

The complaint

Mr C complains that Moneybarn No.1 Limited (Moneybarn) lent to him irresponsibly.

What happened

Mr C took out a motor finance agreement for £12,440 over 60 months with Moneybarn, in May 2016. The monthly repayments were £398.43, and Mr C settled the agreement in early 2021.

In March 2024, Mr C complained to Moneybarn, with the help of a professional representative, saying it had treated him unfairly by lending to him irresponsibly. Mr C said this had an adverse effect on both his finances and mental wellbeing. He explained at the time of the lending he was gambling and was already struggling with his finances. Mr C feels that if Moneybarn had completed proper checks, it would have known further credit wouldn't be suitable for him.

Moneybarn considered Mr C's complaint but said it didn't think he had raised it within the time limits allowed.

Mr C didn't accept what Moneybarn said and, again with the help of a representative, referred his complaint to our service and one of our investigators looked into it. When our investigator requested information from Moneybarn, it provided what it had. But it said it didn't consent to us looking into the whole complaint, because part of it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with Moneybarn that it had been brought too late under the rules, so considered the merits of the complaint. But he didn't think Moneybarn had acted unfairly.

Mr C didn't accept what our investigator said, so he asked for a second opinion. 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.

Having done so, I've reached the same outcome as the investigator for broadly the same reasons.

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 decisions 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 Section 140A of the Consumer Credit Act 1974 (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 C says the lending given to him was unaffordable. This may have made the relationship unfair as he's said he had to pay more than he could afford and was unable to maintain payments to the agreement. I acknowledge Moneybarn still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, 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 C'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 C), 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, including:

- 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, requiring a refund, or to do or not do any particular thing.

Given what Mr C has complained about, I need to consider whether Moneybarn's decision to lend to him, or its later action or inaction, 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 C'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, or if it failed to appropriately monitor the account and doing so would have revealed the lending was unfair, 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 this case:

- Did Moneybarn carry out reasonable and proportionate checks to satisfy itself that Mr C was able 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 C in some other way?

Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the credit sustainably. It's not just about Moneybarn assessing the likelihood of Mr C being able to repay the credit, 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, the cost of the credit and the customers circumstances.

Due to the passage of time Moneybarn has said it now has limited information from the time it completed its creditworthiness assessment on Mr C. However, it explained that it carried out a full credit search to get an understanding of Mr C's situation before it decided to lend to him. Moneybarn said this revealed he had one County Court Judgement (CCJ) at least seven months before the lending. It also showed he had defaulted on five accounts with at least one of these defaults being registered at least two months prior to the lending. However, it found that Mr C was up to date with all other active lending and hadn't utilised any payday lending or home credit in the last six months.

Moneybarn has provided a copy of what it now has in relation to the information gathered when Mr C applied for the lending. This shows he declared a monthly income of around £1,780. Moneybarn verified this using Mr C's bank statements but there's no information on Mr C's regular essential expenditure.

Given the recent adverse information recorded on Mr C's credit file, I think it would have been reasonable for Moneybarn to do more to establish what Mr C's regular committed expenditure was. I can't see that it did this, or if it did the information is no longer available. So, on the evidence available to me now, I can't fairly say reasonable and proportionate checks were completed.

There are a number of ways it could have established Mr C's expenditure, but for the avoidance of doubt, I'm not making a finding here that Moneybarn needed to see Mr C's statements in order to complete its own income and expenditure assessment. Rather I think it needed to accurately establish Mr C's regular essential expenditure. That said as Moneybarn were provided with a copy of Mr C's bank statements, I think it's reasonable to rely on these to establish what Moneybarn would likely have found had it done more to establish what Mr C's regular essential expenditure was.

Looking at the statements available, I can see that Mr C was making payments to a loan, and a credit card provider, which is consistent, with what Moneybarn says the credit reference agencies showed. I can also see that he is overdrawn, making payments to the council, a communications provider, and for a TV licence. There are also some gambling transactions.

The gambling doesn't appear to be excessive or problematic from these statements and there's no evidence Mr C let Moneybarn know that there were any issues with gambling or compulsive spending. That said, even if I include these transactions with the other essential expenditure evident on the statements, Mr C still had enough disposable income to meet the repayments to this agreement and have a reasonable sum of disposable income each month.

However, it's unclear from the statements how much (if anything) or how Mr C was paying for rent or other utilities. Given Mr C was overdrawn and the recent poor credit, I think Moneybarn should have investigated further to understand Mr C's arrangements for those essential bills that weren't evident from the statement.

We asked Mr C about expenditure for rent and other utilities. He let us know he often paid for these in cash costing around £470 a month. But he hasn't been able to provide any further detail or evidence to support this. So, I've reviewed the cash withdrawals on the statements, but I can't see there are any particular withdrawals that would be consistent with

rent or bill payments. I also can't see the total of these withdrawals is consistent with the amounts Mr C has said he paid.

Given this, there isn't enough information here for me to understand what Moneybarn would likely have found out if it had completed proportionate checks. This means I don't have enough evidence to fairly say it's likely Mr C would be unable to sustainably repay what he was being lent.

So, although I think Moneybarn's checks should have gone further, I've not seen enough to persuade me that it made an unfair decision to lend to Mr C.

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

It's clear from the statement of account that Mr C ran into difficulties with the agreement. However, it appears Moneybarn agreed several payment plans and a payment holiday and stayed in communication with Mr C about his management of the account. This is consistent with the kind of behaviour I would expect to see where a customer runs into difficulties. Given this, I've not seen evidence to suggest that Moneybarn treated him unfairly in some other way either.

Overall, and based on the available evidence I'm not persuaded that Moneybarn has acted unfairly in this case. It's not clear enough to me that Moneybarn created unfairness in its relationship with Mr C by lending to him irresponsibly and I don't think Moneybarn treated Mr C unfairly in any other way either based on what I've seen.

My final decision

My decision is that I don't uphold Mr C's complaint about Moneybarn No.1 Limited for the reasons I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 December 2025.

Charlotte Roberts
Ombudsman