

The complaint

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

What happened

Mr M applied for and entered into a Conditional Sale Agreement with Moneybarn to acquire a used car. The agreement was on the following terms:

Date	Amount of credit	Term	Monthly repayment	Total payable
16 October 2017	£8,040	60 months	£272.57	£16,468.63

Mr M appears to have struggled to make the payments to the agreement, and a default notice was sent to him on 7 June 2018. As he didn't comply with the default notice, the account was terminated on 11 July 2018. On 13 September 2018, a Decree for Payment was issued by a Scottish Court ordering Mr M to pay £14,772.78 with interest at 8% per annum in instalments of £300 per month. Mr M complied with the Decree and made his final payment on 11 October 2022.

On 2 August 2024, Mr M complained to Moneybarn. He said it had *"failed to carry out an adequate income and expenditure assessment"* to ensure he could repay the agreement. As a result, he said the agreement made his financial position worse. To resolve his complaint, Mr M asked Moneybarn to refund all charges and interest he paid - along with compensatory interest - and £100 compensation for the distress and inconvenience caused.

Moneybarn looked into Mr M's complaint and issued a final response letter. It said it had conducted reasonable checks on his application. It had obtained his payslips to verify his income, reviewed his credit file and *"made reasonable considerations for [his] existing expenses and accounted for appropriate non-discretionary expenditure"*. It said arrears had accrued *"due to a change in [his] financial circumstances"* but acknowledged he had now paid the agreement in full. Moneybarn didn't uphold the complaint.

Mr M didn't accept Moneybarn's response, so he referred his complaint to our service. Once he'd done so, Moneybarn told us it didn't consent to us looking into the lending decision because it had taken place more than six years before the complaint was raised. It said the complaint was outside our jurisdiction due to the time limits included in the complaint handling rules set by the Financial Conduct Authority (FCA).

One of our investigators looked into the complaint. She didn't agree with Moneybarn that the complaint was outside our jurisdiction as she felt it would be reasonable to consider it as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140). She said on that basis she felt we could consider Mr M's complaint, and she went on to do so.

Our investigator felt the checks carried out by Moneybarn were reasonable and

proportionate in the circumstances and went on to conclude it had reached a fair decision to lend to Mr M. She didn't uphold the complaint.

Mr M didn't agree with our investigator. His PR presented a breakdown of his expenditure taken from his bank statements which they said showed he could not afford the finance. 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 as 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 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 M says the agreement made his situation worse as he couldn't afford it. This may have made the relationship unfair as he had to pay more in interest than he could afford and was unable to meet the repayments. 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 M'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 M), 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 M 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 M'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 M 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 M in some other way?

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

When he applied for the finance, Mr M declared that he worked full time and received income of £2,300 per month. Moneybarn obtained payslips from him and they showed an average income of £1,527.72. It's not clear why Mr M declared a much higher income but, in any event, Moneybarn used the figure from the payslips for its calculations. Using the figure of £1,527, Moneybarn calculated he would be left with a monthly disposable income of £382 from which to meet the payment to this agreement.

Due to the time elapsed since the decision, it doesn't have full details of the calculation, but it has provided some. I am satisfied from what I've seen and my experience of its process, that Moneybarn will have used data from the Office of National Statistics and his credit file to do so.

Moneybarn also checked Mr M's credit file and saw that he had no existing credit, but had previously defaulted on two agreements. He was reducing that debt, and the most recent default had been registered 16 months before this application. As Moneybarn is a lender which specialises in lending to people with impaired credit histories, I don't think it's unreasonable for Moneybarn to have considered those defaults as being historic.

So Moneybarn had obtained proof of Mr M's income, and has provided a figure it calculated as a disposable income after an assessment of his expenditure which showed the agreement to be affordable. It had checked his credit file and was satisfied with the results. I think it carried out a reasonable and proportionate check on the application and it follows that I think it made a fair decision to lend to him.

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

I've carefully considered all the information provided by each party to the complaint. I can see that Mr M missed payments from early on in the agreement. According to the notes, he explained to Moneybarn that the payment was *"missed because over spending at Christmas and partner not working...partner has a job that she is starting in Feb"*.

Moneybarn applied 'breathing space' to the account and later set up repayment plans to allow time for Mr M to make up the repayments. Unfortunately, the payment plans were unsuccessful and a default notice was issued in June 2018. As that wasn't satisfied, Moneybarn terminated the agreement a month later and asked Mr M to return the car. It said if he didn't do so, repossession of it would commence.

Ultimately, Moneybarn took Mr M to Court, and he asked to be able to repay the agreement at £300 per month. That was agreed and a Decree for Payment was issued by the Court in September 2018. I note that in the complaint form Mr M submitted to our service when he referred his complaint, he said *"the monthly payments were increased to £300 a month, but I never struggled to make these payments and successfully completed paying the car off in 2022."*

I note Mr M's PR's comments about his bank statements showing that he could never have afforded the agreement and so it was unfair for Moneybarn to have lent to him. But as I've already said, there is no set list of checks businesses need to carry out. There is no requirement on them to obtain bank statements from applicants, although of course, they can request them if they wish. But as I think the checks carried out were reasonable and proportionate, I don't see a need for Moneybarn to have done so here. I also note Mr M's comments above that he never struggled to make the payments of £300 under the Court Decree which were higher than those demanded by the agreement itself.

Having reviewed all the evidence and arguments presented by each party to this complaint, I haven't seen anything which makes me think Moneybarn treated Mr M unfairly.

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 M to accept or reject my decision before 9 December 2025.

Richard Hale
Ombudsman