DRN-5802250

Complaint

Mr D complains that Moneybarn No.1 Limited (trading as “Moneybarn”) unfairly entered into a conditional sale agreement with him.

He’s said that the agreement was unaffordable and that this created ongoing difficulty as he ended up missing payments to priority creditors.

Background

In March 2017, Moneybarn provided Mr D with finance for a used car. The cash price of the car was £6,097.00. Mr D paid a deposit of £207 and entered into a conditional sale agreement with Moneybarn for the remaining £5,890.00 he required.

The loan had total interest, fees and charges of £6,288.19 and a 60-month term. This meant that the balance to be repaid of £12,178.19 (which does not include Mr D’s deposit) was due to be repaid in 59 monthly instalments of £206.41. The statement of account appears to show that the agreement ran to its scheduled end date of March 2022.

In November 2024, Mr D complained to Moneybarn saying that it shouldn’t have entered into this conditional sale agreement with him. He said that Moneybarn ought to have realised that the monthly payments were unaffordable for him and that this caused ongoing financial difficulty as he ended up missing payments to priority creditors.

Moneybarn didn’t uphold Mr D’s complaint. Mr D remained dissatisfied at matters and referred his complaint to our service. When providing its file of papers on Mr D’s complaint, Moneybarn told us that it believed Mr D had complained too late.

Mr D’s complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Moneybarn that it shouldn’t have entered into the conditional sale agreement with Mr D. So he didn’t think that Mr D’s complaint should be upheld.

Mr D 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 Mr D’s complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr D's complaint as being one alleging that the relationship between him and Moneybarn was unfair to him 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 D's complaint. Given the reasons for this, I'm satisfied that whether Mr D's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr D's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr D has not only complained not about the decision to lend but has also alleged that the payments caused ongoing financial difficulty as he ended up missing payments to priority creditors.

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

Mr D's relationship with Moneybarn is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr D'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 turn to whether Moneybarn acted fairly and reasonably when entering into the conditional sale agreement with Mr D.

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 D 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 D's complaint.

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

Moneybarn says it agreed to this application after Mr D provided details of his income which it verified with copies of payslips. It says it also carried out credit searches on Mr D which did show that he had previously defaulted on credit commitments with the most recent occasion this had happened being almost four years prior to this application. The credit checks also show that a county court judgment ("CCJ") was obtained against Mr D also around three years prior to this application too.

In Moneybarn's view, the adverse credit information was historic. Furthermore, when reasonable repayments towards the amount Mr D owed, plus a reasonable amount for Mr D's living expenses were deducted from his monthly income, the monthly payments to this agreement were affordable.

On the other hand, Mr D says the monthly payments were unaffordable and caused ongoing difficulty.

I've thought about what Mr D and Moneybarn have said.

The first thing for me to say is that I don't think that the checks Moneybarn carried out did go far enough. I don't think it was reasonable for Moneybarn to rely on an estimate of Mr D's living costs given his previous difficulty repaying credit, the total cost of this agreement, the amount of his monthly payments and the agreement's term.

However, I think it's worth me emphasising that just because I don't think that Moneybarn carried out sufficient checks this, on its own, doesn't mean that Mr D's complaint should be upheld. Indeed, where a firm didn't carry out sufficient checks we would usually only go on to uphold a complaint in circumstances were 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 think that this is important context to keep in mind.

I've therefore gone on to consider what I think such checks into Mr D's circumstances are more likely than not to have shown Moneybarn. As I've said, bearing the circumstances here, I would have expected Moneybarn to have had a reasonable understanding about Mr D's actual regular living expenses.

Having considered everything provided, I don't think that Moneybarn obtaining further information is more likely than not to have made a difference here. I say this because despite being given significant opportunity to do so, I've not been provided with anything that shows Mr D's actual committed living expenses, were significantly higher than any estimates that Moneybarn relied on at the time of his application.

Most importantly of all, I'm not persuaded that Mr D's actual regular living costs rendered the monthly payments unaffordable for him. So I've not been persuaded that Moneybarn doing more here would have resulted in it making a different decision on lending to Mr D.

I note that Mr D has carried out his own line-by-line analysis of his bank statements and in his view he didn't have sufficient funds to make the payments to this agreement. However, Mr D's analysis has been carried out with the use of bank statements and this includes most of his expenditure, rather than just his committed expenditure.

I also have to keep in mind that Mr D's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mr D considered it an appropriate time to buy a car and presumably wanted the car that he had chosen. I therefore think that any explanations Mr D 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.

For the sake of completeness, I would also add that while this isn't in itself determinative, it's also worth noting that Mr D made pretty much all of the repayments due on this agreement on time and on schedule. In my view, Mr D's repayment record does not support his argument that he had a negative disposable income in the way that he has calculated.

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 D. As this is the case, I don't think that it was unfair for Moneybarn to have entered into this conditional sale agreement with Mr D, or that it doing so created unfairness.

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

So overall and having considered everything, while I can understand Mr D's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr D. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 November 2025.

Jeshen Narayanan

Ombudsman