

The complaint

Miss F complains that Moneybarn No. 1 Limited trading as Moneybarn lent to her irresponsibly.

What happened

On 8 November 2016, Miss F entered into a finance agreement with Moneybarn as shown below, to acquire a used car. She repaid the agreement on 1 May 2019 when she acquired another car and took the remaining balance to that agreement.

Date	Amount of credit	Term	Monthly payment	Total repayable
8 November 2016	£5,439	60 months	£192.04	£11,330.36

On 4 January 2023, Miss F complained to Moneybarn. She said appropriate affordability checks were not carried out and as a result her credit rating had suffered due to missed payments. She said she struggled to pay other bills as she prioritised paying for the car. Miss F was concerned that she had to pay double what the car was worth due to the high cost of the credit.

Moneybarn looked into the complaint and issued a final response letter. It said the complaint had been brought too late for it to be considered under the complaint handling rules of the Financial Conduct Authority (FCA) as the lending decision had taken place more than six years ago.

However it did carry out a review of the complaint and rejected it. Moneybarn provided a summary of the checks it had carried out and felt the agreement was affordable for Miss F. It said she had confirmed the agreement was affordable for her when she agreed to the “*Declaration by Customer*”. It pointed out that she had made the first years’ payments with no issues and explained why some later payments hadn’t been made with reasons such as a change in payment date following a promotion, costs of repairs to the vehicle, and it outlined the support it had given her as a result.

Moneybarn said the cost of credit had been clear in the contract documents completed at the point of sale.

Miss F didn’t accept Moneybarn’s response, so she referred her complaint to our service. One of our investigators looked into it. He didn’t agree with Moneybarn that the complaint had been brought too late for it to be considered under the rules, as he felt Miss F’s complaint could reasonably be considered to be about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140).

He concluded that he couldn’t be sure that reasonable and proportionate checks were carried out on Miss F’s application as Moneybarn couldn’t provide all the information regarding the checks due to the time that had passed. But equally, he had no evidence of what Moneybarn might have found if it had carried out further checks. Based on the evidence that was available, our investigator said he couldn’t reasonably conclude that the

lending was irresponsible or the relationship was unfair.

Miss F didn't accept what our investigator said and explained she was in a Debt Management Plan (DMP) which she was struggling with at the time and her work contract had been due to come to an end just four months after the finance started. As there was no agreement the complaint has been passed to me to decide.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Moneybarn thinks this complaint was referred to us too late. As a starting point, our investigator explained why he didn't think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Miss F says the agreement was never affordable for her and caused her to miss payments on other bills and affected her credit rating. The agreement may have made the relationship unfair as she had to pay more in interest than she could afford. I acknowledge Moneybarn doesn't agree we can look at this complaint, but as I don't think it should be upheld, 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 Miss F's complaint can be reasonably interpreted as being about the fairness of her 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 (Miss F), 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 Miss F has complained about, I need to consider whether Moneybarn's decision to lend to her, or its later actions, created unfairness in the relationship between her 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. Miss F's relationship with Moneybarn is therefore

likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Moneybarn carry out reasonable and proportionate checks to satisfy itself that Miss F was in a position to sustainably repay the credit?
 - If not, what would reasonable and proportionate checks have shown at the time?
 - Did Moneybarn make a fair lending decision?
- Did Moneybarn act unfairly or unreasonably towards Miss F in some other way?

Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Miss F would be able to repay the credit sustainably. It's not about Moneybarn assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Moneybarn has explained in its final response that it carried out a full credit search with a well-known credit reference agency to get an understanding of Miss F's situation at the time. It said this revealed her existing borrowing levels were low and she had no County Court Judgements (CCJs). But it could see she had defaulted on some previous credit, but the last default had been registered almost two years before this application, so it was content to continue with its checks.

Moneybarn said it had verified Miss F's income using payslips she'd given to it dated 30 September and 31 October 2016. It has provided copies of those payslips to us. Moneybarn said it calculated her expenditure and compared that to her income and believed the monthly payments to be affordable for her.

But Miss F says she was in a DMP when she applied for the agreement and had been for some time. She said she had very little disposable income – around £50 a month - and if Moneybarn had done proper checks, it would have realised that.

While I don't doubt what Moneybarn said, it hasn't been able to provide the actual data it received when carrying out the checks. While I understand that is due to the time elapsed, without sight of it, it's difficult for me to say that reasonable and proportionate checks were carried out. That's not to say the checks were not reasonable and proportionate – they may well have been – but I can't say for sure.

So with that in mind, I thought about what Moneybarn might have found had it done more, and our investigator has asked Miss F for any evidence she may have about her circumstances which will provide clear detail of her financial circumstances – such as bank statements.

Miss F has provided some other information such as her employment contract and details of her DMP. But I think it's unlikely that a reasonable lender would have asked questions about those things. The lender would be likely to rely on employment information given to them by the applicant – and Miss F's was supported by her payslips. And the credit agreement signed by Miss F says she declares "*you are not presently on a debt management plan...*" so I wouldn't expect Moneybarn to have requested that information.

I think if a lender wanted to analyse an applicant's situation further, it would be likely to ask for bank statements. Miss F has unfortunately been unable to provide any statements dating back to 2016 for understandable reasons. So again, without the actual data, I can't reasonably conclude that further checks (if necessary) would have led to Moneybarn refusing Miss F credit.

It's also clear that Miss F knew Moneybarn was making an assessment of her ability to meet the repayments at the time she applied for the credit. I say this because she provided the two payslips I've referred to earlier, and the precontract information she signed said Moneybarn would be conducting a credit reference agency search.

It follows that, based on the information I have, I can't reasonably make a finding that Moneybarn acted unfairly when it agreed to lend to Miss F.

Moneybarn has shown that Miss F made repayments on time and in full for the first year or so of the contract. When she fell into arrears after that for a variety of reasons, it agreed repayment plans with her to bring the account back up to date until she settled it early in May 2019. This is what I'd expect it to do.

Overall, and based on the available evidence I don't find that Miss F's relationship with Moneybarn was unfair. It's not clear enough to me that Moneybarn created unfairness in its relationship with her by lending to her irresponsibly, or in respect of its handling of the account under the credit agreement. I don't find Moneybarn treated Miss F unfairly in any other way either based on what I've seen.

Finally, I've thought about Miss F's comments that the agreement meant she had to pay double what the car was worth due to the high cost of the credit. But that information was clearly set out to her in the precontract information and on the credit agreement she signed. So she would have been aware of the cost of the credit at the time she entered into the contract and, if she was unhappy with it, she could have chosen not to proceed.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 14 February 2025.

Richard Hale
Ombudsman