

Complaint

Miss M complains that Moneybarn No.1 Limited (trading as “Moneybarn”) unfairly entered into conditional sale agreement with her. She’s said that the proper checks weren’t carried out which led to her being provided with finance that was unaffordable and this caused ongoing hardship for her.

Background

In June 2016, Moneybarn provided Miss M with finance for a used car. The purchase price of the vehicle was £5,000.00. Miss M didn’t pay a deposit and entered into a 60-month conditional sale agreement with Moneybarn for the entire amount of the purchase. The loan had interest, fees and total charges of £5,677.82 and the total amount to be repaid of £10,677.82 was due to be repaid in 59 monthly instalments of £180.98. I understand that the agreement ended up being repaid early in September 2020.

In April 2023, Miss M complained to Moneybarn saying that the agreement was unaffordable and therefore Moneybarn shouldn’t have entered into it with her. Moneybarn didn’t uphold Miss M’s complaint. It considered that the complaint had been made too late. Miss M remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Miss M’s complaint, Moneybarn reiterated its view that Miss M complained too late. Miss M’s complaint was subsequently considered by a one of our investigators. He eventually reached the conclusion that proportionate checks would not have shown Moneybarn that it shouldn’t have provided Miss M with the finance. So he didn’t think that Miss M’s complaint should be upheld.

Miss M 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 Miss M’s complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Miss M ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Miss M’s complaint as being one alleging that the relationship between her and Moneybarn was unfair to her 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 Miss M's complaint. Given the reasons for this, I'm satisfied that whether Miss M's complaint about the conditional sale agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss M's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Miss M has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

I'm therefore satisfied that Miss M's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and Moneybarn. I acknowledge Moneybarn still doesn't agree we can look Miss M's complaint, 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 Miss M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss M's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her 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 (Miss 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. 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 Miss M's complaint, I therefore need to think about whether Moneybarn's decision to lend to Miss M, or its later actions resulted in the lending relationship between Miss M and Moneybarn being unfair to Miss M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss M's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Miss M's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement 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 agreement with Miss M.

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 Miss M's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit 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 a lender did enough to establish whether the repayments to an agreement were 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 Miss M's complaint.

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

Moneybarn says it agreed to Miss M's application after Miss M provided details of her monthly income which it verified against information on bank statements which Miss M was asked to provide. It says it also carried out credit searches on Miss M although given the length of time that has passed, while it is able to provide a reference number confirming that a check with a credit reference agency took place, it no longer has a record of what this check showed.

On the other hand, Miss M has said that the repayments were unaffordable for her and that this caused her ongoing hardship.

I've thought about what Moneybarn has said.

The first thing for me to say is that Moneybarn hasn't even explained what it was that it looked at in the information that it obtained, let alone what this actually showed. As this is a case, I'm not in a position to say that the checks it carried out on Miss M's circumstances were proportionate in this instance.

I've therefore tried to understand what a proportionate check is likely to have shown Moneybarn. In order to do this, I've looked at the bank statements Miss M provided to Moneybarn in order to see whether it was reasonable for it to conclude that Miss M could make the monthly repayments on this conditional sale agreements.

Having looked through the statements, I can see that Miss M provided Moneybarn with statements for the account that her income was being paid into. I understand that our investigator said that there might have been some discussion between Miss M and Moneybarn about her expenditure and she said that this was covered for her. Miss M has disputed this. I don't know if Moneybarn did ask Miss M this and whether it was told that her living expenditure was met by others. But regardless of what Moneybarn may or may not have been told at the time, it's worth noting that the statements Miss M did provide do not have much in the way of living expenses and non-discretionary committed payments on them.

So I think that Moneybarn may have asked Miss M about her costs, or instead used statistical data to account for Miss M's expenditure. In any event, in order to reassure Miss M, I've also considered the bank statements that Miss M provided for her other account when she first referred her complaint. And while noting that Moneybarn wasn't required to request statements for multiple accounts, I've nonetheless not seen anything in the content of this second set of statements which clearly show me that Miss M's living expenses made this agreement unaffordable.

I accept that Miss M has said that her circumstances were worse than what the information provided shows. For example, I've seen that she has referred to a number of credit commitments which she says would have shown up in any credit check that Moneybarn carried out at the time. As I've explained, Moneybarn no longer has a record of what the credit check it carried out showed. Given this application took place approaching nine years ago, I don't think that this is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of Moneybarn being unable to provide this to us.

I'm also mindful that Miss M has not been able to provide us with a credit report, or equivalent from that time either. I appreciate that Miss M may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Moneybarn isn't required to have retained all of this information either. As this is the case and Miss M has made a complaint, I have to decide the complaint on what I do have before me.

In these circumstances, I've returned to the bank statements.

I've already said that the bank statements don't clearly show that Miss M's living expenses made the repayments to this credit agreement unaffordable. It's also fair to say that the bank statements for both accounts don't clearly show me that Miss M was making payments to existing credit commitments at a level that meant she didn't have the funds to make the monthly payments to this conditional sale agreement either.

I'd also like to reassure Miss M that I've read about the difficult time she's had. I'm sorry to hear about what Miss M has told us and I do sympathise with everything that has happened. I note that Mrs M has said that she was coerced into transferring money by family members, and I can see there were transactions to and from relatives on the bank statements provided. However, I don't think Moneybarn would actually have known what these transactions related to. And based on the facts before me, I don't think that it is the case that was something Moneybarn ought reasonably to have known about at the time either.

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

In reaching my conclusions, I've also noted that Miss M did eventually go on to have difficulty making her payments. I've also considered Moneybarn's actions when Miss M fell into arrears and it became aware she was having difficulty making her payments. In doing so, I can see that Moneybarn provided Miss M with breathing space.

It also looks like Moneybarn tried to help Miss M clear her arrears by setting up a number of payment arrangements with her. One of these plans was even agreed, after Moneybarn had already terminated the agreement and at a time when it could instead have taken possession of the car. I believe that this was because Miss M said that she needed the car.

Therefore, from the information I've been provided with, it seems to me that Moneybarn did attempt to exercise forbearance in accordance with its regulatory obligations when it became aware of Miss M's difficulty making her payments. Although I appreciate that Miss M may feel that it should have done more, I've not been persuaded that Moneybarn acted unfairly in this regard either.

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

So overall and having considered everything, while I can understand Miss M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Miss M – particularly as it is clear that she feels very strongly about this complaint. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 March 2025.

Jeshen Narayanan
Ombudsman