaint was considered by one of our investigators. She didn't think that Moneybarn had done anything wrong or treated Miss H unfairly. So she didn't recommend that Miss H's complaint should be upheld.

Miss H disagreed with our investigator's assessment and asked for her complaint to be 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 Miss H's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Miss H'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 Miss H 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.

Moneybarn says it agreed to this application after it completed an income and expenditure assessment on Miss H. During this assessment, Miss H provided details of her monthly income which it cross-checked against information it obtained from credit reference agencies on the amount of funds she received into her main bank account.

Moneybarn says it also carried out credit searches on Miss H which showed that she had defaulted on previous credit with the most recent of this occurred being around two and a half years prior to this application. Miss H didn't have any County Court Judgments ("CCJ") recorded against her though.

Furthermore, in Moneybarn's view, when repayments to the amount Miss H already owed plus a reasonable amount for Miss H's living expenses was deducted from her monthly income the monthly payments were still affordable. On the other hand, Miss H says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Miss H and Moneybarn have said.

The first thing for me to say is that bearing in mind Miss H's previous difficulties with credit, the amount being lent, as well as the term and total cost of the agreement, I'm satisfied that Moneybarn needed to take further steps to ascertain Miss H's actual living costs, rather than assuming Miss H's living expenses in order for its checks to have been reasonable here. Moneybarn did not do this so I'm satisfied that its checks before lending in this instance weren't proportionate.

As Moneybarn should have done more, I've gone on to decide what I think Moneybarn is more likely than not to have seen had it done that here. Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Miss H's regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss H has provided us with. To begin with, I wish to make it clear that I'm not going to carry out a forensic analysis of Miss H's bank statements to establish whether the monthly payments were affordable for her. I'm simply going to try and get some idea of what Moneybarn is likely to have found out about Miss H's living expenses had it done proportionate checks. I also have to bear in mind that obtaining bank statements wasn't the only way for Moneybarn to find out this information.

Having considered everything, the information provided appears to show that when Miss H's committed regular living expenses are combined with her credit commitments and then deducted from the funds she was receiving at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it's possible that Miss H's circumstances were worse than she'd let on. I know that Miss H has questioned the inclusion of funds that she was receiving from her ex-partner. But as these were funds Miss H was receiving and she was using them to meet some of her commitments, I don't think that it is unreasonable to include them. Equally, it's also worth noting that the statements Miss H has provided do show her having sufficient funds left over each month even accounting for all of her spending.

Finally, while I accept that this is not in itself determinative, I do think that it's also worth noting that the payments being affordable does appear to be supported by Miss H having made all of her repayments before eventually settling the agreement early.

So overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional-sale agreement with Miss H did go far enough, I'm satisfied that doing more won't have prevented Moneybarn from providing these funds, or entering into this agreement with her.

In reaching this conclusion I've also considered whether the lending relationship between Moneybarn and Miss H might have been unfair to Miss H 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 Miss H or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I'm therefore satisfied that Moneybarn didn't act unfairly towards Miss H when it lent to her and I'm not upholding Miss H's complaint. I appreciate that this will be very disappointing for Miss H. 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'm not upholding Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 28 August 2024.

Jeshen Narayanan
Ombudsman