

## **Complaint**

Mr C 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 February 2014, Moneybarn provided Mr C with finance for a used car. The purchase price of the vehicle was £15,500.00. Mr C paid a deposit of £501 and entered into a 48-month conditional sale agreement with Moneybarn for the remaining £14,999.00 he needed to complete the purchase.

The loan had interest, fees and total charges of £8,306.42 and the balance to be repaid of £23,805.42 (not including Mr C’s deposit) was due to be repaid in 59 monthly instalments of £495.86.

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

Mr C 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 C’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr C’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 C 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 C provided details of his monthly income and some information on his expenditure. It says it will also have carried out credit searches on Mr C. However given the finance was provided more than ten years ago and settled in 2017, it no longer has any details of what the checks showed. Nonetheless, in its view, it would only have offered the finance if the monthly payments were affordable.

On the other hand, Mr C 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 C and Moneybarn have said.

The first thing for me to say is that Moneybarn has not said that it found out about Mr C's living expenses before it lent to him. Given the amount being lent, the term of the agreement and the cost of credit, this is information I would have expected Moneybarn to have obtained before lending. As Moneybarn didn't obtain this information, I think that the checks it carried out are unlikely to have been reasonable and proportionate.

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 C. 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 C's regular living expenses as well as his income and existing credit commitments.

The information Mr C 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've noted that Mr C has now said that he was in an individual voluntary arrangement ("IVA") and that Moneybarn would have seen this from his bank statements. I've thought about what Mr C has said. However, the first thing to say is that the payments to the finance appear to have been affordable even when including payments to the IVA.

Secondly, it sounds like Moneybarn did not know about Mr C's IVA, or that he had decided to apply for this finance in breach of the terms of his agreement with his insolvency practitioner. Indeed, what Mr C has said about the broker telling him to change the address on his driving licence before applying for finance, supports Moneybarn not having been aware of the IVA at the time.

Bearing in mind checking bank statements wasn't the only way for Moneybarn to have found out more about Mr C'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 C has now provided us with either. So I don't think that Moneybarn ought reasonably to have been aware of Mr C's IVA.

I'm also mindful that Mr C's most recent submissions are being made in support of a claim for compensation and any explanations he provided to Moneybarn at the time are more likely to have been with a view to persuading it to lend. What Mr C has said about working with the broker to change the address on his driving licence prior to the application appears to support this too.

Furthermore, it is unclear to me why Mr C is complaining to Moneybarn about the broker's actions and his own decision to breach the terms of his IVA. I say this especially as these allegations did not form part of his initial complaint and I've not had any submissions at all

from the broker, which is the party best placed to respond to Mr C's allegations. Therefore, I'm satisfied that Mr C should make this aspect of the complaint to the broker should he wish to take these matters forward.

In any event, bearing in mind what Mr C has said about changing the address on his driving licence for his IVA not to appear, I don't see how Moneybarn could have been aware of his IVA or factor it into account. For the sake of completeness, I'd also add that it was up to Mr C to adhere to the terms of his IVA, rather than it being that case that it was Moneybarn's responsibility to enforce it. As this is the case, I'm satisfied that Moneybarn did not do anything wrong in relation to this matter.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 January 2025.

Jeshen Narayanan  
**Ombudsman**