

DRN-6258425

## The complaint

Mr P complains that Moneybarn No.1 Limited trading as Moneybarn lent to him irresponsibly.

## What happened

On 12 September 2018, Mr P entered into a Conditional Sale Agreement to acquire a used vehicle. It was agreed on the following terms:

Cash price of vehicle	Amount of credit	Term	Monthly repayment	Total payable
£9,160	£8,760	60 months	£295.35	£17,825.65

Mr P quickly fell into difficulty with the repayments. The vehicle was repossessed and sold at auction on 2 July 2019. The sale proceeds were not sufficient to clear the agreement and left a balance of £12,918.60.

On 4 July 2025, Mr P complained to Moneybarn. He said his *“credit file already showed defaults and long-term financial distress. A responsible lender should have declined the application.”* To resolve his complaint, Mr P asked Moneybarn to refund everything he’d paid along with interest of 8%, write off the outstanding balance and remove all adverse information from his credit file. He also sought compensation – a minimum of £750 – for distress and *“consequential loss”*.

Moneybarn considered Mr P’s complaint and issued a final response letter. It said Mr P had brought his complaint too late under the complaint handling rules set by the Financial Conduct Authority (FCA), because more than six years had passed since the events complained about. It didn’t uphold the complaint.

Mr P didn’t accept Moneybarn’s response, so he referred his complaint to our service. One of our investigators looked into it. She said 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 it had therefore been brought in time under the rules. She went on to consider the circumstances in this case and said that even if we were to uphold the complaint, she wouldn’t be able to make an award as no charges and interest had been levied on the account in the last six years.

Mr P didn’t agree with our investigator, so the complaint has been passed to me to decide.

## 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 reached a similar outcome to that of our investigator, but for different reasons. I issued a provisional decision saying:

*“I’ve read and thought about all the information provided by both parties in reaching my decision. If I’ve not specifically reflected or answered something that’s been said it’s not because I didn’t see it, it’s because I didn’t deem it relevant to the crux of the complaint. This*

*isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is.*

*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 decision 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 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 P says the agreement was unaffordable from the outset. This may have made the relationship unfair as he had to pay more in interest than he could afford and was unable to reduce the debt. 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 P'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 P), 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 P 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 the two such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.*

*Mr P'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 P 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 P in some other way?*

*Moneybarn had to carry out reasonable and proportionate checks to satisfy itself that Mr P 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.*

*Did Moneybarn carry out reasonable and proportionate checks?*

*Due to the time elapsed since the agreement was opened, Moneybarn is unable to provide all the information it used to assess Mr P's application. I don't find this surprising as businesses aren't required by law or good industry practice to hold records indefinitely – typically, they hold data for around six years. But it has been able to provide some data which I have used to reach my decision.*

*Moneybarn has provided a copy of Mr P's application. He told it he was employed full time, earned £1,750 per month and lived in rented accommodation. Moneybarn has provided a payslip it received from Mr P to verify his income, and the figure was in line with that declared by Mr P.*

*The application shows that Moneybarn carried out a credit search with a well-known credit reference agency and received a 'credit score' of 769. This was generally considered as a 'good' or 'very good' score.*

*But Moneybarn hasn't been able to provide full details of what it saw on the credit search or full details of its expenditure calculation.*

*As Moneybarn hasn't been able to provide all the information, I can't fairly conclude that the checks carried out were reasonable and proportionate. For that reason, I've gone on to think about what it might have found at the time.*

*As it's clear that Moneybarn did carry out a credit search and the score it received was good, I have no reason to think it needed to more with that information. I did consider asking Mr P for a copy of his credit file, but as they generally only show information for six years, it is unlikely that a current copy will provide any useful information in that regard.*

*So I need to think about what Moneybarn would have found at the time regarding Mr P's income and expenditure. There's no set way of doing this and indeed the rules allow lenders to estimate expenditure in many circumstances. But one way is to review Mr P's bank statements from the time as this generally provides a good picture of a consumers circumstances. I would stress however (as Mr P has specifically said it should have done) Moneybarn was not obliged to obtain statements.*

*Mr P has been able to provide copies of his bank statements from June to September 2018, so I've looked at those to get an idea of his circumstances. I note they don't show Mr P's earned income (for which he provided a payslip) going into the account; rather he receives a benefit payment of just over £1,000 and several transfers from other people. But I think Moneybarn was entitled to rely on his payslip as proof of his income, I'm only looking at his statements for details of his committed expenditure.*

*I've focussed my review on transactions from 18 June 2018 – three months prior to the agreement. I can see what appears to be a rent payment of £900 dated 27 June 2018 which doesn't appear again, and £1 per month to a debt collection company. But the rest of his expenditure appears to be discretionary – retail, fast food and a television streaming service. There is no evidence of utilities, council tax etc. and the account runs in credit.*

*I suspect Mr P may have had an account elsewhere into which his salary was paid and from which he paid his other bills. But as I asked Mr P to provide statements to give me a full*

*picture of his circumstances, I can only rely on what he's given us. And from what I can see in terms of committed expenditure, I think the agreement appeared to be affordable for him.*

*I think if Moneybarn had asked more about Mr P's expenditure – and / or seen the bank statements he's provided to me – it would have felt the finance would have been affordable for him. It follows that I think it reached a fair decision to lend to him.*

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

*I've carefully read and considered everything each party to the complaint has provided. Moneybarn has provided contact notes between it and Mr P. I note that he fell into arrears from the start, and when he spoke to it, he asked for a change in payment date which was agreed.*

*In January 2019, the notes say he told it that he was "between jobs" but he should be able to make the payment. Then in February 2019 he said he'd been in hospital and wouldn't be paid for another four weeks. Moneybarn offered to work out a repayment plan to clear arrears after he'd been paid, and Mr P was to call back with his income and expenditure details. But I can't see that he did so.*

*Ultimately in April 2019, Moneybarn issued a default notice which wasn't satisfied, so led to the agreement being terminated, the vehicle being repossessed and sold. So it appears from the notes of what Mr P told Moneybarn at the time, that he fell into arrears on the agreement due to changes in his circumstances. Moneybarn offered to try to help through a repayment plan – as I'd expect – but Mr P didn't call back until after the default notice. I've not seen anything which makes me think Moneybarn treated him unfairly in this regard.*

*I'm sorry to disappoint Mr P as I can see this matter has caused him distress and difficulty, but for the reasons I've already given, I don't think Moneybarn lent irresponsibly to him or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that s.140 would, given the facts of this complaint, lead to a different outcome here."*

Moneybarn accepted my provisional decision, but Mr P didn't. He said (in summary):

- The provisional decision places too much weight on the payslip and credit score against the "*broader financial context, the incomplete...data and outcome of the agreement.*" As Moneybarn can't produce all the evidence of the checks it carried out, I should be "slow to assume the checks were sufficient".
- As he was a director of his own company, the payslip could not be "treated as equivalent to a standard employed income".
- His credit score was not 'good' or 'very good' when he applied for finance as he had adverse markers on his credit file at the time.
- The absence of the usual bills on his statements is not indicative of having no liability for them. The statements themselves show signs of "financial fragility".
- The subsequent performance of the agreement is relevant.

I acknowledge Mr P's dissatisfaction and understand his disappointment. I've carefully considered what he's said, but I haven't changed my view of his complaint. Let me explain.

He is correct that I shouldn't assume the checks were sufficient where I don't have evidence of them. Indeed, in my provisional decision I said, "*As Moneybarn hasn't been able to provide all the information, I can't fairly conclude that the checks carried out were reasonable and proportionate.*" But that doesn't mean I should disregard the evidence we do have, such as the payslip that Mr P gave Moneybarn when it asked for proof of his income. Rather, I think it is strong evidence that some checks at least were carried out in an attempt to assess the affordability of the agreement.

I note his comment that he was a director of his own company so the payslip cannot be relied upon. But when he applied for the finance, he didn't declare that he was a director of the company. He said he was employed full time and gave a different job role. So, I don't see any reason for Moneybarn to have thought the payslip was anything other than reliable evidence of his income. Had he declared he was self-employed or a director of the company, it may well have asked for other evidence, but he didn't give it that opportunity. Mr P says his credit report showed adverse markers and a pattern of financial strain. He's not however provided any evidence of that. The application details provided by Moneybarn on the other hand, show a credit score as I've described in my provisional decision. So, it is evident that a check was carried out and a result received. Even if I were to disregard that, it would mean I had no information on which to reach a finding – it wouldn't mean I would automatically uphold the complaint.

I agree with Mr P that the absence of certain bills from the statements he's produced doesn't mean he didn't have to pay them. As I said in my provisional decision, I asked Mr P to provide statements to give me a full picture of his circumstances, but he hasn't done so. I can base my decision on the evidence provided by each party to the complaint.

Mr P says the fact that he struggled straight away is evidence that "the original affordability assessment was inadequate". Again, I don't agree. Moneybarn assessed the information declared by Mr P. When he signed the agreement, he confirmed all the information he'd given was "correct and accurate in all respects", and that "the payments ...are affordable to you and you do not envisage anything during the term of this Agreement which would question your ability to make the payments". He knew his circumstances better than anyone and Moneybarn assessed the application based on what he told it and information it was able to obtain from elsewhere.

The notes show that soon after the agreement commenced, it became clear he was not in fact employed but was self-employed. He then told Moneybarn he was between jobs and had been in hospital, so he hadn't been paid. These are factors which are outside the scope of the initial affordability assessment but may have affected his ability to meet the repayments. While I accept these changes in circumstances are likely to have been outside of Mr P's control, there is equally no way that Moneybarn could reasonably have foreseen them either.

Mr P has said the notes provided by Moneybarn contain inaccuracies. I've seen nothing to show that Moneybarn recorded anything other than information he gave it. But in any event the inaccuracies he alleges have not influenced my decision – the reasons for which are set out herein.

I am sorry to disappoint Mr P, but having reconsidered the complaint and taking into account his response to my provisional decision, I am not persuaded to change my thoughts on the complaint.

### **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 P to accept or reject my decision before 29 April 2026.

Richard Hale

**Ombudsman**