

The complaint

With the help of a professional representative (PR), Mr F complains that Moneybarn No.1 Limited lent to him irresponsibly. For ease, I'll refer to the actions of the PR as being those of Mr F.

What happened

In March 2018, Mr F applied for finance from Moneybarn to help him acquire a used vehicle. A conditional sale agreement was agreed on the following terms:

Date	Cash price	Amount of credit	Term	Repayment	Total repayable
7 March 2018	£7,914	£7,113	36 months	£332.91	£12,452.85

The agreement was repaid in full on 15 June 2020.

On 3 April 2024, Mr F complained to Moneybarn. He said it had failed to carry out an adequate income and expenditure assessment and, if it had done so, it ought to have seen he was struggling financially. To resolve his complaint, Mr F asked Moneybarn to refund all interest he'd paid along with compensatory interest, and £100 compensation for the distress and inconvenience caused to him.

Moneybarn looked into Mr F's complaint and issued a final response letter. It said he had complained too late for his complaint to be considered as more than six years had passed since the lending decision had been made. It said he should reasonably have become aware he had reason to complain at the latest when he received a Notice of Sums in Arrears letter in May 2020.

Mr F didn't accept what Moneybarn said so he referred his complaint to our service. One of our investigators looked into it. She didn't agree that the complaint had been brought too late as she felt it could reasonably be considered as being about the fairness of Mr F's credit relationship with Moneybarn. So she went on to consider the merits of the complaint, but didn't uphold it.

Mr F didn't accept what our investigator said. As there was no agreement, the complaint has been passed to me for a 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Moneybarn thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But she also 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 (s.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 that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr F says the agreement simply made his situation worse. The agreement may have made the relationship unfair as he had to pay more than he could afford. I acknowledge Moneybarn still doesn't agree we can look at this complaint, but as I don't think it should be upheld, 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 Mr F's complaint can be reasonably interpreted as being about the fairness of his 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 (Mr F), 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.

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 F 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 F's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out 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 is fair and reasonable in the circumstances of this complaint:

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

Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Mr F would be able to repay the credit sustainably. It's not about Moneybarn assessing the

likelihood of it being repaid, but it had to consider the impact of the repayments 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?

When he applied for the finance, Mr F told Moneybarn he was self-employed, earned £2,500 per month and lived in rented accommodation. He declared no expenditure. Moneybarn checked his credit file and noted he had a County Court Judgement registered against him around 3½ years ago and three defaulted accounts. The most recent default was from 20 months ago. He had a small amount of active credit - £267 on a revolving credit account.

Moneybarn refers to itself as a second chance lender, so it lends to consumers who may have impaired credit records and may struggle to obtain credit from mainstream lenders. As such, I wouldn't expect it to be overly concerned about Mr F's credit history as the CCJ was fairly historic and his latest default was from over a year ago.

Moneybarn calculated Mr F's monthly disposable income as being £441.74, but it hasn't explained how it came to that figure. It may be due to the time elapsed since the application was agreed, as businesses aren't obliged to retain records indefinitely. But as Moneybarn can't show all the information it used to reach its decision, I can't fairly say that it carried out reasonable and proportionate checks because I don't know if what it did was reasonable.

What would reasonable and proportionate checks have shown at the time? Did Moneybarn make a fair lending decision?

There is no set list of checks Moneybarn had to carry out, it simply needed to satisfy itself that Mr F would be able to repay the credit offered to him on a sustainable basis. But one way of assessing this is to obtain a customer's bank statements as they generally provide a good picture of their financial circumstances at the time. I note that when Moneybarn sent us its file on the complaint, it provided copies of Mr F's bank statements from 27 November 2017 to 5 February 2018. It's not clear if these were provided by Mr F to support his complaint, or if Moneybarn obtained them when it assessed his application.

Nonetheless, I've carefully looked at what the statements show. Having done so it is evident that Mr F was earning in the region of £2,200 per month and the statements show committed, non-discretionary expenditure of around £820 per month. This does feel a little light as there's no evidence of council tax going through the account, although other household bills including rent and utilities are shown. But even so, he appears to have sufficient disposable income to cover the repayments to this agreement of £332.91. There is evidence on the statements of discretionary expenditure such as fast food, small gambling transactions and payments to other retail outlets.

So I think if Moneybarn had seen the statements (and it may have) I think it would have reached the same decision to lend. All things considered I think it reached a fair lending decision.

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

I've carefully read and considered everything each party to the complaint has said. I can see that Mr F did make some payments late and fell into arrears on the agreement. Moneybarn set up a payment plan for him and allowed him to catch up the arrears over time as I'd expect. Ultimately, as I've already said, he paid the agreement in full on 15 June 2020 –

almost a year early. So all things considered I've not seen anything which leads me to think Moneybarn treated Mr F unfairly in some other way. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 31 July 2025.

Richard Hale
Ombudsman