

Complaint

Mr O 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 February 2023, Moneybarn provided Mr O with finance for a used car. The purchase price of the vehicle was £8,750.00. Mr O paid a deposit of £400 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £8,350.00 he needed to complete his purchase.

The amount lent was £8,300.00 and the loan had interest, fees and total charges of £11,227.38 and the total amount to be repaid of £19,577.38 (not including Mr O's deposit) was due to be repaid in 59 monthly instalments of £331.82.

In October 2023, Mr O complained that the agreement was unaffordable and so should never have been provided to him. Moneybarn said that its checks confirmed that the finance was affordable and so it didn't think that it had done anything wrong and it was reasonable to lend. Mr O remained dissatisfied and referred his complaint to our service.

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

Mr O 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 O's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr O'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 O 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 O 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 O which did show defaulted accounts but the most recent of these occurred approaching four years prior to this application.

But, in its view, when the amount owing plus a reasonable amount for Mr O's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr O 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 O 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 O'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 O. 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 O's regular living expenses as well as his income and existing credit commitments.

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

Furthermore, the information Mr O 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.

Mr O has provided us with a number of bank statements from different accounts in order to show his financial position wasn't as healthy as it seemed. This may be the case, but bearing in mind checking bank statements for multiple accounts wasn't the only way for Moneybarn to have found out more about Mr O'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 O has now provided us with.

So I don't think that Moneybarn could reasonably be expected to have known about all of Mr O's spending. I say this particularly as Mr O'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 O is likely to have disclosed information indicating the payments to this agreement weren't affordable, particularly given he signed a declaration indicating he had a monthly income, which he now says was inaccurate.

Since our investigator's initial assessment, I know that Mr O has referred to his position changing and being made redundant after the agreement started. And he's complained that Moneybarn didn't offer him any help when he notified it of this. I've considered what Mr O has said and having also reviewed Moneybarn's records of its contact with Mr O, I can see that the first time Mr O told Moneybarn about his difficulty was in June 2023.

I can also see that Moneybarn made a number of attempts to try and set up payment plans with Mr O after his initial payment hold ended and it looks like he was also provided with details on his options to exit this agreement too. So I'm satisfied that Moneybarn did take action and offered some help and support when Mr O got in touch to explain that he was having difficulty making his payments. Although as Mr O was unsuccessful in being able to bring his account up to date, I can understand why he may feel that Moneybarn's assistance did not go far enough.

I've also thought about what Mr O has said about the letters he was sent and the fact that his account was eventually defaulted. I accept the formality of the letters Mr O received might have been alarming. However, these were standard letters that a lender would send as a result of its obligations under the Consumer Credit Act 1974 ("CCA") and Moneybarn was required to send these letters.

Furthermore, I do have to consider that it wouldn't have been fair, reasonable or proportionate for Moneybarn to continue ignoring Mr O's missed payments or his ability to set up a sustainable payment plan to clear his arrears, indefinitely. So while I accept that the timing was far from ideal, given what it knew and what it was told, I would have expected it to issue its default notices by the time it did.

After all while terminating an agreement and recording a default or other adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the debt in question. I also think that it has to be kept in mind that the car was a depreciating asset. So the longer it took for the agreement to be defaulted and then Moneybarn taking possession of the vehicle, the increased chance there would be of Mr O being left with more to pay even after a default.

That said, I'm aware that an outstanding balance remains to be paid on Mr O's account. So Moneybarn will need to continue reviewing Mr O's position in light of what he has said. Nonetheless, while I accept that Moneybarn may need to review Mr O's situation going forward, I'm satisfied that carrying out reasonable and proportionate checks at the time it lent to Mr O, won't have stopped it from providing these funds, or entering into this agreement with him.

Overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr O 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 O. So I'm satisfied that Moneybarn didn't act unfairly towards Mr O when it agreed to provide the funds.

In reaching this conclusion I've also considered whether the lending relationship between Moneybarn and Mr O might have been unfair to Mr O under section 140A CCA.

However, for the reasons I've explained, I don't think Moneybarn irresponsibly lent to Mr O 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 O. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Although I'm not upholding Mr O's complaint, I would remind Moneybarn of its continuing obligation to exercise forbearance and due consideration on the remaining balance, given what Mr O has said about having difficulty making payments.

I would also encourage Mr O 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 O 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 O's complaint.

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

Jeshen Narayanan
Ombudsman