

The complaint

Mr M complains that Moneybarn No. 1 Limited has terminated the conditional sale agreement under which a car was supplied to him.

What happened

A used car was supplied to Mr M under a conditional sale agreement with Moneybarn that he signed in May 2017. Moneybarn didn't receive the monthly payments that were due from Mr M from December 2017 to February 2018 so a default notice was issued to him. He didn't take the required action so his agreement was terminated, the car was repossessed and sold at auction, and his debt was passed to a third party.

Mr M complained to Moneybarn but it didn't uphold his complaint. It said that payments hadn't been made by Mr M, efforts were made to contact him, it was unable to confirm receipt of the e-mails referred to by Mr M and he was afforded the opportunity to keep the car after his agreement had been terminated. Mr M wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that his complaint should be upheld. He couldn't say that Moneybarn had acted unfairly or unreasonably by terminating the agreement as there was a history of missed payments and there was nothing to suggest that Mr M contacted it about his payments before the agreement was terminated. He considered that Mr M remains liable for the outstanding balance of his account.

Mr M has asked for his complaint to be considered by an ombudsman. He says, in summary, that:

- he moved abroad due to work commitments and informed Moneybarn of that to ensure any communication would be by email or phone;
- he admits that he missed one payment but made it clear by email to Moneybarn that it would not happen again and instructed it to withdraw future payments from his new bank account;
- he sent emails to Moneybarn when his payments weren't collected as he couldn't get through by phone and then spoke with it and was assured that the issue would be dealt with;
- he received the notice of default which required him to pay additional fees and Moneybarn didn't accept his offer to clear the arrears; and
- he made it clear to the third party that he would be happy to settle the arrears up to the point of cancellation of the agreement and no further.

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 agree with the conclusions reached by the investigator for these reasons:

- Mr M signed the conditional sale agreement in May 2017 and agreed to make 59 monthly payments of £167.19 for the car to be supplied to him;
- he moved abroad and the payments that were due from him in December 2017 and January and February 2018 weren't made – Moneybarn's account notes show that it tried to contact Mr M about the missed payments but was unable to do so and that it then sent him a notice of default;
- Mr M has provided a screenshot of an e-mail that he says he sent to Moneybarn in January 2018 in which he said that he was having financial difficulties and would start repayments the following month – but he'd missed two payments at that time, Moneybarn says that it didn't receive that email and there's no record of any contact from Mr M in its account notes until March 2018, which was after his agreement had been terminated;
- Mr M has provided a screenshot of an email that he says that he sent to Moneybarn in February 2018 in which he said: *"I have noticed that my monthly payment wasn't charged to my new bank account as instructed. I do not use the previous account as discussed over the phone"* – but Moneybarn has no record of Mr M changing the details of the direct debit for his monthly payment and it said in its final response letter to him that its inbound telephone reports had no record of a call from Mr M between May 2017 and December 2019;
- I consider that the default notice was correctly issued to Mr M in February 2018, he accepts that he received it but he didn't contact Moneybarn in response to it and didn't take the action required by the default notice so I consider that it was fair and reasonable for Moneybarn to terminate his agreement;
- Moneybarn received an email from Mr M in March 2018, after his agreement had been terminated, which said: *"Following my previous email explaining temporary financial difficulties, I am now on track to continue payment through Direct Debit as initially agreed on the second of each month. I apologize for any inconvenience"*;
- it replied to him to say that his agreement had been terminated but he could keep the car if he settled the finance in full or by a consent order – but Mr M didn't settle the finance or agree to a consent order;
- the car was repossessed and was sold at auction, and the sale proceeds were credited to Mr M's account, which left a balance outstanding from him of £7,136.07;
- I'm not persuaded that there's enough evidence to show that Moneybarn has acted incorrectly in these circumstances;
- I sympathise with Mr M for the financial difficulties to which he's referred and the other difficulties that these events will have caused him but the car has been sold at auction so can't be returned to him and I'm not persuaded that it would be fair or reasonable for me to require Moneybarn to reinstate Mr M's conditional sale agreement;
- I'm not persuaded that there's enough evidence to show that Moneybarn has calculated the outstanding balance of Mr M's account incorrectly and I find that it wouldn't be fair or reasonable in these circumstances for me to require Moneybarn to

reduce, or waive, the amount that is owed by Mr M, to pay him any compensation or to take any other action in response to his complaint; and

- I suggest that Mr M contacts Moneybarn to try to agree an affordable repayment arrangement for the amount that he owes – if he doesn't do so I consider it to be likely that further action will be taken against him, to the extent that's legally allowed, to recover the money from him – Mr M should explain any financial difficulties that he's experiencing to Moneybarn and it's required to respond to any such difficulties positively and sympathetically.

My final decision

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 December 2021.

Jarrold Hastings

Ombudsman