

The complaint

Mr J complains that Moneybarn No. 1 Limited (“Moneybarn”) have been unreasonable when terminating his finance agreement and reporting adverse information to his credit file.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my 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.

I know it will disappoint Mr J, but I agree with the investigator’s opinion. Please let me explain why.

Where the information I’ve got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

Mr J acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The terms of Mr J’s agreement with Moneybarn allowed them to repossess the car and terminate the agreement with Mr J because he was in breach.

Term 8.1.2 explained Moneybarn had a right to terminate the agreement if “*You breach any other term*”. One of those terms was that Mr J would need to be insured and he clearly couldn’t do that if he didn’t have a valid license.

Term 8.1.3 explained that Moneybarn had the right to terminate the agreement if “*any of the information you have given us before entering this agreement ... was false*” and as Mr J had not provided a valid license I think he was also in breach of that term. Moneybarn were entitled to repossess the car and terminate the agreement; as they subsequently did.

Moneybarn have explained that had they known Mr J didn’t have a valid driving license they would not have agreed to provide finance for the car. They made a mistake when accepting the invalid license.

But Mr J clearly knew he was a disqualified driver and that his license wasn’t a valid one.

Moneybarn are invoking their rights under section 9 of the contract to charge Mr J the balance of the agreement less rebate and proceeds of the sale. They've also registered adverse information on Mr J's credit file as he's defaulted on the agreement.

Putting things right

Had Mr J not provided invalid information this issue wouldn't have happened. I think it's reasonable to have expected him to understand he was required to provide a valid license and that he would not be insured without one.

But, I also think Moneybarn could have been expected to identify the failing.

I've thought about how to put that right and I think the investigator's suggestion, that the business have accepted, is a reasonable one. It reduces the sum owed and recognises the errors on both sides.

Moneybarn have an obligation to report activity on an account accurately. It's clear the account was defaulted, and payments were missed. So, I don't think they need to amend the reports they've made to Mr J's credit file.

My final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

Limit Mr J's liability to the cash price of the vehicle plus the interest that had become due in the months he had the car, plus the charge incurred for recovering the vehicle from the pound.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 August 2021.

Phillip McMahon
Ombudsman