

## **The complaint**

Mr M, who is represented by a third party, complains that Moneybarn No.1 Limited, trading as Moneybarn ('Moneybarn') irresponsibly granted him a conditional sale agreement he couldn't afford to repay.

## **What happened**

In January 2016, Mr M acquired a used car financed by a conditional sale agreement from Moneybarn. Mr M was required to make 60 monthly repayments of £298.21. The total repayable under the agreement was £17,594.39.

In September 2023, Mr M complained to Moneybarn that it agreed to provide him with finance under the terms of the agreement without carrying out reasonable and proportionate checks. It then acted unfairly by approving the finance.

Mr M says he knew straight away that he couldn't afford the finance but he needed a car for work.

The finance was settled in August 2020.

Mr M says that Moneybarn didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Moneybarn didn't agree. It said that it carried out a thorough assessment which included requiring proof of income and running credit checks.

Our investigator didn't recommend the complaint be upheld. He didn't think there was enough to show that Moneybarn had acted unfairly or unreasonably by approving the finance agreement.

Mr M didn't agree and said that in lending to him Moneybarn had worsened his financial situation.

The complaint has therefore been passed to me for a final decision.

## **What I've decided – and why**

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 unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr M's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Moneybarn thinks part of this complaint was referred to us too late because some of the lending decisions took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in

Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mr M's complaint, and given the reasons for this (which I'll go on to explain), whether Mr M referred his complaint about the lending decision that happened more than six years ago in time or not has no impact on that outcome. Like the investigator, I think Mr M's complaint should be considered more broadly than just those lending decisions seeing as he complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Moneybarn. Mr M's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Moneybarn. I acknowledge Moneybarn still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr M's complaint can be reasonably interpreted as being about the fairness of his relationship with Moneybarn, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Moneybarn) and the debtor (Mr M), 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.

S.140B 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 what Mr M has complained about, I therefore need to think about whether Moneybarn's decision to lend to Mr M and increase his credit limits or its later actions created unfairness in the relationship between him and Moneybarn such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr M's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out proportionate affordability checks where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there wasn't a set list of checks that Moneybarn needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr M would need to make repayments for.

*Did Moneybarn Carry out reasonable and proportionate checks to satisfy itself that Mr M was in a position to sustainably meet the repayments that were due under the agreement?*

Whilst I've seen that Moneybarn obtained proof of Mr M's income by way of payslip information, it didn't ask him about his expenditure. Although it did complete a credit check in order to find out more about his level of committed expenditure for other credit as well as his payment history for such credit, this won't have shown what his regular living expenses were. Without knowing what Mr M's regular committed expenditure was, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

Moneybarn says that the credit check showed Mr M had defaulted on some previous borrowing. The most recent of these was six months before he applied for the finance and he was in the process of paying it back. There were no other adverse records on his file, such as having county court judgments against him or insolvency. I've seen that Mr M says he'd been in an individual voluntary arrangement, but I haven't seen any evidence to support that. In any event, I have to keep in mind that Mr M was taking on a significant financial commitment over a five-year period. So again, I think it therefore would have been proportionate for Moneybarn to have got a more thorough understanding of Mr M's financial circumstances before lending to him.

*What would reasonable and proportionate checks have shown at the time? Did Moneybarn reach a fair decision to lend?*

I can't be certain what Mr M would have told Moneybarn had it asked about his regular expenditure. I don't think Moneybarn needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in the bank statements Mr M has sent us as an indication of what would most likely have been disclosed.

I've reviewed bank statement covering a period of four months leading up to Mr M applying for and being granted the finance. Our investigator asked Mr M some additional questions to help better understand them.

I've seen evidence of Mr M's monthly income, made up of his earned income and the state benefits he was entitled to receive. I broadly agree with our investigator that his average net income over the three-month period leading up to the lending was just under £1,900 – and looking at the full four months, it was higher at around £2,050. And I agree that the statements appear to show only limited details about the extent of Mr M's monthly day to day and committed expenditure – such as for rent and other household costs such as utilities, council tax, food and car expenses. So there isn't enough information for me to conclude that Mr M's spending may have been at a level such that he wouldn't have had enough disposable income to meet the monthly repayment costs of the agreement. But based on what I can see of his spending, he appears to have had available disposable income of around £1,000-£1,100.

Mr M has told us about the financial challenges he was facing at the time due to his working pattern. I've seen evidence that he's explained he was paying rent via a letting agent, but that only covers the month of September before the agreement started. It may be that his living arrangements had changed after that. So it's not possible for me to gain a sufficiently the time.

All of this means I'm unable to make a finding that Mr M's financial situation was getting significantly worse to the extent that Moneybarn granting him the finance would have been unfair. So I can't fairly say that better checks would have shown the repayments to be either unaffordable or likely to become unsustainable.

It follows that, taking all the information and evidence I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Mr M.

Overall, and based on the available evidence I don't find that Mr M's relationship with Moneybarn was unfair. It's not clear enough to me that Moneybarn created unfairness in its relationship with Mr M by lending to him irresponsibly. I don't find Moneybarn treated Mr M unfairly in any other way either based on what I've seen.

For this reason, I'm therefore not persuaded that Moneybarn acted unfairly in approving the finance.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 February 2025.

Michael Goldberg

**Ombudsman**