

Complaint

Miss V 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.

Background

In November 2019, Moneybarn provided Miss V with finance for a used car. The cash price of the vehicle was £5,990.00. Miss V paid a deposit of £400 and entered into a 58-month conditional sale agreement with Moneybarn for the remaining amount she needed for the purchase.

The amount borrowed was £5,590.00, the loan had interest, fees and total charges of £7,067.99 and the balance repayable of £12,657.99 (not including Miss V’s deposit) was due to be repaid in 57 monthly instalments of £222.07.

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

Miss V 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 V’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss V’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 V 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 V. During this assessment, Miss V provided details of her monthly income which it cross-checked against the amount of funds which entered into Miss V's main bank account each month.

Moneybarn says it also carried out credit searches on Miss V which showed that she didn't have any County Court Judgments ("CCJ") recorded against her. Miss V did have defaulted accounts recorded against her but it considered these to be historic as the most recent default occurred approaching two years prior to this application.

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

I've thought about what Miss V 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 V's previous difficulties with credit, I'm satisfied that Moneybarn needed to take further steps to ascertain Miss V's actual living costs, rather than assuming Miss V'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 and Miss V's responses to our investigator, 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, meant that Miss V'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 V's regular living expenses as well as her income and existing credit commitments. I've considered the information Miss V has provided us with in order to get an idea of what proportionate checks are more likely than not to have shown.

Having done so, I'm satisfied that the information provided appears to show that when Miss V's committed regular living expenses are combined with her credit commitments and then deducted from the amount she received at the time, she did have sufficient funds left over to make the payments to this agreement.

I accept that Miss V's circumstances were worse than she'd let on and worse than what proportionate checks are likely to have shown. I know that Miss V has said that there were other bills which she was not paying, she was in arrears on others and she's questioned the inclusion of funds that she was receiving from family. But Moneybarn can't reasonably be expected to have known about this.

Furthermore, I've also explained why I don't think that Moneybarn's checks weren't proportionate. So even if Miss V for applying for finance in the knowledge that she'd already had a car repossessed, the statements Miss V has provided do show her having sufficient funds left over each month.

I'm also mindful that Miss V's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Miss V 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, whereas now she's trying to show that the agreement was unaffordable.

In these circumstances it is difficult for me to accept that Miss V would have looked to show Moneybarn that the agreement was unaffordable for her in circumstances where the information likely to have been derived from proportionate checks, does not obviously shows this.

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 V 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.

For the sake of completeness, I've also considered what happened after Miss V ran into difficulties making her payments. Having reviewed Moneybarn's records of contact with Miss V, I can see that Miss V was granted with payment reductions during the pandemic.

I can also see that Miss V 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 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 V got in touch to explain that she was having difficulty making her payments. However, particularly as Miss V 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 the car being sold in this instance.

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

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

Jeshen Narayanan
Ombudsman