

Complaint

Mr P 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 September 2019, Moneybarn provided Mr P with finance for a used car. The purchase price of the vehicle was £8,700.00. Mr P paid a deposit of £400 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £8,300.00 he needed to complete his purchase.

The loan had interest, fees and total charges of £11,115.13 and the total amount to be repaid of £19,415.13 (not including Mr P's deposit) was due to be repaid in 59 monthly instalments of £329.07.

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

Mr P 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 P's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr P'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 P 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 P 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 P which did show defaulted accounts but no County Court Judgments recorded against him.

But, in its view, when the amount owing plus a reasonable amount for Mr P's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr P 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 P and Moneybarn have said.

The first thing for me to say is that bearing in mind the adverse information Moneybarn saw on the credit checks, 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 P'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 P. 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 P's regular living expenses as well as his income and existing credit commitments.

There has been some dispute over the income figure which Moneybarn used in its assessment. However, Mr P signed a proposal form to confirm that he was earning £2,200.00 a month. And as Moneybarn took steps to cross-check this declaration of income against the funds going into his account and this did not indicate Mr P was receiving less funds into his account each month, I'm satisfied that it was entitled to rely on Mr P's declaration. This is regardless of whether some of these funds were for expenses he accrued.

I also have to keep in mind that Mr P'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.

Equally, as checking bank statements wasn't the only way for Moneybarn to have found out more about Mr P'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 P has now provided us with. Therefore, I think much of Mr P's discussions about what the bank statements show isn't relevant.

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

I've also thought about what Mr P has said about not being treated fairly when he had difficulty making his payments to the agreement. Having reviewed Moneybarn's records of contact with Mr P, I can see that Mr P applied for a pandemic payment holiday, which was granted, in August 2020.

I can also see that Mr P was then granted a further payment holiday in December 2020 before he was provided with payment plans after the temporary pandemic support ended. These payment plans were designed to bring his arrears up to date and I can see that Moneybarn went through income and expenditure assessments with him to ensure that the payments on these plans weren't too much or more than he could afford pay either.

So I'm satisfied that Moneybarn did take action and offered some help and support when Mr P got in touch to explain that he was having difficulty making his payments. Although I do accept that there may be a need for a further review in light of the time that has passed and what Mr P has said about still having difficulty making his payments.

Finally, I've also thought about what Mr P has said about Moneybarn's failure to simply restructure his agreement. Having done so, I can understand why it might be frustrating for Mr P that Moneybarn didn't do this. However, Mr P has a conditional-sale agreement not a fixed sum loan.

Conditional-sale agreements are a type of loan with certain characteristics in terms of the obligations on the parties as well as the protections afforded to customers. This means that a conditional sale agreement can't just automatically be extended, in the same way that a fixed-sum loan might be able to be, without those obligations and protections being affected.

Furthermore, the amount lent has a link to the value of the car over the period as the borrowing is effectively secured on it and the car wasn't worth the same amount at the time Mr P ran into difficulty. So attempting to rewrite the agreement on new terms may well have created a mismatch between the amount borrowed and the asset being financed.

I don't think that the fact that Moneybarn has offshore call centres, even though Mr P may have preferred to speak to an agent in the United Kingdom, changes this. Therefore, I can't see that Mr P would have been able to restructure the agreement irrespective of where the agent he spoke to was based and I don't think that Mr P has been disadvantaged by the fact that Moneybarn's call centre is outside the United Kingdom either.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Mr P might have been unfair to Mr P 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 P 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 P. 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 September 2024.

Jeshen Narayanan
Ombudsman

