

Complaint

Mr W complains that Secure Trust Bank (trading as “Moneyway”) unfairly entered into a hire-purchase agreement with him. He’s said that the repayments to this agreement were unaffordable and so it shouldn’t have been provided to him.

Background

Mr W did initially indicate that he wished to complain about the commission Moneyway paid to the broker that arranged his finance. However, Mr W subsequently asked us to solely consider the affordability of his agreement. Therefore, this decision is only looking at whether Moneyway acted fairly and reasonably towards Mr W when agreeing to lend to him.

In February 2020, Moneyway provided Mr W with finance for a used car. The cash price of the vehicle was £7,795.00. Mr W didn’t pay a deposit and borrowed the total amount required for the purchase, by entering into a hire-purchase agreement with Moneyway.

The amount lent was £7,795.00 and the agreement had interest, fees and total charges of £4,238.40 (made up of interest of £4,228.40 and an option to purchase fee of £10). The total amount to be repaid of £12,033.40 was due to be repaid by 59 monthly instalments of £200.39 followed by a final monthly instalment of £210.39.

Mr W complained that the agreement was unaffordable and so should never have been provided to him. Moneyway didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

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

Mr W 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 W’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr W’s complaint. I’d like to explain why in a little more detail.

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 a 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 meant 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've kept this in mind when deciding Mr W's complaint.

Moneyway says it agreed to this application after Mr W provided details of his monthly income which it cross checked against information from credit reference agencies on the amount of funds received into his main account each month.

It says it also carried out credit searches on Mr W which did show some significant adverse information - in the form of defaulted accounts - which it considered to be historic. However, it says when reasonable repayments to the total amount Mr W already owed plus a reasonable amount for his living expenses, calculated on statistical data, were deducted from his monthly income the monthly payments were affordable.

On the other hand, Mr W 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 W and Moneyway have said.

The investigator reached the conclusion that it was reasonable for Moneyway to rely on statistical data in order to ascertain Mr W's expenditure. It's fair to say that it can sometimes be proportionate for a lender to rely on statistical data in determining a prospective borrower's expenditure. I can also to some extent understand why the investigator reached the conclusion that he did.

However, bearing in mind the circumstances here, it's not a view I share. In my view, it is not fair and reasonable for a lender to automatically resort to such data – like Moneyway did here - where a prospective borrower had previously had significant difficulty repaying credit and a lender is proposing to provide credit with a high total cost.

Nonetheless, while I don't think that it was fair and reasonable for Moneyway to rely on statistical data, I'm not persuaded that it carrying out further checks would have resulted in it

reaching a different conclusion on lending to Mr W in this instance. I say this as bearing in mind Mr W's previous difficulties repaying credit, the term of this agreement and its total cost, I would have expected Moneyway to have had an understanding about Mr W's actual committed living expenses as well as his income and existing credit commitments.

I wish to be clear in saying that this isn't the same as carrying out a line-by-line analysis of Mr W's bank statements. What Moneyway needed to do was supplement the information it had on Mr M's credit commitments, with some further information on his actual committed living costs rather than relying on estimates of this. However requesting and analysing bank statements wasn't the only way for Moneyway to have found out more about Mr W's actual living costs. Moneyway could have done this by asking Mr W about these costs, or asking him for copies of bills or other evidence of payment etc.

I think that this is important because having looked at the information Mr W has provided, it does appear to show that when his actual committed living expenses and the credit commitments on the credit search (which Moneyway was entitled to rely on) are deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Indeed, Mr W's statements show that his actual committed living expenses weren't particularly high. This is probably because what he told Moneyway about his residential status was accurate. So Mr W's actual committed and non-discretionary living expenditure (and Moneyway using this instead of statistical data) does not result in the monthly payments being unaffordable. Therefore, Moneyway taking steps to find out about this would not have made a difference to its decision on lending to Mr W.

I'm sorry to hear about what Mr W has said about having difficulty making his payments. Having looked at the bank statements he has provided for multiple accounts, I do have an idea why this might have happened. However, I think it's fair to say that the extent of Mr W's other spending would only have been discovered if bank statement information for these multiple accounts had been requested.

I also have to keep in mind that Mr W's submissions now are being made in support of a claim for compensation. But the question I need to consider and what I need to evaluate is what is more likely than not to have happened at the time had Moneyway carried out further checks. It's fair to say that, at the time at least, Mr W wanted the car that he had chosen. I've also seen that he's said that he needed a car at the time.

In this context, I think that any explanations he would have provided to Moneyway, at the time, are more likely to have been with a view to persuading it to lend to him, rather than highlighting any unaffordability. Therefore, in circumstances where Mr W's actual committed living costs do not appear to render the monthly payments unaffordable, I think it unlikely - and certainly less likely than not - that Mr W would have proactively offered other information, which Moneyway wasn't required to obtain, indicating that there were other reasons he might have difficulty repaying.

I know that Mr W has queried how it is possible for us not to uphold this complaint when he's had a separate complaint upheld. He's also provided examples of final decisions from other ombudsmen taken from our database of published decisions that is on our website. I can understand why Mr W might find it strange that he has a different outcome on this complaint from his other one and the ones on our database. This is especially as he perceives the facts and circumstances of all the cases to be the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a

proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, what a lender would learn about a prospective borrower had proportionate checks been carried out would also be determined by what the lender can reasonably be expected to have found out about the borrower in the first place. So caution should be exercised when reviewing final decisions from our database as the full facts and circumstances of the case will not have been set out in the decision.

It may also explain that I am not bound by the outcomes reached by other case handlers on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. So the outcome on Mr W's other case, as well as the other ombudsmen decisions he's taken from our database, cannot and do not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Mr W, it might help for me to explain that there are some key differences between this complaint and the others Mr W has highlighted.

Firstly, having looked at Mr W's other case, it's clear that complained concerned two loans which he took out a number of years prior to this agreement and much closer to the time he had most of his previous difficulties repaying credit. These differing facts not only impacted on what it would have been proportionate for the lender to have checked in that case but also what it would have found out about his ability to make his payments in that case at the relevant times.

Secondly, in relation to the other published decisions which Mr W has referred to, I don't dispute that it wasn't fair and reasonable for Moneyway to have used statistical data when determining Mr W's living expenses bearing in mind his circumstances here. However, while I accept that Mr W may not agree with, this doesn't in itself mean that it would be fair and reasonable for me to uphold Mr W's complaint.

After all it's only fair and reasonable for me to uphold a complaint where a lender did not carry out proportionate checks *AND* the information provided suggests that a lender carrying out such checks would have resulted in it reaching a different decision on lending to the customer.

In this case, bearing in mind the circumstances and while noting that by this stage the vast majority of Mr W's previous difficulty with credit was historic, I've explained that Moneyway needed to find out more about Mr W's actual committed expenditure, rather than using estimates of this. However, I've already explained that Mr W's actual committed living expenses aren't the reason why he might have had difficulty meeting his monthly payments here.

So Moneyway finding out more about Mr W's actual living costs in this instance would not have resulted in it concluding that the monthly repayments in this case would be unaffordable for Mr W.

Whereas in the other decisions Mr W has provided, where the complaint was upheld, it was because the deciding ombudsmen determined the lender obtaining the missing information, in those cases, would more likely than not have resulted in it deciding against lending to the customer.

Therefore, while I'm not required to replicate the outcomes reached by our other ombudsmen, nonetheless I don't consider that my answer here is incompatible or

inconsistent with the one Mr W received on his other case, or the other published decisions he has referred to, notwithstanding the differing outcomes.

In reaching my conclusions, I've also considered whether the lending relationship between Moneyway and Mr W might have been unfair to Mr W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Moneyway irresponsibly lent to Mr W 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, while I think that Moneyway's checks before entering into this hire-purchase agreement with Mr W may not have gone far enough, I'm satisfied that Moneyway finding out more about Mr W's actual living costs won't have prevented it, from providing these funds, or entering into this agreement with him. So I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 February 2025.

Jeshen Narayanan
Ombudsman