

Complaint

Mr L complains that Moneybarn No. 1 Limited ("Moneybarn") unfairly entered into a conditional sale agreement with him. He's said that the payments to the agreement were unaffordable so he should not have been lent to.

Background

In March 2019, Moneybarn provided Mr L with finance for a used car. The purchase price of the vehicle was £13,099.00. Mr L paid a deposit of £100 and entered into a conditional sale agreement, which had a 60-month term, with Moneybarn for the remaining amount of £12,999.00 he needed to complete his purchase.

The loan had interest and charges of £12,859.52. This meant that the total amount to be repaid of £25,858.52 (not including Mr L's deposit) was due to be repaid in 59 monthly instalments of £438.28.

Mr L 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.

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

Mr L 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 L's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr L'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 L 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 L provided details of his monthly income, which it cross-checked against information that it obtained from credit reference agencies on the funds going into his main bank account. It says that it also carried out credit searches on Mr L, which had shown that he had previous difficulties repaying credit. Mr L had historic defaulted accounts recorded against him. The most recent of which was more than a year prior to this application and Mr L didn't have any county court judgments recorded against him.

In Moneybarn's view, when reasonable repayments towards the amount Mr L already owed plus a reasonable amount for Mr L's living expenses (based on average data) were deducted from his monthly income the monthly payments for this agreement were still affordable.

On the other hand, Mr L says that the payments were unaffordable and there was no way he was going to be able to maintain them.

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

Having done so, I'm not persuaded that it was reasonable to rely on an estimate of Mr L's living costs bearing in mind Mr L's previous difficulties with credit, the cost of this credit and the term of this agreement. In these circumstances, I think that Moneybarn ought to have done more to ascertain Mr L's actual regular living costs.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, despite having been given significant opportunity to do so, Mr L has not provided us with sufficient information to be able to assess what his living costs were like at the time he entered into this agreement with Moneybarn. He's simply provided evidence in relation to his credit commitments which Moneybarn already knew about as a result of the credit checks.

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 L. 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 L's regular living expenses as well as his income and existing credit commitments.

To be clear as Moneybarn took steps to cross-check Mr L's declaration of income against the funds going into his account and this did not indicate Mr L was receiving less funds into his account each month, I'm satisfied that it was entitled to rely on Mr L's declaration of income.

In any event, even if I were to accept that the motor dealer submitted an inflated declaration of income and submitted that he was employed full time in circumstances where Mr L was on a zero hours contract, I have to consider that this appears to have been done with Mr L's knowledge and I assume permission as well. Indeed, on Mr L's version of event, it appears

that Moneybarn appears to have been the only party left in the dark on this. And I don't see how it could have known the actual position.

Furthermore, the information Mr L has provided does appear to show that when his discernible committed regular living expenses and existing credit commitments were deducted from the amount of the monthly income he declared, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that the real reason for Mr L'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 apparent when Mr L's bank account statements are considered.

However, I've already explained why I don't think that Moneybarn would have known about the position in relation to Mr L's actual income. I say this particularly as Mr L's most recent submissions are being made in support of a claim for compensation. In my view, any explanations he would have provided at the time are more likely to have been with a view to persuading Moneybarn to lend – I need I note he has said that he was desperate to purchase a car of this type at this time, rather than highlighting any unaffordability.

Bearing in mind all of this, I cannot reasonably say that Moneybarn carrying out further checks is likely to have led it to conclude that when Mr L's regular living expenses and existing credit commitments were deducted from what it reasonably believed to be his monthly income, he did not have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Overall and having carefully considered everything, while I'm not persuaded that Moneybarn's checks before entering into this conditional sale agreement with Mr L did go far enough, I've not been satisfied that Moneybarn doing more would 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 L might have been unfair to Mr L 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 L 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, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr L. 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 L's complaint, I would remind Moneybarn of its continuing obligation to exercise forbearance and due consideration, given what Mr L has said about him having difficulty making his payments as a result of recently losing his job.

I would also encourage Mr L 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 L may be able to complain to us – subject to any jurisdiction concerns – should he be unhappy with Moneybarn's actions in relation to exercising forbearance going forward.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 August 2024.

Jeshen Narayanan
Ombudsman