

The complaint

Mr H is unhappy with how Moneybarn No.1 Limited dealt with his request for assistance after he fell into financial difficulties.

What happened

On 18 May 2017, Mr H was supplied with a used car through a conditional sale agreement with Moneybarn. The agreement was for £17,540 over 60 months; with monthly repayments of £546.16. Mr H maintained payments on the account until October 2019, after which payments became erratic and direct debits were missed. Mr H fell into arrears and Moneybarn tried to contact him by phone, and in writing, to discuss the situation. But Mr H didn't contact Moneybarn to discuss matters until 2 September 2020, at which point he was over six months in arrears,

When he contacted them, Mr H explained to Moneybarn that he'd been made redundant, but hadn't received any redundancy pay; that his wife was out of work; and that he'd applied for Universal Credit, but it could take up to four months for the application to be approved. He also explained he was in arrears with priority bills – rent and utilities – and that his situation was also being affected by other family circumstances.

As a result of this conversation, Moneybarn offered Mr H a three-month payment deferral (otherwise known as a payment holiday), with no additional interest charged.

Mr H accepted the payment deferral, but subsequently complained that Moneybarn didn't explain that he had the option to voluntarily terminate (VT) the agreement in September 2020, because he'd already paid more than 50% owing under the agreement. Mr H said that, had he known about this option, he could've and would've walked away from the agreement with nothing more to pay in September 2020. Mr H also complained that Moneybarn had threatened him, and laughed at him, when he spoke to them on the phone; and that they were chasing him every hour of the day for repayment of the arrears.

Moneybarn said that, when they discussed the situation with Mr H in September 2020, they thought a payment deferral was the most suitable option given the circumstances. They also said that Mr H had been given the option to VT the agreement in November 2020.

Mr H wasn't happy with Moneybarn's response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Moneybarn had tried to contact Mr H, from December 2019, to discuss the situation and see what support they could offer him. But it wasn't until September 2020 that Mr H responded to any of these contacts, by which point he was substantially in arrears. The investigator thought that the emails Moneybarn had sent were clear in that support was available, so he thought Moneybarn had acted reasonably in the circumstances.

The investigator also said that, as Mr H was looking to keep the car in September 2020, then the offer of a payment deferral with no additional interest was reasonable. But, because Mr

H was in arrears at the time, he wouldn't have been able to VT the agreement, and hand back the car with nothing further to pay – the arrears would still have been payable. He also said that, as Mr H didn't take the opportunity to VT the agreement in November 2020, when this option was provided to him in writing, he thought it was highly unlikely that Mr H would've taken this option in September 2020, had it been fully explained to him on the call.

The investigator also reviewed the correspondence that Moneybarn sent to Mr H, as well as listened to the calls between them. And he didn't think Moneybarn had acted inappropriately when discussing the arrears, or Mr H's options. So, he didn't think Moneybarn needed to do anything more.

Mr H didn't agree with the investigator. He said that he would've handed the car back in September 2020, if he'd been given the option to do so. He also said that Moneybarn have deleted recordings and case notes, as well as falsely recording notes, to avoid their responsibilities. And he said that the Financial Ombudsman Service had acted with Moneybarn to 'drag out the investigation' so as to leave him in more debt.

Because Mr H didn't agree with the investigator, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I address the issues themselves, I think it would be useful to explain the role of the Financial Ombudsman Service. We're an independent complaints handling organisation acting as an alternative to the courts. We don't work for any regulated financial businesses, nor are we consumer champions. We're completely independent of all parties in a complaint, and investigations are carried out based on the facts and circumstances of that complaint.

In his comments, Mr H raised concerns about the integrity of the investigation. And I've seen that he was given the opportunity to follow this up and have it looked into. Because of this, my decision will concentrate on Mr H's complaint about Moneybarn.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've listened to the call that took place on 2 September 2020. Mr H explained that he'd lost his job due to the coronavirus (Covid-19) pandemic, following a period of furlough. He also explained that he was in arrears with his rent and utility bills, and that a close family member was terminally ill. When he asked what his options were, Moneybarn explained that there was a high level of arrears, and that they had concerns over long-term affordability.

While Moneybarn told Mr H that they had 'exit options to get you out of the agreement', they also said their 'priority is keeping you in a vehicle'. And they offered Mr H a payment deferral as breathing space, because his income had been affected by the pandemic; explaining that the missed payments would be added to the end of the agreement, not recorded as arrears.

Moneybarn followed up this call with an email dated 3 September 2020, confirming that the payment deferral had been applied to Mr H's account.

The Financial Conduct Authority (FCA) issued temporary guidance, that came into effect on 27 April 2020, about customers who were faced with payment difficulties as a result of Covid-19. This guidance says a firm providing motor finance agreements should grant a payment deferral for *"3 months unless the firm determines (acting reasonably) that it is obviously not in the customer's interest to do so."* And the Consumer Credit Sourcebook (CONC) 7.3.4 states that *"a firm must treat customers in default or in arrears difficulties with forbearance and due consideration."*

Moneybarn have explained that, given the circumstances with Mr H's close family member being terminally ill, and that the car was the only vehicle within the household; they made the decision not to discuss exit options at this time, instead providing Mr H with *"reassurance and time to deal with the other issues he was dealing with."* Given the circumstances, and that when exit options were mentioned Mr H didn't ask for more information, I'm satisfied that Moneybarn dealt with this matter in line with the FCA guidance and treated Mr H with forbearance and due consideration.

On 16 November 2020, Moneybarn emailed Mr H to let him know that the payment deferral period had now ended. This email also confirmed that *"any payments(s) which were held during the payment holiday will be due at the end of your agreement ... if you settle or end the agreement early (for example by Voluntary Termination...) the payment holiday payments will need to be repaid at that stage."* With regards to the arrears, Moneybarn also asked Mr H to *"get in touch to discuss the best way forward and how we can help you."*

Mr H has said that, had he been given the opportunity in September 2020, he would've handed the car back with nothing more to pay. And this is what he wants to happen now. But, in September 2020, Mr H was already more than six months in arrears.

I've seen a copy of the agreement Mr H signed with Moneybarn on 13 May 2017. This confirmed that, to be eligible to VT, Mr H would need to pay at least half of the amount owing under the agreement - £16,361.72 – *"plus any overdue instalments."* So, if VT had been discussed in September 2020, Mr H would always have had to pay the arrears and wouldn't have been able to walk away from the agreement with nothing more to pay.

While the opportunity for VT wasn't fully explained to Mr H until 16 November 2020, he's been in a position where he could've taken the VT option at any point after he'd paid half of what he owed under the agreement. And I'm satisfied that he would've been reasonably aware of this option, and the terms, since signing the agreement in May 2017. But Mr H chose to keep, and continue to use, the car. So, I'm satisfied that he should pay for this usage, and he remains responsible for any payments that fell/fall due while the car was in his possession.

For these reasons, I don't think it would be fair for Mr H to be able to walk away from the agreement with nothing further to pay. And I won't be asking Moneybarn to allow him to do this. But I would expect Moneybarn to continue to treat his situation with due consideration, and to try and arrange a suitable repayment plan for the arrears.

Mr H has complained about Moneybarn's attempts to recover the arrears. He was suffering financial difficulties and was unable to pay the arrears. As such, he would find any attempts to collect the arrears unwanted and unacceptable. However, as I have stated above, he was in arrears with the agreement and Moneybarn were entitled to attempt to collect the arrears.

I've seen that Moneybarn attempted to contact Mr H on a number of occasions, and that not all of these contacts were successful. Moneybarn offered to discuss the missed payments *"and how we can help you get back on track."* They also advised what actions they would take to legally recover the arrears if they remained unpaid. These are factual statements and, although Mr H may not have wished to be advised of this, it doesn't make them threatening. I've not seen any evidence that Moneybarn laughed at Mr H when he explained his circumstances, and I don't think that Moneybarn's attempts to contact Mr H were excessive in the circumstances – especially as Mr H ignored these contacts from December 2019 to September 2020. So, I'm satisfied that Moneybarn acted reasonably in pursuing the arrears. And I won't be asking them to do anything more.

My final decision

For the reasons explained, I don't uphold Mr H's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 January 2022.

Andrew Burford
Ombudsman