

Complaint

Mr P complains that Moneybarn No.1 Limited (“Moneybarn”) unfairly entered into conditional sale agreement with him. He’s said that the proper checks weren’t carried out which led to him being provided with finance that was unaffordable and he had to work seven days a week to make ends meet.

Background

Mr P entered into two separate conditional sale agreements with Moneybarn. the details of the individual agreements are as follows.

The first agreement

In September 2017, Moneybarn provided Mr P with finance for a used car. The purchase price of the vehicle was £5,995.00. Mr P didn’t pay a deposit and entered into a 50-month conditional sale agreement with Moneybarn for the entire amount of the purchase.

The loan had interest, fees and total charges of £5,422.98 and the total amount to be repaid of £11,417.98 was due to be repaid in 49 monthly instalments of £233.02. Mr P’s statement of account for this agreement shows that he settled this account early in August 2021.

The second agreement

In August 2021, Moneybarn provided Mr P with finance for a second time. This time the finance was being provided to facilitate the purchase of a used van. The purchase price of the vehicle was £19,196.40. Mr P made an advance payment of £3,600.04 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £15,596.36 he needed to complete the purchase.

The loan had interest, fees and total charges of £15,000.45 and the balance to be repaid of £30,596.81 (not including Mr P’s deposit) was due to be repaid in 59 monthly instalments of £518.59.

In February 2024, Mr P complained to Moneybarn that it shouldn’t have provided either of these agreements as they were unaffordable for him.

Moneybarn’s investigation

Moneybarn did not uphold Mr P’s complaint. It was satisfied that it had carried out proportionate checks at the time of both of Mr P’s applications and the results showed that it was reasonable to lend on both occasions. When responding to our request for its file on Mr P’s complaint, Moneybarn told us that it believed Mr P had complained about the first agreement too late.

Our investigation

Mr P's complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Moneybarn that it shouldn't have provided Mr P with the finance on either occasion. So she didn't think that Mr P's complaint should be upheld.

Mr P 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Moneybarn has argued that Mr P's complaint was made too late because he complained more than six years after the decision to provide the finance on the first agreement as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr P's complaint as being one alleging that the relationship between him and Moneybarn was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr P's complaint. Given the reasons for this, I'm satisfied that whether Mr P's complaint about the first conditional sale agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr P's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mr P has not only complained not about the respective decisions to lend but has also alleged that this unfairly impacted him going forward and he alleges that this resulted in him having to work seven days a week.

I'm therefore satisfied that Mr P's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Moneybarn. I acknowledge Moneybarn still doesn't agree we can look Mr P's complaint about the first agreement, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr P's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr P's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Moneybarn, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Moneybarn) and the debtor (Mr P), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;

- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr P's complaint, I therefore need to think about whether Moneybarn's decisions to lend to Mr P, or its later actions resulted in the lending relationship between Mr P and Moneybarn being unfair to Mr P, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr P's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr P's ability to repay in circumstances where doing so would have revealed payments to the agreements to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Moneybarn didn't then somehow remove the unfairness this created.

I'll now turn to whether Moneybarn acted fairly and reasonably when entering into the conditional sale agreements with Mr P.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 P's complaint.

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 for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was 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 mean 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 P's complaint.

Was Moneybarn's decision to enter into the first conditional sale agreement fair and reasonable?

Moneybarn says it agreed to the first application after Mr P provided details of his monthly income which it verified against information in a bank statement which Mr P was asked to provide. It says it also carried out credit searches on Mr P which did show defaulted accounts, although it considered these to be historic as the most recent default had taken place more than a year prior to this agreement. Furthermore, Mr P had no County Court Judgments ("CCJ") recorded against him.

In its view, when reasonable repayments to the total amount Mr P owed plus a reasonable amount for Mr P's living expenses were deducted from his monthly income the monthly payments were still affordable.

I've thought about what Moneybarn has 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 estimates or assumptions of Mr P's living costs, based on statistical data, given the adverse information on his credit file and the fact that Moneybarn had copies of Mr P's bank statements.

In these circumstances, I would have expected Moneybarn to have had a reasonable understanding about Mr P's regular living expenses, using the bank statements it obtained rather than rely on estimates or assumptions of this. So I've gone on to decide what I think Moneybarn is more likely than not to have done had it reviewed the bank statements it obtained.

Having reviewed the information Mr P provided this does appear to show that when his discernible committed regular living expenses and payments to his active 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.

As this is the case, I don't think that it was unfair for Moneybarn to have entered into the first conditional sale agreement, or that it doing so created unfairness.

Did Moneybarn act fairly and reasonably when agreeing to enter into the second conditional sale agreement with him?

Moneybarn says it agreed to the second application after Mr P provided details of his monthly income which it cross checked against information it received from credit reference agencies on the amount of funds going into his main bank account each month. It also says that it once again carried out credit searches on Mr P, which showed defaulted accounts. This time Mr P's most recent default had taken place only three months earlier. Once again, Mr P had no County Court Judgments ("CCJ") recorded against him.

Moneybarn has again argued that when reasonable repayments to the total amount Mr P owed plus a reasonable amount for Mr P's living expenses were deducted from his monthly income the monthly payments were still affordable. However, I don't think it was reasonable

to rely on estimates or assumptions of Mr P's living costs, based on statistical data, in this instance either. I say this particularly given the fact that Moneybarn saw that Mr P had recently defaulted on a credit commitment.

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 P. Once again, bearing in mind the adverse information Moneybarn saw, 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 P's regular living expenses as well as his income and existing credit commitments. I've considered the information that Mr P has provided in order to determine this.

It's fair to say that the bank statement information Mr P has provided now, which to be clear on this occasions Moneybarn did not have, shows that a number of different payments were going out to debt collection agencies each month. Nonetheless, the copy of the credit check Moneybarn carried out and has provided to us indicates that a financial associate had a significant number of defaults in their name. So it's possible that not all of the payments going out of Mr P's account were for accounts in his name.

I'm also mindful that while Mr P might say that this was down to him working seven days a week, he nonetheless was earning considerably more than he was at the time of the first agreement. It looks like he was earning double what he'd been earning previously. Furthermore, I think that Moneybarn using Mr P's actual living costs in its assessment, rather than the assumptions or estimates that it used, would not have shown these payments to have been unaffordable.

Indeed, it's arguable that the amount left in Mr P's account each month was sufficient to repay this agreement, given Mr P had not only maintained all the payments to his previous agreement he also settled it early. Equally, this is even without taking into account the significant amount of discretionary spending Mr P was making.

To be clear, I do have concerns about the sheer amount of payments to debt collection agencies going from Mr P's account. However, the amount of Mr P's discretionary spend, the lack of CCJs recorded against him which suggests that he was able to pay more when he needed to and the fact that all of the payments may not have been to accounts in his name, are also factors that I need to consider.

In my view, these factors leave me of the view that this is a case of whether Moneybarn was reasonably entitled to accept the credit risk Mr P's application presented, rather than it being the case that Mr P's situation was so obviously distressed that he shouldn't have been lent to.

As I've explained, Mr P had made all the payments to his first agreement and settled it early. He was earning substantially more than he was at the time of the first agreement and crucially was also paying a deposit equivalent to seven months' worth of monthly payments. It's also worth noting that Mr P was purchasing a van at this stage too and given the nature of his self-employment, I think that this is a vehicle that would have provided a significant benefit.

I should also make it clear that it isn't for me to substitute my judgement for Moneybarn's and determine whether I would have lent to Mr P based on all the information (some of which Moneybarn did not have) before me. In other words, it's not for me to re-underwrite Mr P's application. What I'm required to decide here is whether the decision that Moneybarn took to lend to Mr P was unreasonable.

Having considered everything and weighed it up in the round, I think that Moneybarn was reasonably entitled to accept the credit risk of Mr P's application. I don't think that it accepted an application that was obviously unaffordable, or that would cause significant harm, given the vehicle Mr P was purchasing. To be clear, I'm not making the finding that it always be the case that providing vehicle finance to a customer with previous difficulty cannot and will not cause harm.

It's my finding that, in this case, Moneybarn considered that it was prepared to accept the risk of lending to Mr P, notwithstanding the fact that he wasn't repaying others, in circumstances where it looks like he could, on the face of things at least, paid more than he was had he wished to do so.

Bearing in mind what I've said about Mr P's deposit, his increased income (since the first agreement) and the fact that he likely wanted this vehicle to help him work, I'm just about persuaded that Moneybarn's decision to lend wasn't unreasonable.

As this is the case, I don't think that it was unfair for Moneybarn to have entered into the second conditional sale agreement, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr P and Moneybarn was unfair to Mr P. I've not been persuaded that Moneybarn created unfairness in its relationship with Mr P by irresponsibly lending to him when it entered into these conditional sale agreements with him. And I don't find Moneybarn treated Mr P unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr P's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr P. 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 February 2025.

Jeshen Narayanan
Ombudsman