

Complaint

Mr T 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 January 2019, Moneybarn provided Mr T with finance for a used car. The purchase price of the vehicle was £8,150.00. Mr T paid a deposit of £433 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £7,717.00 he needed to complete the purchase.

The loan had interest, fees and total charges of £6,742.72 and the total amount to be repaid of £14,459.72 (not including Mr T’s deposit) was due to be repaid in 59 monthly instalments of £245.08.

Mr T’s complaint was considered by one of our investigators. She reached the conclusion that Moneybarn hadn’t done anything wrong or treated Mr T unfairly. So she didn’t recommend that Mr T’s complaint should be upheld.

Mr T 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 T’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr T’s complaint. I’d like to explain why in a little more detail.

Given Mr T’s response to our investigator’s assessment, 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 a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what 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 meant 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 kept this in mind when deciding Mr T's complaint.

Moneybarn says it agreed to this application after Mr T provided details of his monthly income which it verified against copies of payslips which Mr T was asked to provide. It says it also carried out credit searches on Mr T which did show defaulted accounts and what it considered to be historic County Court Judgments ("CCJ") recorded against him.

But, in its view, when reasonable repayments to the amounts owing plus a reasonable amount for Mr T's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr T 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 T 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 T's living costs given the adverse information on his credit file. This is regardless of whether Moneybarn considered this information to be historic.

As I don't think that Moneybarn carried 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 T. 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 T's regular living expenses as well as his income and existing credit commitments.

The information Mr T has provided does appear to show that when his discernible committed regular living expenses and existing credit commitments were deducted from the amount he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I also think that it is worth keeping in mind that Mr T'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 to him, rather than highlighting any unaffordability. In these circumstances, I don't think Mr T would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information I've seen suggests proportionate checks would have shown that they were.

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

I've also thought about what Mr T has said about the difficulty he had making his payments to the agreement. Having reviewed Moneybarn's records of contact with Mr T, I can see that Mr T applied for a pandemic payment holiday, which was granted, in April 2020. I can also see Mr T was then granted further breathing space opportunities and 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 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 T was having difficulty making his payments. And I've not been persuaded that it acted unfairly in relation to this matter either.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Mr T might have been unfair to Mr T 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 T 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 T. 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 T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 November 2024.

Jeshen Narayanan
Ombudsman