

The complaint

Mr B complains Moneybarn No.1 Limited (Moneybarn) irresponsibly entered into a car finance agreement because it didn't carry out reasonable and proportionate checks to ensure the agreement was affordable for him.

What happened

Mr B entered into a conditional sale agreement with Moneybarn on 8 February 2016. The cash price of the car was £8,350. No deposit was paid. The term of the agreement was 60 months and Mr B was to make monthly repayments of £272.53. The total amount repayable under the agreement was £16,079.27.

Mr B is represented in his complaint. But for ease of reading, I'll simply refer to Mr B throughout my decision. Mr B complained to Moneybarn about irresponsible lending on 12 September 2024.

Moneybarn responded to the complaint on 2 October 2024. It said it carried out reasonable and proportionate checks to ensure the lending was affordable for Mr B. It said it verified his monthly income and carried out a credit search. Based on the information obtained, it was satisfied the lending was affordable.

Mr B remained unhappy and asked our service to investigate. He explained he had a poor credit rating at the time and his options were fairly limited. He said he was made redundant around that time and his bank statements would show the true picture of his circumstances. He said he had separated from his wife and had been left with considerable debt.

Our Investigator considered matters and felt the complaint was one our service could consider. So, he went on to consider the merits but didn't think Moneybarn had done anything wrong.

Mr B didn't agree with our Investigator's view. In summary, he said:

- He had a very poor credit score at the time and so his options for credit were very limited. He had split up with his wife in 2012 and was left with all the household debt as it was all in his name. He had also been made redundant, so he had a lot of debt to pay off and things did fall behind.
- His ex-wife also had a car which got returned. There was still £1,600 owing and this account defaulted.
- His pay slips do look good however, his bank statements show a different picture and would likely have shown he was thin on the ground and was paying off lots of other creditors.
- He feels he has been discriminated against because he has had to use a subprime lender. He feels exploited for having a poor credit score. The cost of the borrowing was very high and not affordable.
- He did pay the whole loan back in full and on time.

As Mr B didn't agree, the complaint has been passed to me to decide.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service. Our Investigator explained why he didn't think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our Investigator and think this complaint is one I can consider. I think this complaint can reasonably be considered as being about an unfair relationship as Mr B has said the lending was unaffordable and he struggled with his debts. This may have made the relationship unfair. I acknowledge Moneybarn may not agree we can look at the complaint about the conditional sale agreement, but as I don't intend to make any award to Mr B, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr B's complaint can be reasonably interpreted as being about the fairness of his relationship with Moneybarn, relevant law in this case includes Section 140A-C.

As explained by our Investigator, Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (Moneybarn) and the debtor (Mr 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.

But the case law also says that the court may not make an award for an unfair relationship where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making it. So I've taken this into account when deciding a fair and reasonable outcome for this complaint.

The case law doesn't provide a fixed period that would constitute a substantial delay, but in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34, the Supreme Court approved the District Judge's comment that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

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 Mr B has complained about I need to consider whether Moneybarn's decision to lend to him, or its later actions, created unfairness in the relationship between him 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.

Mr B's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out reasonable and proportionate affordability checks and 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 think there are key questions I need to consider in order to decide what's fair and reasonable:

1. Did Moneybarn carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the credit?
 - If so, did it make a fair lending decision?
 - If not, what would reasonable and proportionate checks have shown at the time?
2. Did Moneybarn act unfairly or unreasonably towards Mr B in some other way?

Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the credit sustainably. It's not about Moneybarn assessing the likelihood of being repaid, but it had to consider the impacts of the repayment on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Moneybarn carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the credit?

Moneybarn confirmed it understood Mr B was in full time employment and it verified his income by obtaining payslips which showed a monthly income of around £2,712. This appears to be the likely gross value calculated by Moneybarn based on the cumulative totals showing on the payslips.

Moneybarn also confirmed it had completed a full credit search at the time. It hasn't provided a copy of the credit search itself as it has said this isn't available, but it has provided evidence of the credit scoring and also a summary of the information it obtained. This information showed Mr B had a total active credit balance of £2,555 and his highest utilisation of revolving credit was 22%. Mr B has provided a copy of his credit file but unfortunately it doesn't cover the period of the lending.

In respect of the adverse information, Moneybarn's summary shows seven defaulted accounts with an original default balance of £9,400. However, Mr B had reduced the balance to around £7,200 and the most recent default had been 14 months prior to the lending decision. It does seem there was a problem with at least one account Mr B held at the time. I don't have any more detail from Moneybarn, but Mr B has told us he was in arrears on a car finance agreement, his ex-wife had the car and about £1,600 was outstanding. Whilst I'm satisfied it does seem Moneybarn took into account the adverse information when making its lending decision, I think the information it had ought to have prompted further checks.

I can't see from the checks Moneybarn carried out that it did anything to consider Mr B's other non-discretionary expenditure at the time. I've thought about the size of the loan, the

total amount repayable and the duration of the agreement. I'm mindful the monthly repayment was a fair proportion of his net monthly income. I've also considered the adverse information Moneybarn had. Taking everything into consideration, I think Moneybarn ought to have done more to understand Mr B's expenditure at the time, particularly around his essential spend and how he was managing his credit commitments. I don't think it could have been sufficiently satisfied Mr B could make repayments of around £272.53 a month without this information.

Would reasonable and proportionate checks have shown Mr B was in a position to sustainably repay the credit?

Although I have found the checks weren't proportionate, it doesn't mean the complaint should automatically be upheld. Instead, I must now consider what reasonable and proportionate checks were likely to have shown. Unfortunately, Mr B has confirmed he is unable to provide any information about his expenditure at the time of the lending. This is in no way unusual because of the amount of time which has passed.

I note it will likely be disappointing for Mr B because he has explained his bank statements showed a different picture. I do want to provide him with the assurance that I've carefully considered all the information I do have. Having done so, I can't say it was unreasonable for Moneybarn to have lent to him in the circumstances. The information I have doesn't give me a full picture of Mr B's circumstances. So, I'm unable to conclude it was likely reasonable and proportionate checks would have found the lending wasn't sustainable or affordable for Mr B.

I've thought about Mr B's likely net monthly income based on what was verified by Moneybarn. His payslips show his net monthly pay and also cumulative total for the financial year. After the repayments on this agreement, it seems he would have been left with around £1,700 to cover his credit commitments, repayments towards debt and essential living costs. I appreciate Mr B's circumstances as he has explained them, but the evidence I have isn't sufficient to say this wouldn't be enough.

I am mindful of the car finance agreement which Mr B seemed to have been having difficulties with at the time of the lending and which has been highlighted by Mr B's representative. I think Moneybarn ought to have asked Mr B about this. I've also thought about Mr B's circumstances at the time as he has told us he had separated from his wife and that she was using the car. I understand it was returned to the finance provider. So, I do understand times were more difficult and he was experiencing less stability with his finances. However, I'm not satisfied the information I have seen is sufficient in itself for me to conclude the lending was irresponsible. It does seem Moneybarn considered this account at the time of the lending. I also note Mr B wanted the car and, if he'd have been asked about his finances at the time, it is with this in mind that he would have presented his circumstances.

Weighing up all the information I have been provided, I'm unable to conclude Moneybarn created unfairness in its relationship with Mr B by agreeing to lend to him. I appreciate my decision will come as a disappointment to Mr B, and I acknowledge the difficult circumstances he has described. However, the evidence doesn't satisfy me that it is likely reasonable and proportionate checks would have shown it was irresponsible to lend to Mr B or that the lending would be unaffordable.

Did Moneybarn act unfairly or unreasonably towards Mr B in some other way?

I appreciate Mr B has expressed some concerns about the terms of the agreement and the costs involved. I've reviewed a copy of the agreement, and I think the terms are clearly set out at the top and so I'm satisfied Moneybarn provided reasonable information for him to

make an informed decision. I've not seen evidence which persuades me Moneybarn treated Mr B differently to how it would have treated any of its consumers in similar circumstances.

I've also reviewed a copy of the statement of account, and I can see only one missed payment throughout the course of the agreement. This seems to have been made up promptly and it was discussed with Moneybarn at the time. I've also considered the contact notes, and it doesn't appear from the information I've seen that Moneybarn have treated Mr B unfairly or unreasonably in some other way.

Summary

Overall, and based on the available evidence I don't find that Mr B's relationship with Moneybarn is or was unfair. It's not clear enough to me that Moneybarn created unfairness in its relationship with Mr B by lending to him irresponsibly initially, or in respect of how it treated him throughout the duration of the agreement. I don't find that Moneybarn treated Mr B unfairly in any other way either based on what I've seen.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 July 2025.

Laura Dean
Ombudsman