

The complaint

With the help of a professional representative (PR), Mr M complains that Moneybarn No.1 Limited lent to him irresponsibly. For ease, I'll mainly refer to the action 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. It was agreed on the following basis:

Date	Amount of credit	Term	Monthly repayment	Total payable
5 May 2016	£8,512.50	60 months	£291.91	£17,422.69

On 11 February 2025, Mr M complained to Moneybarn. He said it had *“failed to carry out an adequate income and expenditure assessment”* or *“obtain any evidence such as bank statements, payslips and information from other creditors confirming income and [his] ability to pay debt”*. As a result, he said the agreement had made his financial position worse. To resolve his complaint, Mr M asked Moneybarn to refund all the interest he'd paid on the agreement along with compensatory interest on top. He asked for £100 compensation for the distress and inconvenience caused to him.

Moneybarn looked at Mr M's complaint and issued a final response letter. It said Mr M had brought his complaint too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Mr M didn't accept Moneybarn's response, so he referred his complaint to our service. One of our investigators looked into it. He didn't agree with Moneybarn that the complaint was outside our jurisdiction as he 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). He said on that basis we could consider Mr M's complaint and went on to do so.

Our investigator said he didn't have enough information (perhaps due to the time elapsed) to enable him to conclude that the checks carried out by Moneybarn were reasonable and proportionate. But he went on to look at bank statements which had been provided to Moneybarn by Mr M at the time and concluded that even if it had done further checks, Moneybarn would still have agreed to lend to him. He didn't uphold the complaint.

Mr M didn't agree with our investigator so, 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

he 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 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 M says the increases simply 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 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 has provided what information it can from the time of the application, but as the finance was agreed almost nine years before Mr M raised his complaint, I can understand that it doesn't have everything. Businesses are not obliged to keep information indefinitely.

It has provided a copy of Mr M's application data, some information about the credit check it carried out and some bank statements it obtained from Mr M "for affordability" at the time.

The application shows Mr M declared that he was employed full time on an income of £1,240 per month and was living with parents. Moneybarn verified his income using the bank statements provided, and calculated he actually received £1,510 per month. Moneybarn hasn't retained the figurework it carried out for his expenditure unfortunately, but I'm aware it generally uses data provided by the Office of National Statistics for this purpose and it had the bank statements too. So I'm satisfied it did carry out some form of expenditure assessment, but as I don't have the figures, I can't say what it saw.

The credit report data Moneybarn provided shows he had seven defaulted accounts totalling £1,700, but the most recent default was from 30 months before this application. But I don't have any details of what those defaults were or any information about any outstanding credit. So again, I'm satisfied it did carry out the credit check, but I can't say what it saw as a result.

As I can't see the details of the credit check and the expenditure calculation, I can't reasonably conclude that the checks went far enough.

There is no prospect of obtaining a useful credit file for Mr M from as they only reflect information over the last six years so won't show what Moneybarn would have seen in 2016. Moneybarn is a lender which specialises in lending to customers with impaired credit histories and, as the last default was from 2½ years before this application, I think it is unlikely that further detail will have deterred Moneybarn from lending.

I've looked closely at the bank statements provided to Moneybarn by Mr M at the time. I note it has said it used them for affordability, so it's right that I do the same. Having done so, I can see his average committed expenditure was around £720. Using the figure Mr M declared for his income of £1,240, this still left him with sufficient disposable income from which to fund the repayments to this agreement of £292.

Mr M's PR has disputed the income and expenditure calculation – and therefore the affordability of the agreement. They say Mr M's income came from a particular employer and was an average of £1,064. While I can see some income from that employer, it's not the one Mr M gave Moneybarn. I can see he began to receive £310 per week from his declared employment, which equates to £1,240 based on a four-week month. This is in line with the income he quoted on the application.

Mr M's PR calculated his nondiscretionary expenditure as an average of £715 or so – in line with the figure our investigator and I have calculated. This leaves him with a disposable

income of £525 from which to pay the agreement. So I don't agree with the PR that the agreement appeared unaffordable for Mr M.

I think Moneybarn reached a fair decision to lend to Mr M.

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

I've carefully read and considered all the evidence provided by each party to the complaint. I can see that Mr M made payments regularly for over a year but then began to struggle from early 2018. I can see from the notes provided that Moneybarn put payment plans in place and tried to support Mr M as I would expect. I've not seen anything which makes me think Moneybarn has treated Mr M unfairly in some other way.

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 12 December 2025.

Richard Hale
Ombudsman