

Complaint

Mr G complains that Moneybarn No.1 Limited (trading as “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 April 2021, Moneybarn provided Mr G with finance for a used car. The purchase price of the vehicle was £8,945.00. Mr G paid a deposit of £205 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £8,740.00 he needed to complete the purchase.

The loan had interest, fees and total charges of £9,365.92 and the balance to be repaid of £18,060.92 (not including Mr G’s deposit) was due to be repaid in 59 monthly instalments of £306.88.

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

Mr G 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 G’s complaint.

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

Given Mr G’s response to our investigator’s assessment, 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 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 were 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 G's complaint.

Moneybarn says it agreed to this application after Mr G provided details of his monthly income which it verified against copies of payslips which Mr G was asked to provide. It says it also carried out credit searches on Mr G which did show what it considered to be a historic County Court Judgment ("CCJ") recorded against him.

But, in its view, when reasonable repayments to the total amount Mr G owed plus a reasonable amount for Mr G's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr G 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 G 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 G's living costs, based on statistical data, given the adverse information on his credit file.

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

The information Mr G 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 appreciate that Mr G says that his situation at the time was worse than this. He has referred to taking out multiple payday loans which may have been removed from his credit report, borrowing from family and friends and the fact that he was doing this to fund gambling. I've thought about what Mr G has said. However, Moneybarn wouldn't have known about the payday loans removed from his credit file and it the credit search wouldn't have shown any loans from friends or family either. And Moneybarn was entitled to rely on the results of its credit search.

I also accept that the real reason Mr G might have gone on to have difficulty making his payments to this agreement wasn't due to his existing credit commitments or his living expenses. And that this is readily apparent when all of the bank statements Mr G has provided are considered. It's also possible – but by no means certain – that Moneybarn might have taken a different decision had it seen these bank statements at the time.

But what I need to think about here is what did Moneybarn need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr G's actual regular living expenses (bearing in his income and credit commitments had already been validated against information from credit reference agencies)? – given this was a first agreement and Mr G was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for Moneybarn to have found out more about Mr G'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 G's main account. And I certainly don't think that Moneybarn needed to request statements for Mr G's other accounts, which contained most of his gambling, either.

So while I sympathise with the difficulty Mr G may have had, nonetheless I don't think that Moneybarn could reasonably be expected to have known about the nature and extent of Mr G's gambling at the time. Furthermore, as Mr G was being provided with an asset rather than cash, which he would not have been able to gamble, I also think that this limits the relevance of his gambling in this instance.

Overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr G did go far enough, I'm nonetheless satisfied that carrying out reasonable and proportionate checks won't have stopped Moneybarn from providing these funds, or entering into this agreement with Mr G. So I'm satisfied that Moneybarn didn't act unfairly towards Mr G when it agreed to provide the funds.

I've also thought about what Mr G has said about Moneybarn contacting him by phone when he asked it not to do so. I can understand why it may be frustrating for a customer to receive phone calls from a firm asking for payment - particularly when a customer says that they would prefer not to be contacted by phone. I can also understand that as these phone calls will have discussed why payments have been missed, I can also, to some extent, understand why they could be perceived as harassing.

However, having reviewed Moneybarn's records of contact with Mr G, I can see that phone calls were attempted after responses hadn't been received to its written correspondence. So Moneybarn does appear to have attempted to initiate contact with Mr G via other means. Equally, it wouldn't be fair and reasonable for a firm to simply continue sending written correspondence in circumstances where this isn't being responded to, in the hope that doing the same thing repeatedly would eventually produce a different result. This is particularly as Mr G could have responded to Moneybarn's communications at his own convenience but did not do so.

I can also see that as a result of these phone calls, Moneybarn did try to set up payment plans with Mr G. These payment plans were designed to bring his arrears up to date and I can 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. Finally, Moneybarn also provided Mr G with details on his options for exiting his agreement if he felt he would not be in a position to return to making full payments.

Bearing in mind all of this, while I can understand why it would have been frustrating for Mr G to have received phone calls and other contact from Moneybarn at times where he felt he couldn't make payment, I don't think that Moneybarn was contacting Mr G to harass him into paying. Instead, I'm satisfied that Moneybarn contacted Mr G with a view to finding out why he was missing payments in order to offer help and support in order to bring his account up to date, in accordance with its obligation to offer forbearance and due consideration.

As this is the case, I've not been persuaded that Moneybarn acted unfairly in relation to this matter either.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Mr G might have been unfair to Mr G 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 G 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. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Mr G. 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 G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 February 2025.

Jeshen Narayanan
Ombudsman