

Complaint

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

Miss H has also said that she was mis-sold extras, did not sign her finance agreement and she is unhappy with Moneybarn’s actions when she ran into difficulty making the payments on her agreement.

Background

In June 2019, Moneybarn provided Miss H with finance for a used car. The cash price of the vehicle was £5,392.00. Miss H paid a deposit of £99 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £5,293.00 she required to complete her purchase. The loan had interest, fees and total charges of £4,289.78 and the balance to be repaid of £9,582.78 was due to be repaid in 59 monthly instalments of £162.42.

Miss H has also complained about the commission Moneybarn paid the credit broker that introduced her business. We’ve explained that we’re now looking at Miss H’s commission complaint separately and this decision is only considering matters concerning whether Moneybarn acted fairly and reasonably in agreeing to lend to Miss H.

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.

Before I go on to set out my conclusions on this matter, I want to say that I can see that it’s clear just how strongly Miss H feels about her complaint and why she’s unhappy. So I think it might help for me to set out that while I may have not commented on each and every point that she’s made, I have read and considered everything she’s said.

However, I’ve focused on the key things that have led to me reaching, what in my view is, a fair and reasonable decision. For the sake of completeness, I’d add that the rules of this service permit me to do this as it reflects the nature of our service which was set up to be an informal alternative to the courts.

I’ll now proceed to set out my thoughts on what I consider to be the key issues in this complaint. I’ve started by looking at Moneybarn’s decision to lend to Miss H.

Did Moneybarn act fairly and reasonably when agreeing to lend to Miss H?

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.

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 information from credit reference agencies on the amount of funds that went into her main bank account each month. This is a form of cross-checking of income that a lender is entitled to take

Moneybarn says it also carried out credit searches on Miss H which showed that she had defaulted accounts recorded against her, with the most recent of these being around six months prior to this application.

Nonetheless, in Moneybarn's view, when reasonable repayments to the amount Miss H already owed plus a reasonable amount for Miss H's living expenses were deducted from her monthly income, enough was left over for her to make the monthly payments for this agreement. 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, its total cost and Miss H's previous difficulties with credit, 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.

At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the Moneybarn didn't do enough to establish whether the repayments were affordable, doesn't, on its own, mean that Miss H's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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 therefore considered whether that is the case here.

As I've explained, 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.

However, the information Miss H has provided me with doesn't show me that her living expenses were substantially more than the amount of the estimates Moneybarn used, or that they meant the monthly payments to this agreement were unaffordable for her. So I'm not in a position to say that Moneybarn doing more here would more likely than not have led to it reaching a different decision to lend in this instance.

I'm also mindful that Miss H's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Miss H would have wanted the car. So any explanations she would likely have provided to Moneybarn at the time are more likely to have been with a view to persuading it to lend her.

Indeed, I note that the finance explanation document which Miss H electronically signed at the time of her application, highlighted that Moneybarn's decision to lend was based on her having a monthly income of at least £1,938.00 and a total non-discretionary monthly expenditure of around £841.08. Given Miss H signed this declaration, I find it difficult to conclude that she would have volunteered that this agreement was unaffordable, if she was asked for more information on her actual signature.

I know that Miss H's circumstances took a turn for the worse after she entered into the agreement. I've seen what she's said about the difficulties in her existing accommodation and that she had to move to more expensive accommodation which increased her rent and associated costs. I'm sorry to hear about what Miss H has told us and I sympathise with her situation.

However, I don't think that Moneybarn could be expected to know or anticipate that this would happen. All it could do was carry out a proportionate check and then make a decision based on what the information gathered showed. For the reasons I've explained, I'm satisfied that a proportionate check will more likely than not have shown that Miss H could make her payments, therefore I don't think that it was unreasonable for Moneybarn to lend in these circumstances.

Sale of Extras

Miss H has said that she had to take extras including guaranteed asset protection ("GAP") in order to push her agreement closer to £10,000.00, which would then be more likely to be accepted as a result.

I've thought about what Miss H has said.

I don't know what Miss H was told at the time. However, I have reviewed the motor dealer's sales invoice. Having done so, I can see that the selling price of the vehicle purchased is listed as £5,392.00, which is also the cash price listed on Miss H's conditional sale agreement. A warranty and paint protection are included on the invoice. But the warranty is listed as being £0 and the paint protection is listed as F.O.C, which I take to mean free of charge as the total amount invoiced to Moneybarn is £5,392.00.

There is nothing on this invoice indicating that GAP was sold to Miss H, although I do accept that Miss H has provided evidence of having missed payments to some kind of insurance policy she purchased directly from the motor dealer. In any event, the most important thing for the purposes of this complaint, is that this insurance was being paid separately from the

monthly payments for the agreement, so I'm satisfied that Moneybarn didn't finance Miss H's purchase of a GAP insurance policy.

Given Miss H doesn't appear to have been charged for any extras for the car itself and I can't see that a GAP policy was financed by Moneybarn, it's difficult for me to agree that Moneybarn is responsible for Miss H paying for extras that she didn't want. This is especially as the total amount to be repaid, as a result of this agreement, still didn't reach £10,000.00, which is what Miss H says she was led to believe would increase her chances of being accepted for the finance in the first place.

As this is the case, I've not been persuaded that Moneybarn is responsible for Miss H having been pushed into paying extra for additional products that she didn't want.

Execution of the agreement

Miss H has said that her agreement has been improperly executed and therefore it is unenforceable under section 44 of The Companies Act 2006. I've thought about what Miss H has said.

In the first instance, I think it's worth me saying that s44 of The Companies Act 2006 is concerned with who is entitled to execute an agreement on behalf of a company. However, I note that Miss H's argument is that she was provided with an unsigned copy of her conditional sale agreement and this means that it is unenforceable. S77 of the Consumer Credit Act 1974, which Miss H's agreement is subject to as it is a regulated credit agreement, requires a creditor to provide an executed copy of an agreement, on demand, for it to be enforceable.

Miss H has said that she didn't sign the conditional sale agreement. However, I note that she has provided a copy of an email which contains a link to a webpage where she was invited to sign the agreement electronically. Furthermore, Moneybarn has also provided a copy of the agreement showing not only that it was electronically signed in the section for the debtor, it was also signed on behalf of Moneybarn.

I appreciate that Miss H has said that she didn't sign the agreement. But given the email she had provided, the agreement does have an electronic signature and Moneybarn released the funds to the motor dealer, I think it's more likely than not that Miss H did electronically sign the agreement. Indeed, I cannot envisage a scenario where Moneybarn would have released the funds to the motor dealer without first having received a signed agreement.

For the sake of completeness, I would also add that even if I'm wrong about the signature on the agreement being Miss H's and Miss H's agreement is unenforceable this doesn't mean that Miss H no longer has a debt, or that Moneybarn can't ask her to pay what she owes. What the agreement being unenforceable, for the avoidance of doubt I wish to make it clear that I don't agree that this is the case, means is that Moneybarn might not be able to enforce the terms of the agreement in court.

But ultimately that would be a matter for the court rather than me to decide. Furthermore, my role is to consider what's fair and reasonable in all the circumstances and given Miss H was provided with the car, has used it and has also made a number of payments under the terms of the agreement, I don't think it would be fair and reasonable for me to now say that it should be voided.

Miss H's payment difficulties

I've also thought about what Miss H has said about not being treated fairly when she had difficulty making her payments to the agreement. Having reviewed Moneybarn's records of contact with Miss H, I can see that Miss H applied for a pandemic payment holiday, which was granted, in March 2020. Miss H returned to making her payments after this.

I can also see that Miss H then got into contact with Moneybarn in July 2022 to say that she was struggling with her finances and was finding it difficult to make her payments. From what I can see, Moneybarn carried out an income and expenditure assessment which showed that Miss H had a negative disposable income. As a result, it sent Miss H a letter notifying her of her exit options on this agreement. I'm satisfied that this was a fair and reasonable response to what Miss H had said about her circumstances at the time.

I appreciate that Miss H was unhappy with all of these options and feels that Moneybarn could have done more. However, I think that Moneybarn was limited in the alternative, non-statutory, options it was able to offer in light of her having a negative disposable income. I've noted that Miss H has said that the voluntary termination ("VT") amount listed in the letter was incorrect.

However, the letter clearly states that all of the amounts set out in the table are estimates. It's also clear that the letter does invite Miss H to get into contact to discuss matters I think that it is more likely than not that a correct and accurate figure would have been provided to Miss H, had she sought to follow up on any of the options presented in the letter.

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. And while I appreciate that Miss H did not consider any of these options to be suitable, I don't think that this means Moneybarn acted unfairly towards her when it learned of her difficulty.

That said, Miss H has retained custody of the car. Given the length of time it has been since Moneybarn last considered matters, I think that a further review, taking account of Miss H's current circumstances and what if anything she may be able to pay, is likely to be necessary. I would encourage Miss H to co-operate with any such steps that will be required to assess what the next steps from here should be.

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.

Overall and having carefully considered everything, while I think that Moneybarn ought to have found out a bit more about Miss H before entering into this conditional-sale agreement with her, I'm satisfied that Moneybarn doing this won't have prevented it from providing these funds, or entering into this agreement with her. I've not been persuaded that Moneybarn treated Miss H unfairly or unreasonably in relation to the other matters that she has complained about either.

So while I sympathise with Miss H's position and I appreciate that this will be very disappointing for her – particularly as it's clear she feels strongly about matters - I'm not upholding this complaint. I hope that Miss H will 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 8 December 2025.

Jeshen Narayanan
Ombudsman