

Complaint

Miss B 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 worsened her position going forward.

Background

Miss B also complained about Moneybarn having paid the broker who arranged this agreement commission. However, we’ve explained that we’re looking at that complaint separately and this decision is solely considering whether Moneybarn acted fairly and reasonably when deciding to lend to Miss B.

In June 2016, Moneybarn provided Miss B with finance for a used car. The purchase price of the vehicle was £5,495.00. Miss B paid a deposit of £1,495.00 and entered into a 48-month conditional sale agreement with Moneybarn for the remaining £4,000.00 she required. The loan had interest, fees and total charges of £3,821.74 and the balance to be repaid of £7,821.74 (which does not include Miss B’s deposit) was due to be repaid in 47 monthly instalments of £166.42.

In May 2024, Miss B 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 B’s complaint. It considered that the complaint had been made too late. Miss B remained dissatisfied at matters and referred her complaint to our service.

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

Miss B 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 B’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 B ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Miss B'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 B's complaint. Given the reasons for this, I'm satisfied that whether Miss B'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 B's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Miss B 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 B'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 B'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 B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss B'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 B), 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 B's complaint, I therefore need to think about whether Moneybarn's decision to lend to Miss B, or its later actions resulted in the lending relationship between Miss B and Moneybarn being unfair to Miss B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss B's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Miss B'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 B.

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 B'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 it 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 B's complaint.

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

Moneybarn says it agreed to Miss B's application after Miss B provided details of her monthly income which it verified against copies of payslips which Miss B was asked to provide. It says it also carried out credit searches on Miss B which showed that she didn't have any county court judgments ("CCJ") recorded against her. And while Miss B did have defaulted accounts recorded against her, it considered this information to be historic as the most recent default occurred almost four years prior to this application.

On the other hand, Miss B 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 while I accept that Moneybarn carried out a credit check and validated Miss B's income, bearing in mind Miss B's previous difficulties with credit, I'm not entirely persuaded that Moneybarn's checks went far enough. In my view, given, the albeit historic, adverse information on the credit searches, I think that Moneybarn needed to take further steps to ascertain Miss B's actual living costs, rather than relying on Miss B's declaration in order for its checks to have been proportionate here.

Moneybarn did not do this, so I'm not satisfied that its checks before lending were proportionate in this instance. At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the Moneybarn didn't do enough to establish whether the repayments were affordable, doesn't, on its own, meant that Miss B's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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 therefore considered whether that is the case here.

As I've explained, given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Miss B's regular living expenses as well as her income and existing credit commitments (which it already had). However, I've not been provided with anything that clearly shows me that Miss B's living expenses were significantly more than the £400 she declared at the time. For the sake of completeness, I don't agree that the amount declared was in itself unrealistic given Miss B said she was single and living at home with parents at the time of the application.

I would also add that apart from the bank holiday hours on the May 2016 payslip, it's not immediately clear to me that Miss B's payslips did include overtime. I think that obtaining payslips is an accurate form of income declaration and in truth I'm unclear what it is Miss B expects that Moneybarn should have done instead. In any event, it appears as though Moneybarn did consider the potential for these payslips to include income that was not guaranteed going forward.

I say this because it used a figure of £1,300.00 a month in the income and expenditure assessment it carried out, instead of the substantially higher amounts included on the payslips. So I don't agree with Miss B's assertion that Moneybarn relied on an unrealistic expectation of her income.

I'm satisfied that the information Moneybarn gathered did suggest that the monthly payments were affordable for Miss B. Given I've not been provided with anything at all to indicate that Moneybarn finding out more about Miss B's living expenses would have shown it that she was paying substantially more than what she declared, I don't think that it was unfair for Moneybarn to have entered into this conditional sale agreement with Miss B, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Miss B and Moneybarn was unfair to Miss B. I've not been persuaded that Moneybarn created unfairness in its relationship with Miss B 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 B unfairly in any other way either.

So overall and having considered everything, while I can understand Miss B'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 B – 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 1 April 2025.

Jeshen Narayanan
Ombudsman