

## Complaint

Mr C 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 caused ongoing financial difficulties.

## Background

In February 2016, Moneybarn provided Mr C with finance for a used car. The cash price of the car was £4,500.00. Mr C paid a deposit of £4,300.00 and entered into a conditional sale agreement with Moneybarn for the remaining £4,300.00.

The loan had total interest, fees and charges of £3,103.37 and a 42-month term. This meant that the balance to be repaid of £7,403.37 was due to be repaid in 41 monthly instalments of £180.57.

In April 2024, Mr C 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.

Mr C has also complained about the commission Moneybarn paid the credit broker that introduced his business. We’ve explained that we’re looking at Mr C’s commission complaint separately and this decision is only considering matters concerning whether Moneybarn acted fairly and reasonably in agreeing to lend to Mr C.

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

Mr C’s complaint was considered by one of our investigators. She wasn’t persuaded that proportionate checks would have shown Moneybarn that it shouldn’t have entered into the conditional sale agreement with Mr C. So she didn’t think that Mr C’s complaint should be upheld.

Mr C 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 C’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 C'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 C's complaint. Given the reasons for this, I'm satisfied that whether Mr C's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr C's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr C 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 C'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 C'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 C's case, I am required to take relevant law into account. For the reasons I've explained above, I'm satisfied that Mr C'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 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:

- 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 C's complaint, I therefore need to think about whether Moneybarn's decision to lend to Mr C, or its later actions resulted in the lending relationship between Mr C and Moneybarn being unfair to Mr C, 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 reasonable and proportionate checks into Mr C'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 C.

*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 C 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 C's complaint.

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

Moneybarn says it agreed to this application after Mr C provided details of his income which it verified with copies of payslips. It says it also carried out credit searches on Mr C which did show that he had previously defaulted on credit commitments with the most recent occasion this had happened being around four years prior to this application. The credit checks also show that no county court judgments ("CCJ") had been obtained against Mr C.

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

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

I've thought about what Mr C 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 C'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.

At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the Moneybarn didn't do enough to establish whether the repayments were affordable, doesn't, on its own, mean that Mr C's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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.

However, despite having been provided with sufficient opportunity to do so, Mr C hasn't provided me with clear evidence to show that his actual living expenses were significantly higher than the estimates that Moneybarn used. Furthermore and in any event, I also have to consider Mr C's current submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr C clearly wanted the car he had chosen.

In these circumstances, it's fair to say that any explanations he would have provided would have been with a view to persuading Moneybarn to lend to him, rather than highlighting the monthly payments were unaffordable. Indeed, in the witness statement Mr C has provided, he's said that his previous car had died on the motorway and he knew the exact car he wanted as a replacement. Given Mr C has also said that he was living within his means, I can only assume that his means would have played a part in determining his choice of replacement car.

I accept that Mr C's witness statement was prepared in support of a commission claim, rather than this affordability complaint. Nonetheless, given it refers to Mr C's means and circumstances at the time of his application, I would have expected Mr C to have said that the repayments were unaffordable for him, in this witness statement, if he genuinely considered this to be the case.

Finally, while I accept that this is not in itself determinative, I do think that it's also worth noting that Mr C not only made all of the monthly payments while he had the agreement on time, he also settled the finance early. Mr C's actions in doing this do not corroborate what he's said about the monthly payments being affordable for him.

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 C.

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 C, or that it doing so created unfairness.

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

So having considered everything, while I can understand Mr C'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 C. 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 C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 May 2026.

Jeshen Narayanan  
**Ombudsman**

