

Complaint

Mr S 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 October 2016, Moneybarn provided Mr S with finance for a used car. The purchase price of the vehicle was £7,430.00. Mr S paid a deposit of £300 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £7,130.00 he needed to complete the purchase.

The loan had interest, fees and total charges of £6,972.18 and the total amount to be repaid of £14,102.18 (not including Mr S’ deposit) was due to be repaid in 59 monthly instalments of £239.02.

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

Mr S 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 S’ complaint.

In the first instance, I note that all parties are now in agreement that it is appropriate for me to consider this complaint. I am in agreement with this and I will now setting out my findings on whether Mr S’ complaint should be upheld.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr 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 S 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 S provided details of his monthly income which it verified against copies of payslips which Mr S was asked to provide. It says it also carried out credit searches on Mr S which I understand did show historic defaulted accounts but no County Court Judgments ("CCJ") recorded against him.

But, in its view, when reasonable repayments to the amounts owing plus a reasonable amount for Mr S' living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr S 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 S 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 S' living costs given the adverse information Moneybarn is likely to have seen on its credit searches.

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

The information Mr S 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 note that there has been some discussion between the investigator and Mr S about the precise nature of some of the transactions on Mr S' bank statements – including transfers out of his account, funds he received from family and cash withdrawals.

However, as checking bank statements wasn't the only way for Moneybarn to have found out more about Mr 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 S has now provided us with.

So I don't think that Moneybarn would reasonably be expected to have known about most, if not all, of the transactions Mr S is now relying on to argue this agreement was unaffordable. Furthermore, I don't think that a customer withdrawing cash from their bank account means that they are experiencing financial difficulty either.

I also think that it is worth keeping in mind that Mr 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 S is likely to have disclosed the transactions, or had anything like the discussions he's had with the investigator at the time when Moneybarn was deciding whether to lend to him.

Therefore, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr S 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 S.

I've also thought about what happened when Mr S ran into difficulty making his payments to the agreement. Having reviewed Moneybarn's records of contact with Mr S, I can see that Mr S was granted a number of payment plans. These payment plans were designed to bring Mr S' arrears up to date and I can also see that 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 not only took action but also offered some help and support when Mr S got into arrears on his agreement.

Finally, I've also thought about what Mr S has said about Moneybarn's failure to simply restructure his agreement. Having done so, I can understand why it might be frustrating for Mr S that Moneybarn didn't do this. However, Mr S had a conditional-sale agreement not a fixed sum loan.

Conditional-sale agreements are a type of loan with certain characteristics in terms of the obligations on the parties as well as the protections afforded to customers. This means that a conditional sale agreement can't just automatically be extended, in the same way that a fixed-sum loan might be able to be, without those obligations and protections being affected.

Furthermore, the amount lent was linked to the value of the car over the period as the borrowing was effectively secured on it and the car may not have been worth the same amount at the time Mr S ran into difficulty. So attempting to rewrite the agreement on new terms may well have created a mismatch between the amount borrowed and the asset being financed. As a result of this, while Mr S may have preferred his loan being restructured, I don't think that it was unfair for Moneybarn not to do this.

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

Overall and having carefully considered everything, I'm satisfied that Moneybarn didn't act unfairly towards in its dealing with Mr S and I'm not upholding his complaint. I appreciate that this will be very disappointing for Mr S. 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 S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2024.

Jeshen Narayanan

Ombudsman