

## **The complaint**

Miss O complains that Moneybarn No.1 Limited, trading as Moneybarn ('Moneybarn') irresponsibly granted her a conditional sale agreement she couldn't afford to repay.

## **What happened**

In March 2016, Miss O acquired a used car financed by a conditional sale agreement from Moneybarn. Miss O was required to make 60 monthly repayments of £178.26. The total repayable under the agreement was £10,517.34.

In March 2020, the agreement was settled early, after the car was written as the result of a road accident.

In March 2024, Miss O complained to Moneybarn that it agreed to provide her with finance under the terms of the agreement without carrying out reasonable and proportionate checks to ensure the finance would be affordable. As a result, she says it worsened her overall financial situation.

Moneybarn doesn't agree, saying that it carried out a thorough assessment which included requiring proof of income and running credit checks. It also said that the complaint had been brought too late under the time limit rules we apply as part of our complaint handling rules. Essentially, it says that as a result of all the steps Moneybarn took when she defaulted on payments and got into arrears, she ought reasonably to have been aware of having a reason to complain more than three years before she started her complaint.

Our investigator at first decided the complaint should be upheld, having considered evidence and information Miss O had provided about her financial situation at around the time she applied for the finance. But, having received further evidence and information from Moneybarn about the checks it carried out, she didn't think Moneybarn had acted unfairly or unreasonably by approving the finance agreement.

As Miss O doesn't agree, her complaint has therefore been passed to me for a final decision.

## **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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss O's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Moneybarn thinks part of this complaint was referred to us too late because the decision to provide finance took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Miss O's complaint, and given the reasons for this (which I'll go on to explain), whether Miss O referred her complaint about the decision to agree credit happened more than six years ago in time or not has no impact on that outcome. Like the investigator, I think Miss O's complaint should be considered more broadly than just the decision to provide the finance, given that she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with Moneybarn. Miss O's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Moneybarn. I acknowledge Moneybarn may still not agree we can look at this complaint, but given the outcome I have reached, 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 O'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 O), 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 their 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 O has complained about, I therefore need to think about whether Moneybarn's decision to lend to Miss O 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 O's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where 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 will therefore first look at the checks Moneybarn carried out. I'll then move on to look at what reasonable and proportionate checks would have shown.

*Did Moneybarn carry out reasonable and proportionate checks to satisfy itself that Miss O was in a position to sustainably meet the repayments that were due under the agreement?*

When assessing affordability, there isn't a set list of checks that Moneybarn needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Miss O would need to make repayments.

When applying for the finance, Miss O gave details of her work and residential status. I've also seen that Moneybarn obtained proof of Miss O's income by way of payslip information. This showed that Miss O was receiving around £1,800 per month by way of net income. Miss O also provided a redacted bank statement to show that her income was being credited to her bank account.

Moneybarn also completed a credit check in order to find out more about any other debt she had and we now have more details about that. This showed she owed around £1,800 by way of unsecured credit, most of it from credit card or catalogue accounts and the rest of it from a loan. Whilst all these were paid up to date, the check also showed Miss O had a default valued at £2,300 from around 14 months earlier. Miss O was in the process of paying this back. There were no other adverse records on her file, such as other defaults or a county court judgment. I'm aware this is at odds with the information Miss O has given us that suggested she was in arrears with several lenders. That's not necessarily unusual given the level of information held by the credit reference agencies and the time it takes for issues to be recorded.

Moneybarn didn't ask Miss O about her expenditure, which would've helped to gain a better idea of what her regular living expenses were. Without knowing what Miss O's regular committed expenditure each month was, Moneybarn wouldn't have got a wider understanding of whether the agreement was affordable or not. I've also kept in mind that Miss O was taking on a significant financial commitment over a five-year period so Moneybarn needed to be assured that she could repay it sustainably. I agree that one way to have done this would have been to review bank statements for the period leading up to the agreement.

I therefore think it would have been proportionate for Moneybarn to have got a more thorough understanding of Miss O's financial circumstances before lending to her. That means it should have done more than it did.

*What would reasonable and proportionate checks have shown at the time? Did Moneybarn reach a fair decision to lend?*

So I next need to consider what better checks would likely have shown. Our investigator has already explained that we can't hold Moneybarn responsible for details about Miss O's financial circumstances which didn't show up on the credit checks it carried out. I appreciate that's a frustrating point for Miss O. However, Moneybarn is entitled to rely on these searches as being representative of the financial circumstances of the person applying for credit at that time.

As mentioned, we've already seen some details about Miss O's income and expenditure at the time. Our investigator has flagged a number of issues between this and the information Moneybarn relied upon from its credit checks - for example in relation to her income and the rent she was paying at the time. I've taken a good look at these and am broadly in agreement that, based on the information it had available to it, Moneybarn would likely not have formed the impression that Miss O was struggling financially, given that she appeared to be managing her existing debts and regular financial commitments well. I've kept in mind that the only bank statement information available to it had been redacted and so was of limited value.

I can't be certain what Moneybarn would have seen had it asked for more details about Miss O's monthly committed expenditure – for example by reviewing bank statements leading up to the lending decision. Miss O has only been able to provide us with a part of a bank statement which, taken on its own, doesn't suggest that Miss O was experiencing financial difficulties. To be clear, I am not suggesting that this was representative of Miss O's

overall financial situation. But it highlights that we can only place limited reliance on the other information Miss O has provided to us – and that it isn't necessarily representative of what Moneybarn might have seen had it carried out better checks.

All of this means is we haven't seen sufficient information to be able to make a finding that Moneybarn failed to make a fair lending decision at the time. In particular, there isn't enough information for me to conclude that Miss O's committed expenditure and day-to-day spending may have been at such a level that she wouldn't have had enough disposable income to meet the monthly repayment costs of the agreement. It follows that I can't say with enough certainty that had Moneybarn carried out better checks, it's likely it would have been persuaded that Miss O was in serious financial difficulty or that there was a real risk that her financial welfare would deteriorate if it was to agree to grant the finance she was applying for.

I would add that, having noted the steps Moneybarn took to support Miss O when she got into difficulties with meeting her monthly repayments in 2017, I think Moneybarn acted responsibly in helping her to manage her arrears and to continue paying the agreement. I've seen that Moneybarn put in place a large number of payment plans to help her.

To summarise, taking all the information and evidence I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Miss O. It's not clear enough to me that Moneybarn created unfairness in its relationship with Miss O by lending to her irresponsibly. And I don't find Moneybarn treated Miss O unfairly in any other way either based on what I've seen.

For this reason, I'm therefore not persuaded that Moneybarn acted unfairly in approving the finance.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 3 April 2025.

Michael Goldberg  
**Ombudsman**