

Complaint

Mr P complains that Secure Trust Bank Plc (trading as “Moneyway”) unfairly entered into a hire-purchase agreement with him. He’s said that the finance was unaffordable which resulted in him ending up in a cycle of borrowing from friends, family and payday loans in order to keep up with the repayments.

Background

In May 2016, Moneyway provided Mr P with finance for a used car. The purchase price of the vehicle was £12,200.00. Mr P didn’t pay a deposit and entered into a 60-month hire-purchase agreement with Moneyway for the funds he required.

The loan had interest, fees and total charges of £11,600.00 (made up of interest of £11,590.00 and a £10 option to purchase fee) and the balance to be repaid of £8,943.40 was due to be repaid in 59 monthly repayments of £396.50 followed by a final payment of £406.50.

In February 2024, Mr P complained to Moneyway saying that it shouldn’t have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in him ending up in a cycle of borrowing from friends, family and payday loans in order to keep up with the repayments.

When it provided its file of papers on Mr P’s complaint, Moneyway told us that it considered that the complaint was made too late. Mr P’s complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Moneyway that it shouldn’t have entered into the hire-purchase agreement with Mr P. So he didn’t think that Mr P’s complaint should be upheld.

Mr P 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. Moneyway has argued that Mr P’s complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr P’s complaint as being one alleging that the relationship between him and Moneyway was unfair to him as described in s140A of the Consumer Credit Act 1974 (“CCA”). He 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 Mr P's complaint. Given the reasons for this, I'm satisfied that whether Mr P's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr P's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr P has not only complained not about the decision to lend but has also alleged that agreement resulted in him ending up in a cycle of borrowing from friends, family and payday loans in order to keep up with the repayments.

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

Mr P's relationship with Moneyway is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr P'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, Moneyway didn't then somehow remove the unfairness this created.

I'll now turn to whether Moneyway acted fairly and reasonably when entering into the hire-purchase agreement with Mr P.

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 Mr P'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 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 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've kept this in mind when deciding Mr P's complaint.

Was Moneyway's decision to enter into a hire-purchase agreement with Mr P fair and reasonable?

Moneyway says it agreed to Mr P's application after he provided details of his income and it carried out a credit search. It says that it obtained a partial copy of a bank statement as well as a copy of a payslip to verify Mr P's income. It also says that the credit searches showed that Mr P had some active credit accounts which were being reasonably maintained.

However, it also saw that Mr P had defaulted on three previous credit agreements between 2012 and 2013. Although Mr P didn't have any County Court Judgments ("CCJ") recorded against him. As this adverse information was from more than three years prior to this application, it considered it to be historic.

In its view, when reasonable repayments to the total amount Mr P owed plus a reasonable amount for Mr P's living expenses were deducted from his monthly income, the monthly payments for this agreement were affordable.

On the other hand, Mr P has said that the finance was unaffordable and this resulted in him ending up in a cycle of borrowing from friends, family and payday loans in order to keep up with the repayments.

I've thought about what Mr P and Moneyway have said.

The first thing for me to say is that I'm not in a position to say that the checks Moneyway carried out did go far enough. I say this because I don't know what steps that Moneyway took to find out about Mr P's living expenses. Given the defaulted accounts, the amount being borrowed, the cost of the credit and the term of the agreement, I think that Moneyway needed to have a reasonable understanding about Mr P's actual living expenses before being able to say that the monthly payments were affordable.

As I can't see that Moneyway took steps to have this, I don't think that the checks it carried out before providing this finance were reasonable and proportionate. As Moneyway didn't carry out sufficient checks, I've gone on to decide what I think Moneyway is more likely than not to have seen had it obtained further information from Mr P. As I've explained, I would have expected Moneyway to have had a reasonable understanding about Mr P's regular living expenses as well as his income and existing credit commitments.

The information Mr P has provided from the time does appear to show that when his discernible committed regular living expenses are added to payments to the credit commitments Moneyway knew about and then deducted from what 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 P has said that he was borrowing from payday lenders and that Moneyway will have seen this from the bank statement it obtained from him. However, I can only see one payday lender on the partial statement Mr P provided to Moneyway. Furthermore, the other lender Mr P has referred to isn't a payday lender. In any event, it's also worth noting that Moneyway was aware of these payments and factored them into its assessment, as a result of the credit checks.

I don't agree when Mr P says that the existence of these loans means that he shouldn't have been lent to. I say this particularly as there is little in the way of discernible living costs on the partial bank statement that Mr P provided Moneyway with at the time. Having considered the more extensive set of statements that Mr P has provided us with, which Moneyway did not need to request, I can understand why the payments to this agreement may have gone on to prove to be unaffordable. It's also possible – but by no means certain – that if Moneyway had seen this information it may have reached a different decision.

However, the information Mr P provided Moneybarn with at the time was far more limited than what he has provided now. I also have to consider Mr P's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr P clearly wanted the car he had chosen and it's fair to say that any explanations he would have provided would have been with a view to persuading Moneyway to lend rather than highlighting the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Mr P would have disclosed the reasons for his cash withdrawals and transfers, or that he was borrowing from friends and family, or more importantly that Moneyway would have been in a position to know about this had it carried out proportionate checks.

I've also thought about what Mr P has said about the difficulty he had making his payments to the agreement and Moneyway's actions in relation to this. Having reviewed Moneyway's

records of contact with Mr P, I can see that Mr P did get in contact with Moneyway to explain that he was having difficulty making his payments.

I can also see that Mr P was not only given time to catch up with his payments but that he was also eventually sent an income and expenditure assessment form to ensure that any payments weren't too much, or more than he could afford pay either. In these circumstances, it seems to me that Moneyway took reasonable steps to help Mr P get through any difficulties, once it became aware of these issues.

Overall and having carefully considered everything, while I'm not persuaded that Moneyway's checks before entering into this hire-purchase agreement with Mr P did go far enough, I'm nonetheless satisfied that carrying out reasonable and proportionate checks won't have stopped Moneyway from providing these funds, or entering into this agreement.

In these circumstances, I don't find that the lending relationship between Mr P and Moneyway was unfair to Mr P. I've not been persuaded that Moneyway created unfairness in its relationship with Mr P by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find Moneyway treated Mr P unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr P's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr P. 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 May 2025.

Jeshen Narayanan
Ombudsman