

The complaint

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

What happened

Mr H entered into a Conditional Sale Agreement with Moneybarn to enable him to acquire a used car. It was agreed on the following terms:

Date	Amount of credit	Term	Monthly repayment	Total payable
3 October 2017	£6,840	60 months	£269.04	£16,273.36

On 4 July 2024, Mr H complained to Moneybarn. He said that “*suitable affordability checks ... would have resulted in my application being declined*”. He asked Moneybarn to refund the charges and interest he paid on the agreement – plus statutory interest – along with compensation for stress and inconvenience.

Moneybarn didn't respond within the required period, so Mr H referred his complaint to our service. When he did, Moneybarn told us that it felt the complaint had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA), as more than six years had passed since the agreement was opened. It said the complaint was outside our jurisdiction.

One of our investigators looked into it and felt the complaint could reasonably be considered as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140) and it was therefore within time for us to consider it. He went on to review it and felt that Moneybarn had treated Mr H fairly when it lent to him and throughout the relationship. He didn't uphold the complaint.

Mr H didn't agree with our investigator so, as there was no agreement, the complaint has been passed to me for a final 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 he 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 he 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 H says he could never afford the agreement. This may have made the relationship unfair as he had to make payments to it that he couldn't afford. 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 H'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 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;
- 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 H has complained about, I need to consider whether Moneybarn's decision to lend to him, or its later actions, created unfairness in the relationship such that Moneybarn ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr H'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.

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 H was in a position to sustainably repay the agreement?
- 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 H in some other way?

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

Moneybarn hasn't been able to provide all the evidence it considered before agreeing Mr H's application for finance, but I don't find that surprising as businesses are not required to retain information indefinitely. But it has sent us evidence that his income was verified, that it did a credit check (and a headline of what that showed) and a copy of a bank statement it obtained from Mr H at the time.

The statement covers the period 26 August to 27 September 2017 – so a full month just prior to the agreement being taken. But the bank statement doesn't provide clear evidence of Mr H's living expenditure – there's no evidence of rent or utilities for example – but it does show some existing motoring expenses such as payments to car finance (totalling £500 in the period) and insurance. It does however show Mr H's income from the employer he gave on his application and for the amount he declared in his application.

The credit check Moneybarn carried out showed he had little credit elsewhere – a revolving facility (probably a credit card) with a balance of £191. He had one County Court Judgment which was more than two years old and six defaulted accounts – the newest of which was almost four years old. Moneybarn specialises in lending to people with impaired credit histories. Given the age profile of the problems on Mr H's credit file, I don't think that information would have caused Moneybarn to refuse to lend to him.

So I can see that Moneybarn verified Mr H's income and carried out a credit search which will have caused it no concerns. But given the amount and length of the credit agreement, I would have expected Moneybarn to consider Mr H's expenditure as well as his income before agreeing to lend, to ensure he could afford the repayments. The limited information on his bank statement doesn't provide enough information to be able to do that. And Moneybarn hasn't provided evidence of the figures it used for Mr H's expenditure and living costs. So, I can't fairly conclude that the checks were reasonable and proportionate.

I've gone on to look at three months bank statements that Mr H has provided in order to try to see what Moneybarn might have seen had it done more. Unfortunately those statements present a similar picture to the one provided to Moneybarn (and include the one it saw). It is evident that Mr H would transfer his salary out to another account when it was received, and make ad hoc transfers back in as required. In his view of the complaint, our investigator asked Mr H to provide copies of the statements for the other account if he felt they would support his case. Unfortunately, no further statements have been provided, so I have had to assess the complaint based on the information we have.

Having done so, over the three month period I've looked at, Mr H earned an average of £1,050 and his regular commitments and living expenses I can see averaged £592. So he had an average monthly disposable income of £458 from which to pay this agreement of £269. As the expenditure I've seen includes some motoring costs already (DVLA and insurance), based on the information available, the agreement appeared to be affordable for him.

So if Moneybarn had done more to check Mr H's ability to repay the finance he applied for, I think it would have still agreed to lend to him. It follows that I think it reached a fair decision to lend.

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

Mr H has told us he fell into arrears due to things outside his control such as a job change where he had fewer hours. I can see from the notes provided by Moneybarn that it tried to contact him several times prior to issuing a default notice in June 2018. I can see Mr H contacted Moneybarn following that to explain he'd been in an accident a few months earlier and he wanted to sort out the account. A payment plan was then agreed to help to repay the

arrears.

Mr H had several agreed payment plans over the course of the agreement as a result of change in jobs, Christmas pay being late, health issues and unexpected bills. Ultimately the account was cleared in full with nothing further due from Mr H in July 2022.

From what I can see, Mr H has had a number of problems over the life of the agreement, but these appear to have been as a result of changes in circumstances. Moneybarn agreed payment plans on a regular basis and showed forbearance as I'd expect. For the reasons I've already given, I don't think Moneybarn lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter.

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 H to accept or reject my decision before 22 December 2025.

Richard Hale
Ombudsman