

## **The complaint**

Ms H complains Moneybarn No.1 Limited (Moneybarn) irresponsibly lent to her when it entered into a car finance agreement because it didn't carry out reasonable and proportionate checks to ensure the lending was affordable.

## **What happened**

Ms H took out a conditional sale agreement with Moneybarn in May 2017 in order to acquire a used car. The cash price of the car was £6,475. No deposit was paid. Ms H was to make 47 equal monthly repayments of £258.01. The total amount payable under the agreement was £12,126.47.

Ms H is represented in her complaint but for ease of reading, I'll simply refer to Ms H throughout this decision. Ms H complained about irresponsible lending on 5 April 2024. She explained the checks hadn't been reasonable or proportionate. She said she had a poor credit history, struggled to service existing credit commitments and had a limited income with little (or no) disposable income. Ms H has also complained about commission but this is being dealt with separately by our service.

Moneybarn responded to the complaint on 28 May 2024. It didn't uphold the complaint because it felt it had completed appropriate checks, and the lending seemed affordable.

Ms H was unhappy with Moneybarn's response, so she referred the complaint to our service. One of our Investigators looked into it and felt we could consider the complaint under the complaint handling rules of the Financial Conduct Authority (FCA). However, he didn't think the complaint should be upheld. Moneybarn didn't respond to our Investigator's findings.

However, Ms H confirmed she didn't agree. The income and expenditure assessment completed by her representative indicated that the repayments would not be affordable or sustainable for her. A summary of the calculations has been provided and some of her key expenditure has been highlighted. Additionally, Ms H said she never declared her expenditure to be £400 as explained by Moneybarn because her rent alone was this much. She had recent defaulted accounts and was in a debt management plan. So, it ought to have been clear she was struggling with her existing credit commitments, and the lending would worsen her financial position.

As Ms H didn't agree with our Investigator's findings, 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. Moneybarn hasn't commented on this in its submission to our service. Our Investigator explained why he didn't think we could look at a complaint about the lending decision which

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 Ms H has said the lending made her financial position worse and she struggled to make payments. This may have made the relationship unfair. Moneybarn hasn't responded to our Investigator's view, but as I don't intend to make any award to Ms H, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Ms H's complaint can be reasonably interpreted as being about the fairness of her 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 (Ms H), 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; and
- 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 Ms H has complained about I need to consider 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 H'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 Ms H 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 Ms H in some other way?

Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Ms H 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 her.

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 Ms H was in a position to sustainably repay the credit?*

In respect of Ms H's income, it seems Moneybarn understood she had declared an income of £1,900. It requested payslips from Ms H and verified her income as £1,118.40. It also had details of her employer and noted she was a tenant.

Moneybarn also completed a credit search. It hasn't provided a copy of the credit search but has provided its summary. From the summary, I can see Moneybarn understood Ms H had a total credit balance of £4,920. It also noted she had eight defaulted accounts with the most recent being seven months prior to the lending decision. The original defaulted balance was reported as £6,200. Ms H seems to have been making payments and had reduced it to £2,900.

Looking at Moneybarn's system notes, Moneybarn recorded Ms H's expenditure as being £400. But it doesn't provide any more detail, and this seems very low for overall living costs. Ms H has now confirmed her rent was £400 so it may be this which is being reflected.

Taking everything into consideration, I'm not satisfied Moneybarn's checks went far enough to ensure Ms H could afford the agreement. Ms H had previous adverse information and there was evidence of a defaulted account within the seven months preceding the agreement. Whilst she seemed to be reducing the defaulted balances, she still had an outstanding balance. Moneybarn also verified Ms H's income as being fairly low and the size of the monthly repayments represented a significant proportion of this (notwithstanding her other commitments). Therefore, I don't think Moneybarn could be satisfied Ms H would be able to afford the agreement without carrying out more checks to understand her financial circumstances and her essential expenditure.

*Would reasonable and proportionate checks have shown Ms H was in a position to sustainably repay the credit?*

Although I don't think the checks carried out were reasonable and proportionate, it doesn't automatically mean the complaint should be upheld. I must now consider what the checks were likely to have shown about Ms H's financial circumstances and whether she was likely to have been able to sustainably afford the credit.

To do this, I have considered bank statements which mostly reflect the three months leading up to the lending decision. For clarity, I don't think Moneybarn needed to go as far as to get bank statements. However, I think these statements give a reasonable picture of what Ms H was likely to have disclosed had she been asked about her essential spend. I'm also mindful Ms H did want the car at the time, and it is with this in mind that she is likely to have presented her financial circumstances.

There has been some back and forth with Ms H's representative about her income and expenditure and I've thought about everything which has been said. I also appreciate Ms H had provided payslips to Moneybarn which showed she received £1,015.14 net pay in April 2017 and £1,221.67 in May 2017. However, I think had further discussion taken place about Ms H's circumstances its likely Moneybarn would have discovered Ms H's other sources of income.

This income was made up of weekly payments for working and child tax credit and child benefit. Some of the payments slightly fluctuate from week to week and I've also thought about what she was likely to receive annually. Taking all of this into consideration, I'm satisfied further checks were likely to have discovered Ms H could expect to receive an average monthly income of around £1,779 per month. I appreciate this is different to the figure put forward by her representative, but I'm satisfied this is around the figure reasonable checks were likely to have discovered and appropriately takes into account her income from child benefit and tax credits.

I've also thought about what Moneybarn were likely to have discovered about Ms H's expenditure. Looking at her statements, I think her essential spend was likely to be around £1,150. This includes her average spend on food, rent (which I have taken to be £400), childcare costs, repayments towards debt, credit commitments, essential direct debits and so on.

The repayments under the agreement were £258.01. This would leave disposable income of around £370.99. I'm also mindful Ms H was in her overdraft at the time and Moneybarn would need to ensure the agreement wouldn't prevent Ms H from being able to repay this within a reasonable period. The overdraft balance seemed to fluctuate in the period leading up to the agreement. Thinking about when it was highest, I'm satisfied the amount remaining would be sufficient for Ms H to afford a sustainable repayment so she could repay it within a reasonable period, whilst leaving her with enough disposable income to meet reasonable unexpected costs which might arise.

I've also thought about how Ms H was managing her other external credit. I appreciate she was using her overdraft, and she had previous defaulted accounts. However, I don't think this is enough in itself to conclude Moneybarn shouldn't have lent. This is particularly because I think had it asked Ms H about her expenditure it was likely to have discovered the lending was affordable for her.

Weighing up all the information I have, I'm satisfied reasonable and proportionate checks were likely to have demonstrated that Ms H would be able to sustainably afford the repayments under the agreement. It seems she had sufficient income to meet her existing commitments and the repayments, and she would be left with enough disposable income to meet other reasonable unexpected costs. Although there was adverse information on her credit file, I don't think this is enough to say Moneybarn ought not to have lent to her particularly where checks were likely to have shown it was affordable.

*Did Moneybarn act unfairly or unreasonably towards Ms H in some other way?*

I've reviewed the statement of account, and I can see there is evidence of missed payments at points throughout the agreement. This included in December 2017 and October 2018. Also, there were missed payments in July 2019, August 2019 and September 2019 and in August 2020, September 2020 and October 2020.

Having reviewed the support Moneybarn provided when Ms H missed payments, it seems to me it acted reasonably. It contacted Ms H and discussed the reasons for the arrears, and I've seen correspondence from the relevant periods with signposting to agencies who could provide Ms H with additional support. I can also see it completed income and expenditure assessments with Ms H at the relevant points to see what she would be able to afford. There's also evidence of payment plans on the file so Ms H could repay the arrears, as well as discussions around the provision of breathing space and exit options.

The agreement ended in August 2021 when Ms H had made all the repayments. Overall, I don't think there is anything further Moneybarn ought to have done throughout the course of the agreement or that it otherwise acted unfairly or unreasonably towards Ms H.

### Summary

Overall, and based on the available evidence I don't find that Ms H's relationship with Moneybarn is or was unfair. It's not clear enough to me that Moneybarn created unfairness in its relationship with Ms H by lending to her irresponsibly initially, or in respect of how it treated her throughout the agreement. I don't find that Moneybarn treated Ms H 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 Ms H to accept or reject my decision before 25 August 2025.

Laura Dean  
**Ombudsman**