

The complaint

Mr C has complained about the support he received from Moneybarn No. 1 Limited trading as Moneybarn (Moneybarn).

What happened

In January 2019, Mr C entered into a conditional sale agreement with Moneybarn to acquire a motorbike first registered in 2016. The cash price of the motorbike was around £4,031. The total amount payable was approximately £7,124. Mr C provided an advance payment of around £400, and there were 59 equal consecutive monthly payments each around £114.

On 23 March 2020, the UK Government announced the UK would enter a lockdown due to the Covid-19 pandemic. Mr C said that due to the pandemic eventually he was made unemployed. As such, he said he called Moneybarn and completed an online payment deferral request for June, July and August 2020 payments, which he says was agreed by Moneybarn.

In September 2020, Moneybarn wrote to Mr C. In this correspondence they said that they can see that he cancelled his direct debit on 23 June 2020. They said that on 30 June 2020, they sent him an automated SMS, and an email, advising him that arrears were present on his account, and requested that he contact them to discuss this. In this correspondence they also explained that on 30 June 2020, they received a payment deferral application from him, in which Mr C stated that he had applied for one previously, and that he wanted to extend it by one month. In the September 2020 correspondence, they explained to Mr C that on 24 July 2020 they contacted him by email in response to his payment deferral request, which he submitted on 30 June 2020.

In the 24 July 2020 correspondence, Moneybarn said they advised Mr C that they found no record of a payment deferral request until 30 June 2020. That is why they said they requested that he provide them with evidence of the agreed payment deferral and asked him to complete an income and expenditure assessment, so they could further assess his eligibility for a payment deferral. Moneybarn, in this correspondence, also said that should Mr C provide the required evidence supporting his previous payment deferral request, they could retrospectively apply one to his finance agreement with the additional month he requested. But they said that they received no further contact from Mr C until he raised his complaint in August 2020. So Moneybarn didn't think they had done anything wrong. Moreover, they say that in the September 2020 correspondence to Mr C they explained to him that if he was experiencing financial difficulties as a result of the Covid-19 pandemic, he should contact their customer services team, or alternatively log in to his online account, to discuss the options available to him. They went on to explain that this way he would be able to discuss his options regarding payment deferrals, and if they could apply one to cover the missed payments, which if agreed, they said would negate any negative impact caused to his credit file at the time.

Mr C was unhappy with Moneybarn's response, so he brought his complaint to this service.

Our investigator thought the complaint shouldn't be upheld.

Mr C disagreed with the investigator. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 14 February 2022. In the provisional decision I said:

‘What I’ve provisionally 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I’ve summarised the events of the complaint. But I want to assure Mr C and Moneybarn that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr C acquired the motorbike under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

This case centres around the question of whether Moneybarn has done enough to support Mr C, when he requested a payment deferral. So, I’ve thought about the relevant rules and guidance at the time. The rules and guidance mentioned below refer to ‘customers’ and ‘consumers’, and I will be using these words interchangeably, but in this decision the words are to have the same meaning.

The Financial Conduct Authority (FCA) – Consumer Credit Sourcebook (CONC), and in particular CONC 7, titled “Arrears, default and recovery (including repossession)”, says that firms should treat consumers in default or in arrears difficulties with forbearance and due consideration. Treating consumers with forbearance could include such things as considering suspending, reducing, waiving or cancelling any further interest or charges, allowing deferment of payment of arrears, and accepting token payments for a reasonable period of time.

The FCA on 24 April 2020 also published additional guidance – “Motor finance agreements and coronavirus: temporary guidance for firms”. This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19, and it builds on Principle 6 (“A firm must pay due regard to the interests of its customers and treat them fairly”).

In relation to the payment deferrals – the guidance states the following: “Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for 3 months unless the firm determines (acting reasonably) that it is obviously not in the customer’s interests to do so.” And it states that: “In determining whether a 3 month payment deferral is obviously not in customers’ interests, firms should consider both customers’ need for immediate temporary

support and the longer-term effects of a payment deferral on the customer's situation, in particular the customer's ability to repay any accrued interest once the payment deferral ends, and over what period".

This guidance was further updated by the FCA in July 2020. This update was published a short period after Mr C contacted Moneybarn, but I think it is relevant to this case, as it builds on the previous guidance. The guidance states that: "There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer's interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support."

Bearing in mind all of the above guidance, I've thought about when Mr C asked Moneybarn for assistance. Mr C said he called Moneybarn and completed an online payment deferral request for June, July and August 2020 payments, which he says was agreed by Moneybarn. But Moneybarn said that Mr C cancelled his direct debit on 23 June 2020, and according to them it was only on 30 June 2020 that they received a payment deferral application from him. This would've been already after he missed the June 2020 payment. I know that Mr C mentioned in this deferral application that he had applied for one previously, but I've not seen evidence that would allow me to say that most likely he did make this previous contact. So, I've gone on to think about whether fair options were given to Mr C once he did ask for assistance.

While I understand that Moneybarn wanted Mr C to provide them with an income and expenditure assessment, so they could further assess his eligibility for a payment deferral, I don't think it was fair to not provide Mr C with the deferral he was requesting considering the specific circumstances of Mr C's case. Overall, I think the intention of the FCA guidance was for firms to provide quick, immediate short-term assistance to consumers in difficulty without the need for prolonged discussions or detailed additional checks before agreeing a payment deferral. Also I say this because I think it would be difficult for consumers to predict, with any degree of certainty, in the early days of the Covid-19 pandemic how significantly they would be affected by Covid-19 and/or the lockdowns. In addition, I accept that Mr C may have been late asking for help. However, considering the specific circumstances of this case, when Mr C asked for help, I think it might've been fairer for Moneybarn to have given Mr C the deferral for the three months he had requested, rather than asking for an income and expenditure assessment.

According to Moneybarn, the first payment deferral request they received from Mr C was on 30 June 2020, but they didn't contact Mr C until 24 July 2020, almost a month later, and Moneybarn would've also known that something was not right when Mr C cancelled his direct debit in April 2020. Mr C contacted Moneybarn, at the latest on 30 June 2020, because he, like many people at the time, was facing a period of reduced income and was uncertain about what the future might hold considering he lost his job. The guidance, mentioned above, published by the FCA, was intended to provide a quick, immediate short-term assistance to consumers to address this type of scenario, and to provide some immediate relief to consumers; such as payment deferrals for a period of up to three months.

I think the intention of the FCA guidance, mentioned above, was to provide exceptional and quick, immediate short-term assistance to allow consumers breathing space while the pandemic unfolded. But I don't think this is what happened here. This is because on 24 July 2020, almost a month after Mr C told Moneybarn that he needed assistance, and already two months after he missed his first payment, they told him that for them to continue processing his request they needed him to complete an income and expenditure form. This

was, as explained to Mr C in the correspondence they sent him, so that they could gain a full understanding of his current financial situation. The FCA guidance says Moneybarn could've chosen to make the enquiries they considered necessary in order to satisfy themselves that the Mr C is eligible for support, but this was provided that these enquiries do not delay the provision of timely support. And there was no expectation under the guidance that the firms make enquiries with each consumer to determine the circumstances surrounding a request for a payment deferral. While I appreciate that Moneybarn wanted to get a full understanding of Mr C's financial situation, and that Mr C may have been late in asking for assistance, I don't think that it was fair to delay the financial assistance any further, given the particular circumstances of this case. I say this because I don't think the decision made by Moneybarn was in line with the spirit of the FCA's guidance intended to provide quick, immediate short-term assistance.

So overall, I think Moneybarn should've allowed Mr C to take a three-month payment deferral, which would've likely been of great help to him. Bearing this in mind, I think it is fair and reasonable that Moneybarn grant Mr C a three-month deferral in relation to June, July and August 2020 payments, and arrange to remove any adverse information from his credit file for the period in question. Also, Moneybarn should remove any fees and charges in relation to the June, July and August 2020 missed payments – if any have been incurred.

My provisional decision

My provisional decision is that I intend to uphold this complaint, and direct Moneybarn No. 1 Limited trading as Moneybarn to:

1. Grant Mr C a three-month deferral in relation to the June, July and August 2020 payments;
2. Remove any adverse information from Mr C's credit file in relation to the June, July and August 2020 missed payments;
3. Remove any fees and charges in relation to the June, July and August 2020 missed payments – if any have been incurred.'

I asked both parties to provide me with any additional comments or information they would like me to consider by 28 February 2022. And I extended the deadline to 18 March 2022.

Mr C responded and reiterated some of his original points. And Moneybarn didn't provide a response.

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 and considering neither Mr C nor Moneybarn provided any further, or new, information I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

I uphold this complaint, and direct Moneybarn No. 1 Limited trading as Moneybarn to:

1. Grant Mr C a three-month deferral in relation to the June, July and August 2020 payments;
2. Remove any adverse information from Mr C's credit file in relation to the June, July and August 2020 missed payments;

3. Remove any fees and charges in relation to the June, July and August 2020 missed payments – if any have been incurred.'

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 April 2022.

Mike Kozbial
Ombudsman