

Complaint

Mr and Mrs M complain that Moneybarn No.1 Ltd (trading as “Moneybarn”) unfairly entered into a conditional-sale agreement with them. They’ve said the monthly payments to the agreement were unaffordable for them and so they shouldn’t have been accepted for it.

Background

In August 2017, Moneybarn provided Mr and Mrs M with finance for a used car. The cash price of the vehicle was £13,035.00. Mr and Mrs M paid a deposit of £200 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £12,835.00 they required to complete their purchase. The loan had interest, fees and total charges of £10,428.11 and the balance to be repaid of £23,263.11 (which does not include Mr and Mrs M’s deposit) was due to be repaid in 59 monthly instalments of £394.29.

In July 2024, Mr and Mrs M complained to Moneybarn saying that the agreement was unaffordable and worsened their ongoing financial position. Moneybarn didn’t uphold the complaint. Mr and Mrs M remained dissatisfied and referred their complaint to our service. When Mr and Mrs M’s complaint was referred to our service, Moneybarn told us that we couldn’t consider part of it as it was made too late.

Mr and Mrs M have also separately complained about the commission Moneybarn paid the credit broker that introduced their business. We’ve explained that we’re considering Mr and Mrs M’s commission complaint separately and so far we’ve only looked at whether Moneybarn acted fairly and reasonably in agreeing to lend to Mr and Mrs M.

One of our investigators reviewed what Mr and Mrs M and Moneybarn had told us. He wasn’t persuaded that Moneybarn had acted unfairly or unreasonably in agreeing to lend to Mr and Mrs M. So the investigator wasn’t persuaded that the complaint should be upheld.

Mr and Mrs M disagreed with the investigator and asked for an ombudsman’s 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 part of Mr and Mrs M’s complaint was made too late because they complained more than six years after the decision to accept their application for finance was made, as well as more than three years after they ought reasonably to have been aware of their cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr and Mrs M’s complaint as being one alleging that the relationship between them and Moneybarn was unfair to them as

described in s140A of the Consumer Credit Act 1974 (“CCA”). He 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 Mr and Mrs M’s complaint. Given the reasons for this, I’m satisfied that whether Mr and Mrs M’s complaint was made in time or not has no impact on that outcome. I’m also in agreement with the investigator that Mr and Mrs M’s complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr and Mrs M have not only complained about the decision to lend to them but have also alleged that having to make their payments caused ongoing financial difficulty.

I’m therefore satisfied that Mr and Mrs M’s complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between them and Moneybarn. I acknowledge that Moneybarn may still disagree that we are able to look at Mr and Mrs M’s complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr and Mrs M’s case, I am required to take relevant law into account. As, for the reasons I’ve explained above, I’m satisfied that Mr and Mrs M’s complaint can be reasonably interpreted as being about that their lending relationship with Moneybarn was unfair to them, 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 (Mr and Mrs 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 their 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 Mr and Mrs M’s complaint, I therefore need to think about whether Moneybarn’s decision to lend to Mr and Mrs M, or its later actions resulted in the lending relationship between Mr and Mrs M and Moneybarn being unfair to Mr and Mrs M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

In these circumstances, Mr and Mrs M’s relationship with Moneybarn is likely to have been unfair if it didn’t carry out reasonable and proportionate checks into Mr and Mrs M’s ability to repay in circumstances where doing so would have revealed the repayments 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 therefore proceed to considering whether Moneybarn acted fairly and reasonably towards Mr and Mrs M when agreeing to lend to them.

Our approach to complaints about irresponsible or unaffordable lending

Moneybarn needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr and Mrs M before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. 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 the lender needed to know more about a prospective borrower's ability to repay.

I've kept this in mind when determining Mr and Mrs M's complaint.

Application to Mr and Mrs M's complaint - Did Moneybarn act fairly and reasonably when agreeing to enter into this conditional sale agreement with Mr and Mrs M?

Moneybarn says it agreed to this application after it completing an affordability assessment. During this assessment, Mr and Mrs M provided details of their monthly income, which was verified with payslips. Moneybarn says it also carried out credit searches on Mr and Mrs M which showed some outstanding balances on existing credit as well as some adverse information in the form of defaulted accounts and a County Court Judgment recorded.

But when the amount Mr and Mrs M already owed plus a reasonable amount for their living expenses, based on statistical data, was deducted from their monthly income the monthly payments were still affordable. On the other hand, Mr and Mrs M say that these payments were unaffordable. I've thought about what Mr and Mrs M and Moneybarn have said.

The first thing for me to say is that like our investigator I don't think that the checks carried out went far enough. In my view, bearing in mind the adverse information it saw recorded against Mr and Mrs M as a result of its credit search, I'm satisfied that Moneybarn needed to take further steps to verify Mr and Mrs M's actual living costs, rather than rely on statistical data, in order for its checks to have been proportionate.

That said, a lender failing to carry out sufficient checks doesn't on its own mean that a complaint should be upheld. I still need to be satisfied that a lender carrying out such checks would have shown the payments to be unaffordable. So as Moneybarn didn't carry out sufficient checks, I've gone on to decide what I think such checks would have shown.

Given the circumstances here, I would have expected Moneybarn to have had a reasonable understanding of Mr and Mrs M's regular living expenses, in addition to their income and existing credit commitments. Having considered the information Mr and Mrs M have provided, including their bank statements, it suggests that when Mr and Mrs M's identifiable regular living expenses, existing credit commitments and a reasonable amount for their defaulted accounts are deducted from their joint income, they, at the time of application at least, did have the funds to sustainably make the repayments due under this agreement.

In reaching my conclusions, I've noted that Mr and Mrs M have now carried out a line-by-line analysis of their bank statements and have reached the conclusion that they had insufficient funds to be able to make the repayments to this agreement. The first thing for me to say is that Mr and Mrs M's analysis has been carried out with the use of bank statements for

multiple accounts and this includes all of their expenditure. In these circumstances, I don't think that the amount left over is an indication that the repayments were unaffordable.

Most importantly, I also have to keep in mind that Mr and Mrs M's most recent submissions are being made in support of a claim for compensation and any explanations Mr and Mrs M would have provided at the time are more likely to have been with a view to persuading Moneybarn to lend, rather than highlighting any unaffordability. I also think it unlikely – and less likely than not – that Mr and Mrs M would have volunteered that they had the level of expenditure they're now referring to, particularly as Moneybarn wasn't required to request bank statements from them in the first place.

Having considered all of this and weighed it up in the round, I don't think that Moneybarn accepted an application that was obviously unaffordable, or that it ought reasonably to have realised would cause significant harm to Mr and Mrs M. As this is the case, I don't think it was unfair for Moneybarn to have entered into this conditional sale agreement with Mr and Mrs M, or that it doing so created unfairness.

Overall and having carefully considered everything, while I don't think that Moneybarn's checks before entering into this conditional sale agreement with Mr and Mrs M did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Moneybarn from providing these funds, or entering into this agreement.

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

So while I can understand Mr and Mrs M's sentiments and appreciate why they are unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr and Mrs M. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr and Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 13 October 2025.

Jeshen Narayanan
Ombudsman