

The complaint

Mr D complains that Moneybarn No.1 Limited mishandled his request to voluntarily terminate a conditional sale agreement he had on a car.

What happened

In August 2018, Mr D entered into a five-year conditional sale agreement for a used car with Moneybarn. The cash price for the car was £19,500 and Mr D made an initial payment of £2,700, making a total credit amount of £16,800. The interest on the credit amounted to £16,988.17 making a total to pay of £36,488.71. Under the agreement Mr D was to make monthly payments of £572.69.

Mr D says that his financial position changed in June 2019, and he was no longer able to afford the payments on the car. Unfortunately, at the same time, a close relative became very unwell and they needed both Mr D's physical and financial support. Mr D says that, due to these pressures, he was keen to end the agreement so he wouldn't have to continue to meet the monthly payments.

Mr D requested a settlement figure from Moneybarn which was provided in July 2019. The settlement figure was for £16,510.54 and Mr D says he was disappointed with this figure due to the amount he'd paid towards the car. Mr D says he then sought advice from others as to what he could do. Mr D says he was advised that the best solution would be to seek to voluntarily terminate the conditional sale agreement and return the car.

Mr D sent a letter to Moneybarn requesting that he voluntarily terminate the agreement and confirming that he understood he would be liable "*under the formula of section 100 Consumer Credit Act 1974*". In August 2019, Moneybarn actioned the voluntary termination and collected the car. After collecting the car, Moneybarn wrote to Mr D setting out that the account's balance "*pre-final billing*" was £9,817.45. The letter set out there could be additional charges if there was missing paperwork for the car, or if it needed repairs. The car was later sold at an auction.

Moneybarn sent Mr D a letter at the end of August 2019, setting out that the final balance on his account was £9,817.45, which was now due to be paid. It also sent him a notice of sums in arrears for the same amount on the same date.

Mr D contacted Moneybarn and queried the amount outstanding on his account. He said he'd been advised that by voluntarily terminating the agreement the balance would be discounted by 50% and that the sale of the car, plus his contribution, would cover the remaining 50% balance. He said he hadn't expected there to be anything left to pay. Moneybarn explained that the sale of the car was used to cover the 50% that had been deducted and, as set out in the agreement's terms and conditions, Mr D was liable to cover the remaining 50% of the total credit amount that had been borrowed.

Moneybarn also explained that, because Mr D had written asking to voluntarily terminate the agreement, it had been obliged to follow his request. It said that had Mr D called it, then it would have explained the various options that would have been open to him.

Mr D didn't make any payments off the balance and Moneybarn passed his account to a third party to manage. Mr D was unhappy that his account had been passed on and that there was an outstanding balance on his account. He complained to Moneybarn in January 2020.

Moneybarn didn't uphold his complaint. It said that Mr D hadn't made any contact with it prior to his letter requesting that he voluntarily terminate the credit agreement. Moneybarn said that, in these circumstances, it wasn't unreasonable of it to have considered Mr D was aware of his financial liability in taking this action. Mr D had agreed to the terms and conditions of the conditional sale agreement which set out that, if he decided to voluntarily terminate the agreement, he would remain liable for half of the total amount borrowed.

Moneybarn said the total amount borrowed had been £36,488.71 and half of that figure amounted to £18,244.36. Mr D had paid £8,426.90 in repayments and therefore there was a remaining balance to clear of £9,817.45. Moneybarn confirmed that the proceeds of the sale of the car didn't go towards Mr D's liability under the agreement.

Mr D was unhappy at Moneybarn's response and complained to this service. Our investigator didn't recommend that Mr D's complaint should be upheld. He said there were three ways to end an agreement early. It could either be settled and a rebate on the amount of interest payable would be calculated by the business when reaching the figure payable to end the agreement; that the car could be voluntarily surrendered though the total amount payable under the agreement may still remain payable or that the agreement was voluntarily terminated and the consumer's liability was to pay 50% of the total amount borrowed.

Our investigator said Moneybarn hadn't had an obligation to explain the options to Mr D once he'd made his choice. He said the agreement set out Mr D's liability when voluntarily terminating the agreement.

Mr D disagreed with our investigator's view. He said the options should have been set out for him as he was in financial difficulty. Mr D also said that it was unfair that Moneybarn was seeking the balance of £9,817.45 when it had also received the proceeds from the car sale. He said it would have accepted £16,510.54 to settle the agreement in July 2019.

Mr D said he was unhappy that his account had been passed to third party company when he had been disputing the balance he owed.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

Looking at the conditional sale agreement, I can see that, under the terms and conditions, there's a heading "*Termination: Your Rights*". This sets out that there is a right for Mr D to terminate the agreement but if he does then Moneybarn is entitled to the return of the car "*and to half the amount payable under this agreement, that is £18,244.36*". It also says that if "*at least*" that amount has been paid then Mr D won't have to pay more. So, I think the agreement sets out clearly what Mr D's liability is under the agreement should he choose this option.

I've seen that Mr D feels strongly that he should have been provided with more advice about what he could do to limit his financial liability to Moneybarn under the agreement. But I've seen that he didn't contact Moneybarn and explain his financial and personal circumstances

and that he took advice from a third party. It appears that Mr D has either been poorly advised or misunderstood what the effect would be of voluntarily terminating the agreement in terms of what he may still owe.

Voluntary termination is governed by the Consumer Credit Act 1974. Moneybarn has correctly applied the law in regard to how it calculated the remaining balance of Mr D's account, following his request to terminate the agreement and the car being returned. Mr D also referred to the applicable section when he wrote to Moneybarn requesting that the agreement be ended.

So, I don't think I can reasonably or fairly criticise Moneybarn for not providing further information to Mr D about his options. The only contact it received from him, was a formal written request to end the agreement and return the car. This written request had also set out that Mr D understood his liability as set out in section 100 of the Consumer Credit Act 1974. That is, that he understood he would have a liability, after returning the car, to pay 50% of the total amount borrowed. I also think it would have been reasonable to have expected Mr D to have spoken with Moneybarn and explained his circumstances if he'd wanted its advice. I can't reasonably blame Moneybarn for what a third party said would be the best action for Mr D to take.

I've seen Mr D queried the balance with Moneybarn in September 2019, and that it had provided a full explanation over the phone to him as to how the outstanding amount had been calculated. I also note that, at the end of that conversation, Moneybarn had said it would contact him again to see if anything could be done and that Mr D said he would also seek legal advice.

Moneybarn's notes for Mr D's account show that a call back was attempted a few days later but no contact could be made. There then appears to be a gap in its contact with Mr D. Mr D says he assumed this was because he didn't owe Moneybarn any further money and was disappointed to be contacted in early 2020, and informed that the balance of £9,817.45 was still outstanding. Mr D then made his complaint.

While I appreciate this delay in contacting would have caused Mr D frustration and disappointment on discovering he still owed a substantial sum to Moneybarn, I don't think I can fairly say the balance isn't due. As set out above Moneybarn has terminated the agreement in line with the legislation and by signing the agreement Mr D agreed to pay back the credit and abide by its terms and conditions.

Mr D also feels strongly that Moneybarn has acted unfairly by passing his account to a third-party company for collection. He says Moneybarn made no attempt to mediate with him over the debt. However, although I appreciate that Mr D is unhappy that this action was taken, again I can't criticise Moneybarn for doing something it was entitled to do. By entering the agreement Mr D had agreed to his liability should he seek to voluntarily terminate the agreement. I also haven't seen that Mr D has set out what his financial and personal circumstances were to Moneybarn during his complaint. It isn't unusual for a credit provider to pass accounts to other companies to deal with accounts that are in arrears.

I've seen that Mr D has had to deal with a number of stressful factors both before deciding to return the car and afterwards. These have included a reduction in the way he was paid making the car payments unaffordable, ill-health of a close relative and having to support them both physically and financially. He has also suffered two bereavements of close family members which again have had both emotional and financial impacts on him. I think that had Mr D been more open with Moneybarn then it would have sought to provide him with support and advice where it could.

I also think that had Mr D properly understood the full implications of voluntarily terminating the agreement, he would have instead arranged to settle the agreement. I've seen that he obtained valuations for the car but decided not to proceed, because there would have been a shortfall between that and the settlement figure. He was offered a provisional figure of £14,560 by a company and the settlement figure was £16,510.54. Mr D says that had he known how much he would owe by voluntarily terminating the agreement he would have borrowed the difference to pay the settlement from friends or family. I think that, when looking at owing around £2,000 or around £9,500, then Mr D would have sought to raise the additional funds to settle the account.

However, Mr D didn't take pay the settlement and while I am sympathetic to the position he now finds himself in, I can't fairly say this is due to the actions of Moneybarn. It simply abided by his request to voluntarily terminate the agreement and applied the agreement's terms and conditions when doing so. And in light of that, I can't reasonably ask Moneybarn to write-off the outstanding balance.

I would ask that Moneybarn, now that it is aware that Mr D's has financial and personal difficulties, deals with the outstanding balance sympathetically or instructs the third party to do so.

For the reasons given above I'm not upholding Mr D's complaint.

My final decision

For the reasons set out above I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 February 2022.

Jocelyn Griffith
Ombudsman