

Complaint

Miss H complains that Moneybarn No.1 Ltd ("Moneybarn") unfairly entered into a conditional-sale agreement with her. She's said the agreement was unaffordable for her.

Background

In December 2018, Moneybarn provided Miss H with finance for a used car. The cash price of the vehicle was £6,195.00. Miss H paid a deposit of £445 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining amount she needed for the purchase.

The amount borrowed was £5,750.00, the loan had interest, fees and total charges of £7,731.50 and the total amount to be repaid of £13,481.50 (not including Miss H's deposit) was due to be repaid in 59 monthly instalments of £228.50.

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

Miss H disagreed with our investigator's assessment and asked for her complaint to be 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 Miss H's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Miss H'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 Miss H could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Moneybarn carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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 it completed an income and expenditure assessment on Miss H. During this assessment, Miss H provided details of her monthly income which it cross-checked against the amount of funds which entered into Miss H's main bank account each month.

Moneybarn says it also carried out credit searches on Miss H which showed that she didn't have any significant adverse information – such as defaulted accounts or County Court Judgments ("CCJ") recorded against her.

Furthermore, in Moneybarn's view, when repayments to the amount Miss H already owed plus a reasonable amount for Miss H's living expenses was deducted from her monthly income the monthly payments were still affordable. On the other hand, Miss H says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Miss H and Moneybarn have said.

The first thing for me to say is that bearing in mind the term of the agreement and its total cost, I'm satisfied that Moneybarn needed to take further steps to ascertain Miss H's actual living costs, rather than assuming Miss H's living expenses in order for its checks to have been proportionate here. Moneybarn did not do this, so I'm satisfied that its checks before lending in this instance weren't proportionate.

As Moneybarn should have done more, I've gone on to decide what I think Moneybarn is more likely than not to have seen had it done that here. Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Miss H's regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss H has provided us with. Having done so, I'm satisfied that the information provided appears to show that when Miss H's committed regular living expenses are combined with her credit commitments and then deducted from the amount she declared receiving at the time, which was cross-checked, she did have sufficient funds left over to make the payments to this agreement.

Furthermore, this appears to be supported by the fact that Miss H says that the payments became unaffordable when she fell ill and was only able to receive sick pay from work. I'm sorry to hear that Miss H fell ill and that her income reduced as a result. However, while I sympathise with Miss H's situation, I don't think that Moneybarn could be expected to know that this would happen when it was making its lending decision.

So overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional-sale agreement with Miss H did go far enough, I'm satisfied that doing more won't have prevented Moneybarn from providing these funds, or entering into this agreement with her.

Since our investigator's assessment Miss H has also said that she is unhappy with the help that she was offered once she began struggling with her payments. I've thought about what Miss H has said. Having reviewed Moneybarn's records of contact with Miss H, I can see that Miss H applied for a pandemic payment holidays, which were granted.

I can also see that Miss H was also provided with payment plans designed to bring her arrears up to date and I can see that Moneybarn went through at least one income and

expenditure assessment, with evidence, with her in order to try and ensure that the payments on any plan weren't too much or more than she could afford either.

So I'm satisfied that Moneybarn did take action and offered some help and support when Miss H got in touch to explain that she was having difficulty making her payments. However, particularly as Miss H had a conditional-sale agreement, rather than a fixed sum loan, I don't think that Moneybarn could continue ignoring the mounting arrears indefinitely.

I think it's worth me explaining that conditional-sale agreements are a type of loan with certain characteristics in terms of the obligations on the parties and the protections afforded to customers. This means that surrendering custody of the vehicle can be a way of reducing or clearing any arrears. And therefore, I don't think that it was unreasonable for Moneybarn to have suggested and then agreed to such a course of action in this instance – particularly as the collection of the vehicle had already been delayed by the pandemic.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Miss H might have been unfair to Miss H 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 Miss H or otherwise treated her 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 Miss H. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 27 September 2024.

Jeshen Narayanan
Ombudsman