

The complaint

Mr S complains that Moneybarn No. 1 Limited failed to exercise due forbearance or assist him when he faced financial difficulties.

What happened

In September 2016 Mr S entered into a conditional sale agreement for the acquisition of a new car. The monthly sums payable were £152.82 over 60 months with the total due of £9016.38. Mr S was made redundant in 2018 and he missed his July payment. He told Moneybarn about his situation and it put his account on hold for a month and asked him to contact it at the end of August. Its records do not show that Mr S made contact. Mr S says he contacted Moneybarn on several occasions.

On 1 October 2018 Mr S paid £70 and agreed a payment plan of £100 to clear the arrears. No direct debit was set up due to Mr S changing banks. Moneybarn says it received no further payments and so it issued a default notice on 8 November.

On 29 November Moneybarn was told that Mr S was starting a new job and it asked for proof of income and details of income and expenditure so it could set up a payment plan. Mr S's brother became involved at this point and was given authorisation. Mr S says his brother had several conversations with Moneybarn around this time. His work took him out of the country so he wasn't always able to speak to Moneybarn.

As no subsequent payments were made Moneybarn issued a termination notice on 12 February 2019. Mr S's brother contacted Moneybarn and the termination was put on hold and later in February he paid £154. This was followed by a payment of £160 on 25 March, and a plan was set up for Mr S to pay £200 a month. Mr S has explained that due to his brother being out of the country his ability to make the payments was restricted. One payment was made and Moneybarn issued a payment plan failure letter and then a default notice on 17 June. It terminated the agreement in July 2019 and it took out court proceedings.

Mr S told Moneybarn he wished to continue with the £200 payment plan and it asked for proof of income, an income and expenditure schedule, payment of £450 to cover arrears and for the car to be insured. Mr S disagreed and the matter went to court. Mr S has said that he wasn't given sufficient time to find £450 and to insure the car. He had other debts which needed to be addressed. The court said:

"The parties are encouraged to explore settlement as per emailed correspondence dated 18th September 2019 2) It is recorded that at the next hearing, if settlement doesn't occur, it is less likely (in light of the order below) that another adjournment will be granted (albeit that may be determined by another Judge who may take a different view) It is ordered that: 1) This matter is adjourned until 21st of November 2019 at 11:00 (and the Defendant should attend, if not orders may be made in his absence. If there are difficulties with attending then these must be made known to the Court Office at the earliest opportunity and the Defendant may wish to show his employer this Court Order)"

On 5 October 2019 Moneybarn said that Mr S could keep the car under a consent order if he supplied proof of earnings, a completed an income and expenditure schedule and if he made an initial payment of £300.00 against the arrears. It also required that the car be insured. It said that if that was found to be affordable, the consent Order payments would be £200.00 a month. This was in line with what Mr S wished to pay. Mr S says that he wasn't given enough time to raise the funds. He has also pointed out that the car was kept in a secure garage and didn't need to be insured.

The car was repossessed and sold leaving Mr S owing £5,103.66. However, Moneybarn wrote to Mr S on 15 May 2020 to say it would accept 50% of this sum if paid by 15 June and it would show his account as settled by partial payment.

Moneybarn rejected his complaint so Mr S brought the matter to this service. It was considered by one of our investigators who didn't recommend it be upheld. He said Moneybarn was required to show due forbearance in its handling of Mr S and he believed it had done so. Once the matter reached court he considered Moneybarn had sought to reach an agreement, but this had not been possible. He explained that Moneybarn's actions in pursuing the debt once a court judgement was issued was not a regulated activity and so it fell outside our remit. Nor could he consider invoices issued by Mr S to Moneybarn as they were not part of the credit agreement.

Mr S didn't agree and Moneybarn had not acted fairly. He said that more than 50% of the sum due had been paid and Moneybarn had pushed the matter to court regardless of this. It had avoided correspondence and had not made realistic offers. It hadn't given details of the sale of the car which was sold at undervalue and with unnecessary costs attached. He also referenced a judgment made against Moneybarn for not treating customers fairly or exercising appropriate forbearance. He also referenced a court decision against Moneybarn for its failure to support struggling borrowers.

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.

I have every sympathy with Mr S, but I do not consider I can uphold his complaint. I will explain why.

Firstly, I would address the case taken against Moneybarn by the Financial Conduct Authority (FCA). My remit is to consider the facts of each individual complaint and reach a decision based on those facts. This is what I have done in this matter. However, I would point out that the issues that caused the FCA to take action arose well before the matter complained about by Mr S. Indeed, by that time changes overseen by the FCA had been introduced by Moneybarn to address the concerns about its handling of customers in financial difficulties.

I can see that Mr S has had a challenging time and he has been struggling financially and personally. I have reviewed his evidence and that of Moneybarn including very lengthy contemporaneous records. I can see that it has sought to support Mr S on a number of occasions by setting up several payment plans and these have broken down.

Mr S's challenges first arose in the summer of 2018 and it was over a year before the car was repossessed. I consider Moneybarn offered a number of opportunities to Mr S in order to allow him to keep the car and to pay off his debt. I gather he found new employment but refused to provide details to Moneybarn so it could be satisfied that any payment plan it offered at that stage was affordable.

In order for Moneybarn to provide the support that Mr S was seeking it needed to be able to engage with him on a constructive basis, but I fear that this has not happened. I can see that Mr S's brother sought to assist and he made several payments, but due to his frequent travelling his availability was limited. Those payments petered out and in due course Moneybarn took what I consider to be reasonable steps to recover its asset, the car.

It took legal action and after the court asked both parties it put forward a means of resolving the matter. Moneybarn wrote to Mr S as follows:

"The account has been terminated and the arrears are currently at the equivalent of approximately eleven months unpaid. The offer of a Consent Order that was made on 15 October 2019 is still available to you. All we require is proof of income for the last two months and a completed income and expenditure form. If affordability is shown, the Vehicle is insured fully comprehensive with excess of no greater than £500.00, and a payment is made of £300.00 by 22 October 2019 then I will draft Consent Order papers so that you may retain the Vehicle. The Consent Order payments would then be £200.00 per month, from the end of November, which would mean that your payment schedule would run beyond the original term that you signed for."

Mr S didn't consider this a reasonable response even though I gather he was willing to pay £200 a month. I consider the offer to be fair and I believe it is regrettable that Mr S took a different view. As no agreement could be reached the court awarded possession of the car to Moneybarn and it sold it, presumably at auction as it was entitled to do.

For completeness I would add that I agree with our investigator that the post court judgment actions and Mr S's invoices to Moneybarn are not matters that fall within our remit.

While I do not consider this complaint should be upheld, I would remind Moneybarn of its obligation to treat Mr S positively and sympathetically in helping him resolve his financial difficulties

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 June 2021.

Ivor Graham
Ombudsman