

Complaint

Mr W complains that Moneybarn No.1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He's said that the proper checks weren't carried out and he was provided with finance that was unaffordable.

Background

In December 2019, Moneybarn provided Mr W with finance for a used car. The purchase price of the vehicle was £9,400.00. Mr W didn't pay a deposit and entered into a 60-month conditional sale agreement with Moneybarn for the entire amount of the purchase.

The loan had interest, fees and total charges of £9,557.29 and the total amount to be repaid of £18,957.29 was due to be repaid in 59 monthly instalments of £321.31.

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

Mr W 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 W's complaint.

In the first instance, I note that all parties are now in agreement that it is appropriate for me to consider this complaint. I am in agreement with this and I will now setting out my findings on whether Mr W's complaint should be upheld.

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 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 W 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 W provided details of his monthly income which it cross-checked against information it received from credit reference agencies on the amount of funds going into his main bank account. It says it also carried out credit searches on Mr W which did show defaulted accounts and a County Court Judgement recorded against him.

But, in its view, when reasonable repayments to the amounts owing plus a reasonable amount for Mr W's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr W 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 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. I don't think it was reasonable to rely on an estimate of Mr W's living costs given the adverse information on his credit file.

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 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.

The information Mr W has provided does appear to show that when his discernible committed regular living expenses and existing credit commitments were deducted from the amount he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. Indeed, having looked at the bank statements provided, a significant proportion of Mr W's income went towards non-committed expenditure.

Bearing in mind checking bank statements wasn't the only way for Moneybarn to have found out more about Mr W'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 W has now provided us with.

So I don't think that Moneybarn could reasonably be expected to have known about Mr W's non-committed expenditure, or how this might affect his ability to make his monthly payments. I say this particularly as Mr W's most recent submissions are being made in support of a claim for compensation and any explanations he would have provided at the time are more likely to have been with a view to persuading Moneybarn to lend, rather than highlighting any unaffordability.

In these circumstances, I don't think Mr W is likely to have disclosed the level of his non-committed expenditure or proactively provided the information for Moneybarn to have found out about this.

Overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Moneybarn from providing these funds, or entering into this agreement with Mr W. So I'm

satisfied that Moneybarn didn't act unfairly towards Mr W when it agreed to provide the funds.

In reaching this conclusion I've also considered whether the lending relationship between Moneybarn and Mr W might have been unfair to Mr W 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 W or otherwise treated him 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 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.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 September 2024.

Jeshen Narayanan
Ombudsman