

Complaint

Mr S complains that Secure Trust Bank (trading as “Moneyway”) unfairly entered into a hire-purchase agreement with him. He’s said that the agreement was unaffordable.

Background

In November 2019, Moneyway provided Mr S with finance for a used car. The cash price of the vehicle was £14,125.00. Mr S didn’t pay a deposit and borrowed the entire amount of the purchase by entering into a hire-purchase agreement with Moneyway.

The agreement had interest, fees and total charges of £14,664.60 (made up of interest of £14,654.60 and an option to purchase fee of £10). The total amount to be repaid of £28,789.60 was due to be repaid by 59 monthly instalments of £479.66 followed by a final monthly instalment of £489.66.

Mr S’ complaint was considered by one of our investigators. He didn’t think that Moneyway 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.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the

regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr S' complaint.

Moneyway says it agreed to this application after Mr S provided details of his monthly income which it cross checked against information from credit reference agencies on the amount of funds received into his main account each month. It says it also carried out credit searches on Mr S which while it did show a default recorded against Mr S, it considered this to be historic as this occurred more than a year prior to this application.

And when reasonable repayments to the amount owing plus a reasonable amount for Mr S' living expenses, calculated on statistical data, were deducted from his monthly income the monthly payments were 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 Moneyway have said.

The first thing for me to say is that, unlike the investigator, I don't think it was reasonable to rely on an estimate of Mr S' living costs given the default Moneyway was aware of, the cost of credit and the term of the agreement. In these circumstances, I don't think that Moneyway's checks did go far enough.

As Moneyway didn't carry out sufficient checks, I've gone on to decide what I think Moneyway is more likely than not to have seen had it obtained further information from Mr S. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Moneyway to have had a reasonable understanding about Mr S' regular living expenses as well as his income and existing credit commitments.

I know that Mr S has said that while he told Moneyway that he earned £3,000.00 a month at the time of his application, he made this up and that he never actually received this salary. However, while I've thought about what Mr S has said, as Moneyway took steps to cross-check Mr S' declaration of income against the funds going into his account and this did not indicate Mr S was receiving less funds into his account each month, I'm satisfied that it was entitled to rely on Mr S' declaration of income.

Furthermore, what Moneyway needed to do was supplement the information it had on Mr S' credit commitments, with some further information on his actual living costs rather than estimates. And the information Mr S has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from the amount of the cross-checked income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I realised that Mr S has disputed the expenditure amount the investigator used in his assessment. However, bearing in mind checking bank statements wasn't the only way for Moneyway 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 analysing the bank statements Mr S has now provided us with, in the way that he is arguing.

I say this particularly as Mr S' most recent submissions are being made in support of a claim for compensation and in circumstances where he has admitted inflating his declaration of income. In these circumstances, I need to keep in mind that any explanations he would have provided to Moneyway at the time are more likely to have been with a view to persuading it to lend to him, rather than highlighting any unaffordability.

Overall and having carefully considered everything, given what I think further enquiries into Mr S' living expenses are likely to have shown Moneyway, while I don't think that Moneyway's checks before entering into this hire purchase agreement with Mr S did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Moneyway from providing these funds, or entering into this agreement.

In reaching this conclusion I've also considered whether the lending relationship between Moneyway 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 Moneyway irresponsibly lent to Mr S 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 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.

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 9 September 2024.

Jeshen Narayanan
Ombudsman