DRN-3033415

## The complaint

Mr E complains about how Moneybarn No. 1 Limited ("Moneybarn") has managed and administered his conditional sale agreement ("agreement"), both before and after it was terminated on 18 July 2017.

To resolve his complaint Mr E wants Moneybarn to refund all payments made by him against the agreement together with interest, an apology from it and for it to report itself to the Information Commissioner's Office ("ICO") for a breach of General Data Protection Regulation ("GDPR").

## What happened

In April 2015 Mr E entered into a conditional sale agreement with Moneybarn for a used car costing £8,295.99. Everything else being equal Mr E agreed to make 47 monthly payments (by direct debit) of £298.36, with the 1st payment due on 16 May 2015 (payable on 1 June 2015) and ending with the 47th payment due on 16 March 2019 (payable on 1 April 2019) – making a total repayable of £14,022.92 (47 x £298.36).

Mr E made the payments required of him by direct debit (of £298.36) for 1 June 2015 through to 1 October 2015.

Mr E's payments by direct debit for 1 November 2015 and 1 December 2015 (of £298.36) were returned unpaid. However, Mr E made two manual payments of £300 for these failed payments instead. For the failed two direct debit payments Mr E was charged £36 (2 x £18). This meant that on 7 December 2015 Mr E was in advance of £3.28 (exclusive of charges) and £32.72 in arrears (inclusive of charges).

Mr E made the payments required of him by direct debit (of £298.36) for 1 January 2016 through to 1 March 2016.

Mr E's payments by direct debit for 1 April 2016 and 1 May 2016 (of £298.36) were returned unpaid. For the failed two direct debit payments Mr E was charged £36 (2 x £18). This meant that on 4 May 2016 Mr E was in arrears of £593.44 (exclusive of charges) and £665.44 in arrears (inclusive of charges).

Mr E made the payments required of him by direct debit (of £398.36) for 1 June 2016 through to 1 November 2016. This meant that on 1 November 2016 Mr E was in advance of £6.56 (exclusive of charges) and £65.44 in arrears (inclusive of charges).

Mr E made the payment required of him by direct debit (of £363.80) for 1 December 2016. This meant that on 1 December 2016 Mr E was in advance of £72.00 (exclusive of charges) and clear (inclusive of charges).

Mr E's payment by direct debit for 1 January 2017 (of £298.36) was returned unpaid. For this failed direct debit payment Mr E was charged £18. This meant that on 12 January 2017 Mr E was in arrears of £226.36 (exclusive of charges) and £316.36 in arrears (inclusive of charges).

Mr E made the payment required of him by direct debit (of £298.36) for 1 February 2017.

Mr E's payment by direct debit for 1 March 2017 (of £298.36) was returned unpaid. For this failed direct debit payment Mr E was charged £18. This meant that on 2 March 2017 Mr E was in arrears of £524.72 (exclusive of charges) and £632.72 in arrears (inclusive of charges).

Mr E made the payment required of him by direct debit (of £298.36) for 1 April 2017.

Mr E's payments by direct debit for 1 May 2017 and 1 June 2017 (of £298.36) were returned unpaid. For these failed direct debit payments Mr E was charged £18. This meant that on 2 June 2017 Mr E was in arrears of £1,103.44 (exclusive of charges) and £1,229.44 in arrears (inclusive of charges).

On 13 June 2017 Moneybarn issued Mr E with a Default Notice seeking repayment of arrears of £1,229.44 to avoid termination of the agreement and repossession of the car.

Mr E's payment by direct debit for 1 July 2017 (of £298.36) was returned unpaid. This meant that on 4 July 2017 Mr E was in arrears of £1,419.80 (exclusive of charges) and £1,545.80 in arrears (inclusive of charges).

On 18 July 2017 Moneybarn terminated Mr E's agreement as it advised him it would under cover of its 13 June 2017 Default Notice. At the time of termination, the outstanding balance recorded in Moneybarn's books was £7,811.36 with arrears noted of £1,545.80.

On 20 July 2017 Mr E complained to Moneybarn that it had been unfair and unreasonable in terminating his agreement.

On 21 July 2017 Mr E made a manual payment of £200. This reduced the outstanding balance recorded in Moneybarn's books to £7,611.36.

On 17 August 2017 Moneybarn issued Mr E with a final response letter. Under cover of this letter Moneybarn said it had nothing wrong in terminating Mr E's agreement and that if Mr E wanted to retain possession of the car it might be possible for a consent order to be entered into.

On 22 August 2017 £308.00 court costs were debited to Mr E's account.

On 29 September 2017 the car was collected from Mr E following his decision to voluntary surrender it.

On 29 September 2017 the court decided Moneybarn's money claim be adjourned with liberty to restore and that Mr E should have to pay Moneybarn's fixed costs in the sum of £493.

On 2 October 2017 £185.00 court costs were debited to Mr E's account.

On 5 October 2017 Mr E complained to Moneybarn that he had voluntary terminated his agreement, so the balance recorded as being outstanding on his account was incorrect and that court action wasn't necessary. He also complained that he was being sent post despite his request not to be sent any and about how his agreement (including its termination) had been recorded with various credit reference agencies.

On 10 October 2017 £225.00 recovery costs were debited to Mr E's account.

On 11 October 2017 £40.00 damage costs and £16.50 of auction fees were debited to Mr E's account.

On 11 October 2017 £3,550.00 car disposal proceeds were credited to Mr E's account. This meant that the outstanding balance recorded in Moneybarn's books on 11 October 2017 was £4,835.86.

On 15 November 2017 Moneybarn issued Mr E with a final response letter. Under cover of this letter Moneybarn reiterated it had done nothing wrong in terminating Mr E's agreement. It then went on to say that having been given three options, Mr E opted to voluntary surrender the car and it was collected from him on 29 September 2017. It also said that although Mr E would prefer to communicate by email there are occasions when documentation would need to be sent by post and what it had recorded with credit reference agencies in respect of the agreement was accurate and correct.

On 9 July 2019 £4,244.26 was credited to Mr E's account by Moneybarn. This meant that the outstanding balance recorded in its books on 9 July 2019 was £591.60.

On 19 July 2019 Mr E complained to Moneybarn about the balance it was recording as still being outstanding and due from him.

On 1 August 2019 Moneybarn amended the default balance it had recorded with one or more credit reference agencies to £591.60.

On 10 September 2019 Moneybarn issued Mr E with a final response letter. Under cover of this letter Moneybarn reiterated it had done nothing wrong in terminating Mr E's agreement and that although Mr E agreed to voluntary surrender the car, a delay in Mr E actually surrendering it meant court action went ahead as scheduled.

On 20 December 2019 a third party, that I will call "A", purchased Mr E's debt from Moneybarn. A appointed a further party, a party that I will call "M", to manage the purchased debt on its behalf.

On 6 January 2020 Mr E complained to Moneybarn again about various issues.

On 31 January 2020 Moneybarn issued Mr E with a final response letter. Under cover of this letter Moneybarn said it had nothing further to add to what it had said under cover of its final response letter dated 10 September 2020.

On 22 March 2020 A amended the default balance it had recorded with one or more credit reference agencies to £591.60.

In June 2020 Mr E paid M £591.60.

Mr E's complaint was considered by one of our investigators who ultimately concluded that:

- Our service had already considered Mr E's complaint about Moneybarn's decision to terminate the agreement, so she wasn't looking at this again.
- Our service had already considered Mr E's complaint about Moneybarn's registration of its default, so she wasn't looking at this again.
- Having credited the account with £4,244.26, Moneybarn had done enough to compensate Mr E for any shortcomings there might have been in its communication about his agreement exit options and the financial consequences of each one.
- Mr E's complaint about Moneybarn breaching GDPR needed to be taken up with the ICO.

Mr E didn't agree. In summary he said:

- He asked to voluntary terminate his agreement before it was terminated by Moneybarn, not afterwards.
- Moneybarn had no right to register his agreement as being in default with credit reference agencies.
- It's clearly wrong that both Moneybarn and A should be able to record the same debt as being in default with credit reference agencies.

I issued a provisional decision on this case in August 2021. In summary I said:

> I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> Now I've the power to dismiss a complaint, without considering the merits, in certain circumstances – including where the subject matter of the complaint has been subject of court proceedings and where the subject matter of the complaint has previously been considered by our service.
>
> But I'm not obliged to dismiss a complaint in these circumstances. And taking everything into account I think it's appropriate that I address everything Mr E is now complaining about in this one single decision.
>
> But I would also like to make it clear that I'm only considering in this decision Mr E's complaint about Moneybarn. I'm not considering any complaint Mr E might have about A or M.
>
> It's clear Mr E has very strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr E will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

*termination of the agreement by Moneybarn on 18 July 2017*

One of my fellow ombudsmen found in October 2018 that Moneybarn had done nothing wrong in terminating the agreement on 18 July 2017.

Now I've looked at this aspect of Mr E's complaint again and can confirm that I don't disagree with this finding.

Given what both parties have said and submitted I'm satisfied that the reason why Moneybarn terminated the agreement on 18 July 2017 was because following the issue of the Default Notice dated 13 June 2017 Mr E failed to contact and engage with it about the arrears position on his account. I would also add that I'm satisfied that in terminating the agreement Moneybarn wasn't in breach of any of its obligations to Mr E, whether contractual, legal or regulatory.

*did Mr E ask to voluntary terminate his agreement before 18 July 2017 and/or was he deprived of this option by Moneybarn?*

One of my fellow ombudsmen found in October 2018 that Moneybarn had done nothing wrong in terminating the agreement on 18 July 2017.

Now I've looked at this aspect of Mr E's complaint again and can confirm that I don't disagree with this finding.

Despite what Mr E says on this point I've simply seen insufficient evidence to be able to conclude that he asked to voluntary terminate the agreement before 18 July 2017. I'm also satisfied that once the agreement had been terminated by Moneybarn, Mr E's right to voluntary terminate the agreement no longer existed. I also think that it's worth pointing out that had Mr E engaged with Moneybarn after the Default Notice had been issued, but prior to the agreement being terminated, the option of voluntary terminating the agreement may well have formed part of that engagement.

*did Moneybarn act fairly and reasonably in how it dealt with Mr E's ultimate decision to voluntary surrender the car?*

Based on what both parties have said and submitted I'm satisfied that any delay in the car being collected from Mr E (under voluntary surrender) wasn't down to anything that Moneybarn did, or didn't do.

I would also point out that had Mr E agreed to the car being voluntary surrendered sooner than he did, he wouldn't have been put in the position of it being collected on the morning of 29 September 2017, the same date as a court hearing had been scheduled to consider one or more claims brought by Moneybarn against him.

*did Moneybarn act fairly and reasonably in not adjourning the court hearing set for 29 September 2017?*

Given the car wasn't returned to Moneybarn until 29 September 2017, and given what I say above, I don't think it was unreasonable for Moneybarn to not seek an adjournment of the court hearing scheduled for 29 September 2017. However, I think it's worth pointing out that Moneybarn took the decision to not seek a money order at this hearing (given the cars return) but simply sought a return of goods order and costs of £493.

*are the charges debited to Mr E's account of £308, £185, £225, £40 and £16.50 fair and reasonable.*

I've considered the above costs and I'm satisfied that they are all fair and reasonable in their nature and that Moneybarn was entitled to debit Mr E's account with them. I would also add that it's my understanding that the costs of £493 (£308 plus £185) were costs awarded against Mr E by the court and that all the costs, in essence, have been refunded by virtue of the £4,244.26 credit to Mr E's account in July 2019.

*action taken by the Financial Conduct Authority ("FCA") against Moneybarn*

My remit is to consider the facts of each individual complaint and reach a decision based on those facts. And this is what I've done here.

I can understand why Mr E might view Moneybarn's decision to credit his account with £4,244.26 in July 2019 as evidence that he asked to voluntary terminate his agreement before 18 July 2017, or that Moneybarn should have allowed him to do so on or before that date. But I don't agree.

I'm satisfied that Mr E didn't ask to voluntary terminate his agreement before 18 July 2017. I'm also satisfied that although Moneybarn credited Mr E's account with £4,244.26 in July 2019, this in itself doesn't mean it should have treated the account on 18 July 2017 as being voluntary terminated rather than terminated by it.

Mr E was given a number of opportunities to engage with Moneybarn to come to an arrangement to clear his arrears, or to agree an acceptable 'exit' strategy – including voluntary termination, but he didn't do so. And because he didn't do so, and with arrears approaching six monthly contractual payments, I'm satisfied that Moneybarn acted entirely appropriately (and fairly and reasonably) in terminating the agreement.

For the sake of completeness I would also add that can't find any errors in Moneybarn's calculation of the £4,244.26 credit to Mr E's account.

*default registration by Moneybarn*

One of my fellow ombudsmen found in October 2018 that Moneybarn had done nothing wrong in registering the default that it did against Mr E with third party credit reference agencies in 2017.

Now I've looked at this aspect of Mr E's complaint again and can confirm that I don't disagree with this finding and I've nothing further to add in respect of it.

However, I appreciate that things have moved on since 2017 with Moneybarn amending the default balance it initially recorded with third party credit reference agencies in 2017 to £591.60 on 1 August 2019 and with A amending what appears to be the same defaulted debt (recorded by it) to £591.60 on 22 March 2020.

Now it's my understanding that Mr E's debt was purchased by A from Moneybarn on 20 December 2019. So with this in mind I'm satisfied that Moneybarn acted entirely correctly – and not to Mr E's disadvantage – in amending its recorded default balance with third party credit reference agencies to £591.60 in August 2020.

Now I can understand Mr E's frustration in discovering what would appear to be his amended default balance of £591.60 being registered by both Moneybarn and A. But this is, in my view, something that he needs to take up with A because I can't see that there has been any error on the part of Moneybarn in this respect.

*correspondence sent to Mr E by Moneybarn by post rather than by email*

I accept that Mr E asked for all correspondence to be sent to him by email, rather than by post. But as explained by Moneybarn much, if not all, of the correspondence it sent Mr E by post was required to be sent by post. But even if I wasn't of this view I'm not persuaded that being sent correspondence by post, rather than email, warrants in itself the making of an award by me. I say this because although I accept this might have been frustrating for Mr E I'm not persuaded it would have caused him material distress and inconvenience.

*correspondence sent to Mr E by Moneybarn to an incorrect address*

Based on what both parties have said and submitted I've seen insufficient evidence to be able to conclude that Moneybarn sent any correspondence to Mr E at an address other than ones he asked correspondence to be sent to.

*GDPR breaches by Moneybarn*

As pointed out by the investigator it's not the role of this service to decide whether a business has breached GDPR. That would be for the regulator, the ICO to decide. I therefore leave it with Mr E to bring his concerns in this respect to the attention of the ICO if he wishes.

Bearing in mind what I say above, I'm not persuaded Moneybarn has done anything wrong in this case or that it needs to anything.

Moneybarn didn't respond to my provisional decision.

Mr E responded to my provisional decision to say that it was *"completely and utterly contradicting in every manner"* and that our service should not *"reply to* [him] *in any way shape or form"* and that *"*[we should] *not contact* [him] *again"*.

**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.

Given that Moneybarn didn't respond to my provisional decision and given that Mr E has provided nothing materially new for my consideration, I see no reason to depart from my provisional findings and I now confirm them as final.

## My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 19 October 2021.

Peter Cook
**Ombudsman**