

## **The complaint**

Mr L complains that Moneybarn No.1 Limited (Moneybarn) irresponsibly granted him a conditional sale agreement that he couldn't afford to repay.

## **What happened**

In May 2021 Mr L acquired a vehicle financed by a conditional sale agreement from Moneybarn. Mr L was required to make 59 monthly repayments of £223.51. The total amount repayable under the agreement was £13,187.09. Mr L believes Moneybarn failed to complete adequate affordability checks. Mr L says that if it had it would've been clear the agreement wasn't affordable at the time.

Moneybarn disagreed. It said it carried out an adequate assessment which included credit file searches, verification of Mr L's income and statistical estimation of his non-discretionary expenditure. It said these searches showed that Mr L had several historic defaults, low borrowing levels and sufficient headroom to comfortably afford the loan. It also could see that Mr L had no County Court Judgments on his file.

Our Investigator didn't recommend that the complaint should be upheld. They thought Moneybarn's checks weren't proportionate in the circumstances but that without Mr L providing information to enable further investigation they had to conclude on balance that the decision to agree to lend was reasonable.

Mr L didn't agree. He explained he was unable to provide statements to evidence his income and expenditure at the time but felt that his own written expenditure listing was accurate. He explained that the tenancy agreement he provided was an accurate reflection of the rent that he was responsible for monthly, and that his partner only received a small amount in way of benefits. Mr L asked for an Ombudsman to issue a final decision on the matter.

## **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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr L's complaint. Moneybarn needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr L before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr L's complaint. These two questions are:

1. Did Moneybarn complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay his loan without experiencing significant adverse consequences?
  - If so, did it make a fair lending decision?
  - If not, would those checks have shown that Mr L would've been able to do so?
2. Did Moneybarn act unfairly or unreasonably in some other way?

*Did Moneybarn complete a reasonable and proportionate affordability check?*

Moneybarn was required to ensure it carried out adequate checks on Mr L's ability to sustainably afford the agreement. These checks had to be borrower-focused and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Moneybarn says that Mr L's application underwent credit and underwriting checks, and these didn't raise any concerns. His income was verified, and Moneybarn also used statistical data to estimate the level of expenditure Mr L had at the time. It felt that these searches were reasonable and proportionate in this scenario.

I'm not satisfied that Moneybarn gathered a reasonable amount of information from Mr L about his expenditure prior to approving the finance. I understand Moneybarn made the decision to lend on the basis that his estimated disposable income was acceptable and that it found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Mr L.

Moneybarn has provided a copy of the credit file check it completed, and Mr L's own account of his finances at the time appears to agree with what was reflected in its report. At the time of the application Mr L had four historic defaults with amounts outstanding of roughly £1,400. Moneybarn's verification of Mr L's income also suggested it amounted to over £300 a month less than what he'd declared. I do think this all ought to have indicated Mr L may have been struggling financially and so I would've expected Moneybarn to take further consideration of Mr L's specific financial situation before approving any lending.

I want to be clear that I've considered Moneybarn's position about the number and type of checks that it did complete. And I understand that its searches attempted to approximate Mr L's disposable income. However, considering the possibility of financial difficulties in his specific circumstance I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much he actually had left to spend after his existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement, the information in Mr L's credit file, and what level of income was verified I think it would have been proportionate for Moneybarn to have verified Mr L's expenditure. This would have included costs such as food, petrol and housing. Without knowing what his regular committed expenditure was Moneybarn couldn't have got a reasonable understanding of whether the agreement was affordable for his circumstances.

As Moneybarn don't appear to have sought a reasonable understanding of Mr L's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. Moneybarn needed to do more in the circumstances before agreeing

to lend. Without knowing what his regular committed expenditure was, Moneybarn wouldn't have got a reasonable understanding of whether the agreement was affordable for him.

I'm satisfied Moneybarn didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

*Did Moneybarn make a fair lending decision?*

I've considered what Moneybarn would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Mr L would have told Moneybarn had it asked about his regular expenditure. I don't think Moneybarn necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mr L's statements three months prior to the finance being approved as an indication of what would most likely have been disclosed.

However, Mr L has been unable to provide the requested statements. Mr L has instead provided his own written account of what he believes his income and expenditure was at the time. I've considered this carefully, but as Mr L has already explained he isn't able to access his bank statements from the relevant period I'm unsure how he can be sure these self-declared figures are accurate. An example of this inconsistency can be seen in his declared monthly income – which he's suggested was almost double what was both declared and verified at the time. I'm not satisfied that it would be fair to rely on this submission to state that Moneybarn ought to have realised the agreement was unaffordable at the time of sale.

I appreciate that Mr L has also provided a copy of his tenancy agreement to evidence that he was paying significantly more in rent a month than Moneybarn had accounted for – around £850. But the tenancy agreement he's provided lists two other tenants, and it's not explicitly stated anywhere that Mr L was responsible for the full amount. Mr L has also provided testimony regarding the limited amount that his partner was contributing at the time. But I'd need some form of payment evidence to be persuaded that further checks would have most likely made Moneybarn aware that Mr L was paying £850 in accommodation costs. I also must consider that Mr L had previously informed Moneybarn during an income and expenditure exercise in 2022 that he split certain commitments (including rent) with his partner.

As Mr L hasn't been able to demonstrate that his agreement was unaffordable at the time of sale, I can't reasonably conclude that Moneybarn ought to have known he would struggle to make the repayments due under the agreement. I'm unable to see what his overall expenditure was at the time and so I can't decide that the agreement should have been considered unaffordable.

I appreciate that Mr L's testimony is that the borrowing was unaffordable, but the question I must consider is what Moneybarn would have been able to find out if proportionate checks had been completed. In the absence of the information already requested by our Investigator I'm unable to see what Moneybarn would have most likely found at the time had it completed proportionate checks.

I do understand that it will come as a disappointment for Mr L, but it follows that I can't reasonably say that Moneybarn made an unfair lending decision.

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

I'm not persuaded from the submissions made to date that Moneybarn acted unfairly or unreasonably in some other way. I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I haven't seen anything to

suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

**My final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 August 2024.

Paul Clarke  
**Ombudsman**