

## **The complaint**

Mr K is unhappy with the amount of money Moneybarn No. 1 Limited trading as Moneybarn (Moneybarn) is asking him to pay following the termination of his agreement with them.

## **What happened**

In March 2019, Mr K entered into a conditional sale agreement with Moneybarn to acquire a used car first registered in 2014. The cash price of the car was around £6,728 and Mr K made an advance payment of approximately £400. The total amount payable was around £12,988 and the term of the agreement was 60 months with monthly instalments of around £213.

In February 2020, Moneybarn wrote to Mr K as he started missing his monthly payments. In March 2020 Moneybarn sent him the first notice sum in arrears letter. This letter advised that his finance agreement was approximately £427 in arrears. He received two further notice of arrears letters in April and May 2020. In March, May, June and July 2020, Mr K made four payments each of around £213 towards his finance agreement. But as no other payments were made, and Moneybarn were unable to discuss the situation with Mr K, in September 2020 they sent a further notice of sums in arrears letter to him. The arrears at the time were around £853.

In September 2020 Moneybarn also wrote to Mr K and explained his options for ending the finance agreement and requesting for him to contact them. As no contact was made by Mr K with Moneybarn, they issued a default notice to him on 6 October 2020. The default notice gave Mr K until 26 October 2020 to make payment. It also explained the consequences of not making further payments, including the termination of the agreement in question. On 15 October 2020 Moneybarn managed to get a hold of Mr K. During this call Mr K explained that he had started a new job, so would be able to make a payment in November 2020 when he got paid. Moneybarn explained that to stop the termination of the agreement Mr K would need to make the October 2020 payment. But Moneybarn agreed to place the account on hold for one week so that Mr K could call them and complete an income and expenditure assessment. But as Mr K didn't make any contact, the agreement was terminated on 12 November 2020.

Mr K called Moneybarn on 18 November 2020. During this call Moneybarn explained to Mr K what options were available to him at the time, considering the agreement has been terminated.

One of the options explained to Mr K was repossession of the car. Moneybarn informed Mr K that they would collect the car and sell it at an auction. The proceeds of the sale would then come off the outstanding balance on the agreement which at the time was around £9,814. They also explained that Mr K could then complete an income and expenditure assessment to arrange a suitable repayment plan for the remainder of the amount owing. Later in November 2020, Mr K called Moneybarn to confirm that he would like to voluntarily surrender the car. Within a month or so the car was sold at an auction and Moneybarn informed Mr K that the final balance due is £8,116.10.

Mr K is unhappy, as he said, that Moneybarn didn't make him aware that he could voluntarily terminate the agreement. He is also unhappy because he said that it is unfair that he must pay full interest on the finance agreement considering that he no longer has the car. As he was unhappy, he raised a complaint with Moneybarn.

In June 2021, Moneybarn responded to Mr K's complaint. In summary they said that when Mr K spoke to them in January 2021, their agent advised Mr K that the agreement was an enforced termination so there would have been no 'interest rebate'. They said this was because Mr K had breached his agreement by failing to keep up with the repayments. In this correspondence they also mentioned that in September 2020, Mr K was sent a list of exit options, and when they didn't hear from him after 15 October 2020, they issued him with a notice of termination. This is because he had failed to address the arrears, and he was in breach of his agreement. So, they concluded, that the available exit options would no longer have been valid.

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

Our investigator thought that it wouldn't be fair to ask Moneybarn to treat the agreement as if Mr K had voluntarily terminated it, as Mr K was aware of his options and the agreement was terminated. But she did think that Moneybarn should reduce the amount owed by Mr K by applying an interest rebate for the £1,750, the amount of the car's sale proceeds, and she thought the rebate should be calculated in accordance with early settlement regulations.

Mr K accepted the investigators outcome, but Moneybarn disagreed.

So, the complaint has been passed to me to decide.

### **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.

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

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

In summary, Mr K has two main complaint points. The first one being that Moneybarn didn't make him aware that he could voluntarily terminate the finance agreement; And the second one, that it is unfair that he must pay full interest on the finance agreement considering that he no longer has the car.

Regarding Mr K's first complaint point, I can't say that I agree with Mr K that Moneybarn didn't make him aware that he could voluntarily terminate his finance agreement. The reason being that in September 2020, Moneybarn sent a letter to Mr K advising him of the available options for ending the agreement at the time. This letter explained in detail the four options available to him: voluntary termination, hand back option, early settlement, and default termination.

Mr K also questioned why the voluntary termination was not explained to him during certain telephone calls he had with Moneybarn. But it is important to explain that Mr K could only exercise his right to voluntary termination before his finance agreement was terminated. The agreement was terminated on 12 November 2020, so after this date voluntary termination

was no longer an option available to Mr K. As such, I don't think Moneybarn needed to offer this option to Mr K after the finance agreement was terminated. And it was fair for Moneybarn to terminate his finance agreement as and when Mr K didn't remedy the default notice.

This brings me to Mr K's second complaint point, regarding whether it is fair and reasonable for Moneybarn to charge Mr K full interest on the finance agreement considering that he no longer has the car.

Moneybarn has told us that the voluntary surrender rules are not made by them, and that they are statutory and clearly state that there is no interest rebate available. So, they explained that they don't feel inclined to agree with the investigator's view, as they said they believe that they have followed the correct procedures, and that they had given Mr K sufficient time to contact them with his decision on how to exit the finance agreement. And they have, once again, brought our attention to their final response letter, that was issued to Mr K in June 2021, which stipulates that there would've been no interest rebate as Mr K had breached his agreement by failing to keep up with the repayments.

Moneybarn also quoted two sections from the finance agreement in question, which deal with termination. One of these sections being: '9. Effect of Us Terminating Agreement' which, in summary, states that if Moneybarn terminates that agreement due to payments not being made, they will be entitled to immediate payment from Mr K of all payments and other sums due under this agreement up to the date of termination. It then states that the car will be sold, and that Moneybarn will be entitled to immediate payment from Mr K of the rest of the Total Amount Payable under the agreement less a rebate for early settlement, as required by law. So, I've considered this, and I've thought about how this section of the finance agreement specifically applies to Mr K's circumstances.

When Moneybarn say that the voluntary surrender rules are not made by them and that they are statutory, and that these clearly state that there is no interest rebate, I think, Moneybarn might be referring to voluntary termination and not voluntary surrender. But Mr K didn't voluntarily terminate the finance agreement and, as I already mentioned above, I agree with Moneybarn that voluntary termination was clearly explained to Mr K, and he chose not to follow this option. And after the agreement already terminated on 12 November 2020, it is reasonable that this was no longer an option available to Mr K. But the question remains on whether it is fair and reasonable for Mr K to be responsible for full interest on the finance agreement, considering that he no longer has the car, and considering that the £1,750 proceeds from the sale of the car were applied as a lump sum payment towards the finance agreement.

As a starting point, I agree that it is fair and reasonable that Moneybarn are entitled to all payments and other sums due under the finance agreement. This includes full interest due up to the point of termination. But considering the specific circumstances of this complaint, I think it would be fair and reasonable for Moneybarn to apply an interest rebate for the £1,750; the amount of the sale proceeds. It is a lump sum payment that was made towards the finance agreement, and Mr K no longer has the car, so overall I think it is fair and reasonable to treat this amount as an early partial settlement.

I accept the proceeds of the sale of the car on voluntary surrender wouldn't automatically entitle Mr K to an interest rebate. However, in not providing any rebate, Moneybarn would unfairly benefit from receiving everything due back under the credit agreement without Mr K taking ownership of the car at the end of the agreement (which is what would have happened had he made all payments due, without payment difficulty). So, considering the fact Mr K won't take ownership of the car, I don't think it's fair and reasonable for Moneybarn to not treat the sale proceeds of the car as if it were a partial early settlement payment.

Therefore, Moneybarn should reduce the amount Mr K owes them by applying an interest rebate calculated in accordance with the early settlement regulations. It should then notify Mr K of the amount outstanding, and if Mr K is unable to pay this in full, Moneybarn should treat him fairly by arranging an affordable repayment plan.

### **My final decision**

For the reasons given, I require Moneybarn No. 1 Limited trading as Moneybarn to:

- reduce the amount Mr K owes by applying an interest rebate for the £1,750; the amount of the sale proceeds. This should be calculated in accordance with the early settlement regulations.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 January 2023.

Mike Kozbial  
**Ombudsman**