

The complaint

Mr J complains that Moneybarn No. 1 Limited didn't treat him fairly when he was in arrears on his conditional sale agreement.

What happened

In January 2015, Mr J acquired a used car financed by a conditional sale agreement from Moneybarn. Within a few months he began to experience some financial difficulty and fell into arrears on the agreement.

Moneybarn started legal proceedings in late 2015 to recover the car from Mr J. However, Mr J wanted to keep the car and continue making repayments, so a consent order was agreed through the courts between Mr J and Moneybarn. This set out the payment terms that Mr J would need to stick to, otherwise Moneybarn could repossess the car. Mr J didn't keep to the terms of the consent order, so Moneybarn eventually repossessed the car.

In March 2020, Mr J raised a new complaint to say that he felt he should have been included in the recent redress scheme that Moneybarn had agreed with the Financial Conduct Authority ("FCA"). He said his circumstances were similar to those customers that had received payments from the scheme.

Moneybarn didn't agree. It said that Mr J wasn't one of the customers that had been identified as part of the FCA's findings into Moneybarn's practices. It said that it didn't think it had done anything in wrong in the way it had dealt with his agreement.

I sent Mr J and Moneybarn my provisional decision on 17 January 2022. I explained why I wasn't planning to uphold the complaint. I said:

Mr J says he should have been included as part of the redress scheme Moneybarn agreed with the FCA. Moneybarn says Mr J wasn't included because his circumstances didn't meet the criteria.

In summary, the FCA found that in a number of cases Moneybarn didn't give consumers a realistic chance of clearing their arrears in a sustainable way. And it didn't clearly explain their options for exiting their agreements and setting out the financial implications of each of those options. The effect of this was that some of those consumers ended up incurring higher termination costs than they otherwise would have.

Our investigator found that Moneybarn hadn't clearly explained the various exit options to Mr J prior to the agreement being terminated. Further, he didn't think Moneybarn had clearly explained the financial implications of each of these options. From what Moneybarn has provided so far, I'm minded to agree with what the investigator concluded.

However, just because I don't think Moneybarn explained the exit options and their financial implications clearly, it doesn't automatically follow that Mr J's complaint ought to succeed. This is because I'd need to be satisfied that Moneybarn's actions caused Mr J to suffer a loss, and from what I've seen, I'm not persuaded that it did.

From the copies of communications I've seen between Mr J and Moneybarn, it is clear Mr J wanted to keep possession of the car. His communications centred on trying to find a way to avoid repossession or having to hand the car back. He also wanted to continue finding ways to make up the arrears that had built up on the account.

Any of the exit options available to Mr J would have resulted in him losing the car and still owing Moneybarn payments under the agreement. It's clear from his communications at the time that he wanted at all costs to avoid losing the car. I'm therefore not persuaded that had Moneybarn set out his exit options that Mr J would have opted to take any of them.

This is further supported by the fact that Mr J agreed to the terms of the consent order and he negotiated the payment dates that would apply to ensure he could meet those repayments. It would have been clear that if he didn't keep to the terms of the consent order that Moneybarn would be entitled to repossess the car. Mr J's communications at the time set out that he believed he could afford the repayments agreed with the court. So, if he believed this at the time, I don't think he would have chosen to voluntarily hand the car back, particularly when he clearly wanted to avoid doing so.

I've also thought about whether Moneybarn gave Mr J a realistic timeframe to sustainably repay back the arrears.

Mr J first missed a payment in April 2015 and the consent order was agreed in September 2015. Between that time Mr J made one payment towards the agreement, which was after he was already four months in arrears.

I appreciate Mr J was clearly going through a difficult time financially, and he did periodically get in touch with Moneybarn to discuss his circumstances and request support to repay the arrears. I understand he feels Moneybarn ought to have offered him more assistance at the time. However, I can see Moneybarn did try repeatedly to get in touch with Mr J and on several occasions it didn't hear back from him. There were other times when Mr J made promises to pay that weren't kept.

Mr J had fallen into arrears soon after entering into the agreement and given the lack of clear repayment proposals from Mr J, I don't think in the specific circumstances of this case Moneybarn acted unreasonably in seeking to repossess the car and terminate the agreement once the agreement was three to four months in arrears.

After the consent order was sealed by the court Mr J failed to keep to the repayment terms he'd agreed. Moneybarn were therefore entitled to repossess the car. While it's possible that at this final stage Mr J may have accepted taking a different exit option out of the agreement, it was too late for him to do so. This is because after breaching the consent order his agreement was already terminated and he'd lost his rights to exit the agreement in a different way. I note that even at this late stage Mr J was still seeking to find a way with Moneybarn for him to be able to keep the car. This further persuades me that had his exit options been made clear at an earlier stage that he wouldn't have likely opted to take one of them.

Overall, while I don't think Moneybarn acted fairly by not clearly setting out Mr J's options regarding exiting his agreement, this failing didn't cause Mr J any financial loss. For that reason, I don't propose to direct Moneybarn to do anything further to put things right.

Mr J didn't agree with my provisional decision but provided no further comments or evidence for consideration. Moneybarn didn't respond.

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.

As neither party has provided anything further following my provisional decision, I've seen no reason to reach a different conclusion to the one I reached previously. For the reasons set out above in my provisional decision, I don't consider that Moneybarn needs to do anything to put things right.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 March 2022.

Tero Hiltunen
Ombudsman