

Complaint

Mrs T complains that Moneybarn No.1 Limited (“Moneybarn”) unfairly entered into conditional sale agreement with her. She’s said that the proper checks weren’t carried out which led to her being provided with finance that was unaffordable and this led to further debt and struggles going forward.

Background

In April 2014, Moneybarn provided Mrs T with finance for a used car. The purchase price of the vehicle was £7,195.00. Mrs T paid a cash deposit of £1,500.00 and entered into a 42-month conditional sale agreement with Moneybarn for the remaining £5,695.00 she required. The loan had interest, fees and total charges of £3,725.16 and the balance to be repaid of £9,420.16 (which does not include Mrs T’s deposit) was due to be repaid in 41 monthly instalments of £229.76.

In March 2024, Mrs T complained to Moneybarn saying that the agreement was unaffordable and therefore Moneybarn shouldn’t have entered into it with her. Moneybarn didn’t uphold Mrs T’s complaint. It considered that it carried out reasonable and proportionate checks which showed that the monthly payments were affordable. Mrs T remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Mrs T’s complaint, Moneybarn told us that it considered Mrs T had complained too late. Mrs T’s complaint was subsequently considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Moneybarn that it shouldn’t have provided Mrs T with the finance. So she didn’t think that Mrs T’s complaint should be upheld.

Mrs T 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. Moneybarn has argued that Mrs T’s complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Mrs T ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mrs T’s complaint as being one alleging that the relationship between her and Moneybarn was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). She 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 Mrs T's complaint. Given the reasons for this, I'm satisfied that whether Mrs T's complaint about the conditional sale agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs T's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mrs T has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

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

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

I'll now turn to whether Moneybarn acted fairly and reasonably when entering into the conditional sale agreement with Mrs T.

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 Mrs T'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 it 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 we think 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 a 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 kept this in mind when deciding Mrs T's complaint.

Was Moneybarn's decision to enter into the conditional sale agreement with Mrs T fair and reasonable?

Moneybarn says it agreed to Mrs T's application after Mrs T provided details of her monthly income which it verified against copies of bank statements which it asked Mrs T to provide. It says it also carried out credit searches on Mrs T which showed that she didn't have any county court judgments ("CCJ") recorded against her. Although it's worth noting that it hasn't said anything about whether Mrs T had any defaulted accounts recorded against her at this stage.

On the other hand, Mrs T has said that the repayments were unaffordable for her and that this caused her ongoing hardship.

I've thought about what Mrs T and Moneybarn have said.

The first thing for me to say is that while I accept that Moneybarn may have carried out a credit check and validated Mrs T's income, bearing in mind Mrs T's is likely to have had defaults, I'm not entirely persuaded that Moneybarn's checks went far enough. In my view, given the likely adverse information on the credit searches, I think that Moneybarn needed to take further steps to ascertain Mrs T's actual living costs, using the information on the bank

statements it obtained, rather than relying on Mrs T's declarations or any estimates in order for its checks to have been proportionate here.

Moneybarn did not do this, so I'm not satisfied that its checks before lending were proportionate in this instance. At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the Moneybarn didn't do enough to establish whether the repayments were affordable, doesn't, on its own, meant that Mrs T's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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 therefore considered whether that is the case here.

I've therefore tried to understand what a proportionate check is likely to have shown Moneybarn. In order to do this, I've looked at the bank statements Mrs T provided to Moneybarn in order to see whether it was reasonable for it to conclude that Mrs T could make the monthly repayments on this conditional sale agreement.

Having looked through the statements, I can see that Mrs T provided Moneybarn with statements for the account that her income was being paid into. The bank statements Mrs T provided Moneybarn with also appear to show that when Mrs T's committed regular living expenses are combined with her payments to her credit commitments and then deducted from the total amount she was receiving, she did have sufficient funds left over to make the payments to this agreement.

I accept that Mrs T has said that her circumstances were worse than what the information provided shows. For example, I've seen that she has referred to payments that she was making for childcare and she's also referred to a council tax payment having been returned. However, in the first instance, it does seem to me that Mrs T's account was receiving sufficient credits to cover these payments.

I do accept that returned payments, particularly for priority bills, can be an indication of concern. I would also expect a lender to have taken notice of such a situation. However, I'm also mindful that Moneybarn will have been aware of the fact that Mrs T was paying a cash deposit of £1,500.00 as part of this agreement. This was not only substantially more than the amount of the returned payment, it was also equivalent to around six of the monthly payments on this agreement.

I also have to consider Mrs T's current submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Mrs T considered that it was an appropriate time to purchase a vehicle and she clearly wanted the car she had chosen. In these circumstances, it's fair to say that any explanations she would have provided, in relation to the entries on her bank statements, would have been with a view to persuading Moneybarn to lend to her, rather than highlighting the monthly payments were unaffordable.

I accept that Mrs T did go on to have difficulty making her payments and I've seen that she had previously taken payday loans and went on to take out further borrowing of this type. But Mrs T's difficulty isn't apparent in the bank statements provided at the time. So I don't think that Moneybarn was aware of the extent of Mrs T's previous payday loan history and it looks like Mrs T's real difficulties with this type of lending, in terms of final demands and defaults, occurred after this agreement was inception.

Having considered everything in the round, including Mrs T's deposit payment, I'm satisfied that the information Moneybarn was provided with did suggest that the monthly payments were affordable for Mrs T. So I don't think that Moneybarn using the bank statements, rather than relying on assumptions or statistical data of Mrs T's living expenses, would have shown it that it was unfair to enter into this conditional sale agreement with Mrs T.

Overall, and based on the available evidence I don't find that the lending relationship between Mrs T and Moneybarn was unfair to Mrs T. I've not been persuaded that Moneybarn created unfairness in its relationship with Mrs T by irresponsibly lending to her when it entered into this conditional sale agreement with her. And based on what I've seen, I don't find Moneybarn treated Mrs T unfairly in any other way either.

So overall and having considered everything, while I can understand Mrs T's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mrs T – particularly as it is clear that she feels strongly about matters. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 3 June 2025.

Jeshen Narayanan
Ombudsman