

The complaint

Ms C, who is represented by a third party, 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 November 2015, Ms C acquired a used car financed by a conditional sale agreement from Moneybarn. The amount of credit was £6,647.99. Ms C was required to make 60 monthly repayments of £247.33. The total repayable under the agreement was £14,992.47. Ms C was also required to pay a £400 cash deposit.

In June 2018, the agreement was settled early by way of a voluntary termination. There remains an outstanding balance on the account.

In May 2024, Ms C complained to Moneybarn that it had 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 said the complaint had been made too late under the time limit rules we apply as part of our complaint handling rules. First, the complaint had been made more than six years after the finance was approved. And secondly, it said that taking into consideration all the steps it took to help and support her with her arrears, she ought reasonably to have been aware of having a reason to complain more than three years before she started it.

Our investigator, having considered the available evidence and information from Moneybarn about the checks it carried out, didn't think Moneybarn had acted unfairly or unreasonably by approving the finance agreement.

As Ms C doesn't agree, her complaint has 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 Ms C's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and as I've said Moneybarn thinks this complaint was referred to us too late under our time limit rules.

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 on that basis this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Ms C's complaint – and I'll go on to explain the reasons for this - whether Ms C 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 our investigator, I think Ms C'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. Ms C'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 Ms C'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 (Ms C), 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 Ms C has complained about, I therefore need to think about whether Moneybarn's decision to lend to her 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.

Ms C'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.

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 Ms C would need to make repayments.

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 Ms C 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 Ms C would need to make repayments.

Before granting the finance, I think Moneybarn gathered a reasonable amount of evidence and information from Ms C about her ability to repay. This was based on relying on what she'd said in her application and verifying her income by way of checking bank statements. Moneybarn also carried out a credit check to see how she was managing existing and previous financial arrangements and an affordability check to see if she'd have enough disposable income left after allowing for her committed monthly spending.

Ms C said she was earning employed full time and was a rental tenant. From looking at her bank statements Moneybarn could see that Ms C's total income each month was around £1,800. Moneybarn hasn't been able to provide a copy of its credit check that covers that period.

Having verified her income and performed a credit check, Moneybarn went on to use the bank statement information to establish what her monthly household and regular living costs were likely to be. Having done so, Moneybarn estimated that Ms C had monthly disposable income of around £500, before deducting her monthly repayment to Moneybarn.

I've thought about what Moneybarn found out and whether it should have been prompted to find out more before agreeing to lend to Ms C. Moneybarn doesn't expect its potential customers to have unblemished credit histories and so before agreeing to provide any finance I would expect it to carry out reasonable and proportionate checks that would show up any such issues. And in Ms C's case, from what I've seen I think it's likely it did that. When I say that I'm mindful that I haven't seen a copy of the credit check that was used – although I am satisfied that one was obtained. Bearing in mind that Moneybarn had gained a good snapshot of Ms C's wider financial situation from her bank statements, I'm satisfied on balance that Moneybarn's checks were likely to have been proportionate.

However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

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

I've reviewed the information and evidence Moneybarn gathered. Having done so I'm satisfied that the checks that were completed show that the agreement was likely to be affordable to Ms C, taking into account the new loan repayments and the additional cost of running the car she'd acquired.

As I've said, the bank statements used by Moneybarn showed her income. And Moneybarn then used those to work out if, taking her committed expenditure into consideration, the new finance would be affordable for her and that she'd be able to repay it sustainably going forwards. This involved Moneybarn preparing a detailed expenditure breakdown of what her rent and utilities and TV licence came to, being around £600 plus food at around £160, car costs at around £150, and phone/internet at around £55, plus miscellaneous costs allowed for at £30.

I would add that the bank statements didn't show evidence of any overdraft use or reliance, which can be a potential indicator that finances might be becoming stretched each month.

Having noted her income, both earned and from regular benefits, I'm in broad agreement with our investigator that Moneybarn's calculation of her housing and credit costs demonstrated that she needed to allow around £1,000 for these each month. Her income over the two-month period varied, being around £1,500 in September 2015 and £2,000 in October 2015. But even allowing for that, the new loan still looked to be affordable, being likely to leave her with between £250 and £500 each month by way of disposable income.

To summarise, looking at the overall pattern of Ms C's income and day-to-day expenditure, the loan looked to be affordable, plus there wasn't enough to suggest that her financial circumstances were at risk of deteriorating. Ms C appeared able to satisfy her existing household outgoings and credit commitments without getting into difficulty.

Did Moneybarn act unfairly or unreasonably in some other way?

I've also looked at the steps Moneybarn took to support Ms C when she got in touch with them about the difficulties she was having meeting the repayments.

I've seen from the statement of account that Ms C started regularly missing payments and that Moneybarn therefore found it was necessary to write to her about this. Moneybarn attempted to help her in December 2015 by seeing what she could afford and arranging a payment plan to help her deal with the arrears. And I've seen that Moneybarn supported Ms C going forwards with several further payment plans between 2016 and 2019. And when things reached the point that the loan no longer looked to be affordable, Moneybarn told her to seek independent financial help.

Thinking about the help and support Moneybarn offer, I think it did enough. And going forward, I'd urge Moneybarn to continue to engage in a constructive and supportive way as and when Ms C needs additional support in the future.

I've considered the points and observations made by those representing Ms C in response to our investigator's view, but they don't cause me to change my opinion and I think I've already addressed them sufficiently in my findings.

To summarise, taking all the information and evidence I've seen into account, I don't consider I've seen enough to show that the agreement may have been unaffordable for Ms C. It's not clear enough to me that Moneybarn has created unfairness in its relationship with Ms C by lending to her irresponsibly. And I don't find Moneybarn treated Ms C 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.

I am sorry to have to disappoint Ms C on this occasion.

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 Ms C to accept or reject my decision before 2 May 2025.

Michael Goldberg
Ombudsman

