

The complaint

Mr P complains that Moneybarn No.1 Limited acted unfairly when it set the rate of a payment plan when he fell into arrears with a conditional sale agreement that he had with it for a car.

What happened

In October 2016, Mr P entered into a five-year conditional sale agreement for a used car with Moneybarn. The car cost £11,795 and the interest on the agreement amounted to £9,679.23, making a total of £21,474.23 to be paid via 59 monthly instalments of £363.94.

Mr P experienced a change in his financial circumstances and struggled to make the full monthly repayments. Moneybarn said it wished to assist Mr P in keeping the car and various repayments were made in an effort to clear the arrears.

In January 2019, Mr P supplied Moneybarn with his income and expenses document that he'd prepared with the help of a debt organisation. This document set out that Mr P would be able to pay £36.03pm in addition to the set monthly amount. Moneybarn discussed this with Mr P over the telephone as this amount wasn't sufficient to clear the arrears by the time the agreement ended in October 2021. The arrears on the agreement, at this time, were in excess of £3,500. Mr P explained that his financial circumstances should be changing in the future and he would be able to increase his payments. A payment plan at an additional £36pm was set for six months ending in July 2019.

A default notice was issued in April 2019 due to a missed payment and the arrears, by then, were standing at £3,648.56. Mr P contacted Moneybarn and explained his hours at work had been reduced. It was agreed that a payment plan for three months would be put in place with Mr P paying £36pm in addition to the set monthly amount. In setting up this payment plan, Moneybarn considered the earlier income and expenses form provided. It reviewed this form with Mr P and said that, looking at the figures, Mr P had a disposable income of £124pm. Moneybarn says it told Mr P that paying an additional £36pm wouldn't clear the arrears before the agreement ended in October 2021 and that a new income and expenses form would need to be completed with his up to date figures.

In August 2019, Mr P contacted Moneybarn as he was struggling to make the payment due. Moneybarn says he informed it that his income and expenses were the same and there was a disposable income of £124pm. Moneybarn informed him that, as the arrears now stood at £3,940.47, he would need to pay off the arrears at the rate of £158pm in addition to the monthly set payment in order to clear the full balance by the time the agreement was due to end in 25 months' time. Moneybarn says Mr P offered an extra £100pm to clear the arrears. Moneybarn said this amount wouldn't clear the arrears and that exit options needed now to be considered, or for it to receive a new income and expenses form that showed a larger amount of disposable income.

Mr P spoke with Moneybarn again on the same day in August 2019 about the agreement. The previously completed income and expenditure form was again gone over and this time Moneybarn says that a disposable income of £160pm was calculated. It says that it

informed Mr P this would be the last payment plan it would agree to due to affordability. A new payment plan of £158pm to pay the arrears, together with the set monthly amount, was set to commence from September 2019.

Mr P complained to Moneybarn about the payment plan for £158pm. He said this plan was unfair and hadn't been based on an up to date income and expenditure form as Moneybarn had relied on information that was over six months old. He said he had told Moneybarn in August that a new income and expenditure form had been completed with the assistance of a debt organisation, but this wasn't considered. Mr P said he had only been told by Moneybarn that his payments of £36pm would need to be slightly increased and hadn't been warned he would need to make payments of £158pm, which was unaffordable. He said he was told to pay the new amount of £158pm on top of the contractual monthly amount or lose the goods.

Mr P complained that it was an unfair that Moneybarn wasn't prepared to extend the length of the agreement, although this would have made payments sustainable for him. He said that, although the income and expenses had shown a disposable income of £160pm, after he'd paid his expenses it wasn't workable to take the whole amount as it put him under considerable financial pressure. Mr P also said that Moneybarn hadn't taken into account the payments of £400pm he'd made between February and June 2019, which showed he was making an effort to pay.

Mr P said that he had offered £60pm in place of the £36pm he'd been paying and that this had been a sustainable offer which Moneybarn should have accepted, together with extending the agreement's length. He said he'd been pressurised into agreeing the £158pm above the contractual amount.

Moneybarn didn't uphold Mr P's complaint. It said that Mr P had been informed that a payment plan of £36pm was insufficient to clear the arrears before the agreement ended and that this would have to be increased. It said he hadn't been given the expectation this increase need only be marginal. Moneybarn said this was a fixed term loan secured against the vehicle and, if the arrears couldn't be cleared within the time set, then exit options would need to be considered.

Moneybarn also said, although it acknowledged Mr P had made payments to clear the arrears, this didn't have an impact on the information provided to him as the account remained in arrears. It said it wasn't able to accept the lower offer for the payment plan as this wouldn't have cleared the outstanding arrears by the time the agreement ended. And that £158pm was the minimum it could accept for a payment plan in the circumstances. It said it had remained supportive to Mr P due to his financial difficulties and had looked for solutions so that he could keep the car.

Mr P was unhappy at Moneybarn's response and complained to this service. Our investigator didn't recommend his complaint should be upheld. In regard to extending the agreement's length, he said Moneybarn secured the loan value against the car so, while the value of the car decreased with age and use, the loan balance should also reduce alongside. However, if the agreement was extended, our investigator said the value of the car may be less than the balance outstanding on the loan. He said if the agreement was to have been extended, but Mr P remained in arrears, this might have meant that Moneybarn didn't have a reasonable chance of recovering the cost of the loan if the car was repossessed and the agreement cancelled. Our investigator said it wasn't unreasonable that Moneybarn had taken the action that it had.

In regard to the payment plan, our investigator said the proposal of £158pm payment plan hadn't been put into place, but this had been the amount that had been required to

ensure the arrears were cleared by the time the agreement had come to an end. He said that, without up to date information as to Mr P's income and expenses, Moneybarn hadn't been able to work out what was affordable for Mr P.

The investigator also said that Moneybarn had been entitled to look at the income and expenses form that it had, as Mr P hadn't provided it with any new forms. He said he thought Moneybarn had acted fairly and had assisted Mr P in going forward and keeping the car.

Mr P disagreed with the view of our investigator. He said there had been a payment plan for a £158pm, and this had been based on an old income and expenses form, and he disagreed that Moneybarn had asked for any new form. He disagreed that it was fair not to extend the agreement and said he'd experienced this happening in the past. Mr P said that the £158pm payment plan had been implemented, because it was the only option he'd been given to keep the car.

As the parties have been unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

Although Mr P had raised a number of matters in his complaint against Moneybarn, I hadn't answered every point, such as the dates payments were due, because I didn't think they were the important issues here. I'd also seen that Mr P had said he didn't think reasonable and proportionate checks had been carried out by Moneybarn when he'd first entered the credit agreement, to ensure it was affordable for him. But affordability was a new matter which Mr P hadn't raised with Moneybarn before. It wouldn't be fair for me to look at that unless Mr P had complained first to Moneybarn to allow it to investigate. So, what I had concentrated on was whether Moneybarn had acted fairly and with forbearance when Mr P experienced financial difficulties.

Mr P had always wanted to keep the car and I'd seen that he had been able to do so with the assistance of Moneybarn. I'd also seen that this agreement had ended in October 2021. Mr P had been keeping to the £158pm payment plan in addition to the contractual payments, but he said this had been ended by mutual agreement between himself and Moneybarn around April 2020, due to the impact of the pandemic. Mr P had then resumed the contractual payments from December 2020. This meant that in October 2021 there had been £4,950.27 arrears and a further £727.94 not yet due. Mr P had paid a total £15,656.02.

Mr P said that in December 2021 he'd made a payment of £236.59 towards the arrears and it was his intention to continue paying that amount each month until the arrears were cleared. I understood this wasn't an agreed payment plan, but an amount Mr P considered was affordable for him in the longer term.

Looking at the notes made by Moneybarn regarding the contact it had with Mr P concerning his account, I'd seen that a payment plan for £158pm had been put in place from September 2019. I also didn't think that Moneybarn disputed this was what had happened. The figure of £158pm to clear the arrears appeared to have been reached because this amount meant that when the agreement ended in October 2021, the full balance would be paid off.

I was also satisfied that Moneybarn had made it clear to Mr P that paying the arrears off at £36pm wasn't workable in the long term, due to the length of time that would take. I thought it was fair for Moneybarn to have pointed that out. I thought it would have been reasonable for Mr P to have expected that by July 2019, when the three month payment plan was ending, payments towards the arrears would have needed to substantially

increase otherwise other options would need to be considered, such as terminating the agreement early. I'd seen that Moneybarn had advised Mr P that he would need to prepare a new income and expenditure form and send that in for a July 2019 review.

Mr P said that Moneybarn had unfairly in August 2019 when it put the £158pm payment plan for the arrears in place as it had used out of date income and expense figures. I'd seen that there were two calls between Mr P and Moneybarn on the same day in August 2019. During the first call Mr P had confirmed there was no change to his income and outgoings, but had offered to increase payments to clear the arrears to £100pm. Moneybarn said that wasn't sufficient and that exit options needed to be looked at, or that Mr P needed to produce a new income and expenses form that showed a larger disposable amount was available to him. I thought this call would have put a lot of pressure on Mr P.

A second call was made one hour later by Mr P to Moneybarn. Mr P had again been taken through his income and expenses as set out in the form he'd provided in January 2019. This time his disposable income was found to be £160pm. Looking at Mr P's complaint letter he had appeared to agree that this was his disposable income at that time. While I accepted no new income and expenses form had been produced this was because Mr P hadn't submitted a new one, despite this being raised with him in April 2019. I'd also seen he had confirmed there hadn't been any changes. So, I didn't think it was unfair for Moneybarn to look at the figures that it had for Mr P.

However, I thought Moneybarn had been inflexible as to its requirement that the payment plan had to be for £158pm or the agreement terminated, and the car returned. It told Mr P there would be no further payment plans put in place and that it would serve him with a default notice if this wasn't kept too. I thought it was fair to say Mr P had no option but to agree, since keeping the car was important to him. I thought that since Mr P had been offering to pay £100pm it would have been fair for Moneybarn to have looked at this offer more closely and considered extending the agreement's term.

While I accepted that extending the agreement while Mr P was paying off the arrears at £36pm would have been unreasonable, since the agreement would need to be extended by over 100 months, I thought Moneybarn could have looked at extending it for a few months when Mr P had offered to increase that amount to £100pm. However, I also thought it would have been fair for Moneybarn to have considered a maximum length of any extension, bearing in mind the value of the car and the size of the arrears. It also had to be satisfied that any payment plan was viable for Mr P in the longer term.

I thought £158pm towards the arrears was too high for Mr P to afford from a disposable income of £160pm. It had left him with only £2.00pm to cover any other expenditure. I thought meeting this amount, particularly as he'd been told it wouldn't be reviewed again, would have caused him distress and unreasonable financial pressure. I didn't think Moneybarn had acted fairly in the way it set the amount Mr P had to pay off the arrears, as well as meeting the monthly contractual payments, since I thought it was clear he would struggle to do so.

I therefore intended to uphold Mr P's complaint as I was satisfied that Moneybarn had acted unfairly in the way it had set the payment plan to £158pm, in addition to the contractual monthly payment. I also thought this had caused Mr P unnecessary distress and inconvenience.

So, although I appreciated Moneybarn had enabled Mr P to keep the car, I thought it had acted unfairly when setting the amount of the payment plan. I thought that compensation for Mr P was due to the impact of Moneybarn's handling of the payment plan would be

fair. I'd seen that Mr P made around seven monthly payments of £158 and I therefore think compensation of £350 would be fair to reflect the period of time he would have struggled to make those payments.

While I appreciated Mr P had set a monthly amount he said was affordable I thought a new income and expenses form should be completed by him for an appropriate payment plan to be agreed between Mr P and Moneybarn to clear off the remaining balance. I'd seen Mr P no longer wished to use the organisation that had competed the income and expenses form before.

Mr P agrees with my provisional decision. Moneybarn has voiced some concerns over the affordability of the credit agreement going forward and have asked if Mr P can complete a new income and expenses form in order for a suitable and appropriate payment rate to be set.

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.

Although neither party has requested me to reconsider any parts of my provisional decision, I still reviewed the evidence and my reasons for reaching the conclusion that I did. After doing so, I haven't changed my view. I still think Moneybarn acted unfairly in the way it set the payment plan for the arrears and I'm upholding Mr P's complaint.

Unfortunately, the pandemic has led to further payments being missed and I understand the arrears now stand at £5,204.01. I think Moneybarn is acting responsibly to raise concerns about the potential length of time it will take Mr P to clear the account and that this likely to have a lasting impact on his credit file. I think it is fair in these circumstances that a new income and expenses form is completed by Mr P and I would expect him to co-operate with that in order that a suitable payment plan for the arrears can be set up.

Putting things right

I am asking Moneybarn to pay Mr P £350 as compensation for the distress and inconvenience caused meeting the unfair payment plan. I'm also asking it to agree an appropriate payment plan with Mr P for the outstanding arrears once a new income and expenses form has been completed by him.

My final decision

For the reasons set out above I'm upholding Mr P's complaint. I am asking Moneybarn No.1 Limited to pay Mr P £350 as compensation for the distress and inconvenience caused meeting the unfair payment plan. I'm also asking it to agree an appropriate payment plan with Mr P for the outstanding arrears once a new income and expenses form has been completed by him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 March 2022.

Jocelyn Griffith
Ombudsman