

The complaint

Miss B complains about a conditional sale agreement taken out in her name with Moneybarn No.1 Limited, to get a used car.

What happened

In January 2020, Miss B says her former partner, who I'll call A, completed an online application for a conditional sale agreement with Moneybarn, by using her personal details. She says A did this without her knowledge or authority to get a used car from a dealer. In the lead up to the signing of the agreement, a broker was used to handle the application between all the parties involved.

Miss B says she realised what A had done after a friend had told her. She says she cancelled the direct debit to Moneybarn and made arrangements to get the car back from A.

Subsequently, Miss B complained to Moneybarn and told them her relationship with A ended in December 2019 and that she already had a car. She says there wasn't a reason for her to take out this agreement and A had acted fraudulently. Miss B also told Moneybarn that she had documents from a support worker and the police, to show that she was a victim of abuse by A.

In their final response to Miss B's complaint, Moneybarn said that Miss B's driving licence was provided when the loan was agreed. They also said they sent a welcome pack to Miss B's address and that she hadn't provided further evidence from her support worker. So, Moneybarn told Miss B that they thought it was fair for them to hold her responsible for the balance due under the agreement.

Miss B didn't accept Moneybarn's response and brought her complaint to our service. In the meantime, Moneybarn took the car back from Miss B and arranged to sell it. They used the proceeds from the sale to reduce the outstanding balance of the loan, which they are now asking Miss B to repay.

One of our investigators looked into Miss B's case and found that Moneybarn had treated her fairly. He concluded that Miss B hadn't sent further evidence from her support worker or the police and that it's likely Miss B did receive the welcome pack from Moneybarn.

The investigator also said Moneybarn had contacted Miss B about the missed payments, but she hadn't initially responded. Overall, the investigator wasn't persuaded that A had applied for the conditional sale agreement without Miss B's authority.

Miss B didn't agree with the investigator's findings and now her case has been passed to me to make a final decision.

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, I acknowledge the very difficult personal circumstances which Miss B has told us about. It must have been a challenging time for her and I hope her circumstances have improved over the last few years.

The details used in the agreement

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Miss B says her relationship with A ended in December 2019 and that during the relationship, A was abusive towards her. I can see that when Miss B complained to Moneybarn, she told them she had evidence of the abuse from a support worker and the police.

Miss B hasn't provided direct evidence about the abuse during the relationship, beyond what she's told us. So, while I empathise with the very distressing situation Miss B has explained, I need to consider the weight I can place on that, in the absence of the other information from the parties she relied on for support. I've done this when looking at the circumstances leading up to the start of the conditional sale agreement.

With that in mind, I've thought about the application and what Miss B, the dealer, the broker and Moneybarn have said happened at the time.

Both Moneybarn and Miss B say that although Miss B's personal details were used on the application form for the loan, the email address and telephone number was different. I can see from the contact records for the account with Moneybarn, that the email address was used by a third party in May 2020. So, I think the email address used by Moneybarn when the agreement was signed, was that of a third party.

However, Moneybarn say that Miss B's driving licence was used at the time of the application, as well as her debit card. Miss B says A had previously taken photographs of these details and kept them stored on his mobile telephone.

On one hand, I think what Miss B says supports how A could have obtained her identification and debit card details. And how A could have used her personal details, but changed the contact information, so Miss B wouldn't find out about the application. Miss B also says she already had a car using finance from a different lender, so she didn't need another.

I also recognise though, that it isn't uncommon for an arrangement to exist whereby one party may use a car, but the finance to be in the name of someone else, like a family member.

The selling dealer has told us he remembers talking to a male about the car and he thinks that person had a partner with him at the time. The dealer also says it was the male who collected the car, once the agreement was in place. So, I've considered what happened after the agreement had started, to help decide if it's fair for Moneybarn to hold Miss B responsible for the repayments.

The contact with Miss B

I've concluded that the telephone and email contact from Moneybarn at the start of the agreement was with a third party. However, I can see from Moneybarn's records that they also sent letters to Miss B's address.

From January 2020, Moneybarn sent a welcome pack, a VAT invoice, notice of a failed direct debit as well as other arrears and default notices, to Miss B's home address.

Moneybarn's records also show that Miss B first made contact with them, to say A had acted fraudulently in June 2020. So, I think there was a six month period of time, where Moneybarn had made Miss B aware of the loan.

Miss B has provided us with her bank account statements from October 2019 until March 2020. I can see where payments to Moneybarn have been returned unpaid in February 2020 and Moneybarn's records show that this continued in the months following. The bank statements Miss B has sent to us, also show a returned payment to the DVLA in March 2020, related to the car taken out under the conditional sale agreement.

Miss B says A may have intercepted her post and he had previously accessed her email account without her permission. But Miss B also says A didn't live at her address in January 2020. On balance, I'm persuaded Moneybarn treated Miss B fairly, by sending information about the loan to her.

While I've considered the extremely difficult circumstances Miss B has told us about, I think the activity on her bank account statements demonstrated a connection with Moneybarn. I also think the statements demonstrated a connection to the car taken out under the agreement, as the registration details appear on the transaction to the DVLA.

In all the circumstances, on balance I'm persuaded that Moneybarn made Miss B aware of the conditional sale agreement in her name. I also think Miss B had an opportunity to raise this with Moneybarn around six months before she contacted them in June 2020.

During the complaint, the broker sent us details of the telephone contact they had when the application was started. The broker's records show they received a call from Miss B on 10 January 2020, to discuss signing the agreement. But, a copy of that call isn't available. The broker has also told us that they didn't have authority to speak to anyone other than Miss B.

I accept that the recording of the call with the broker would be helpful here. But, based on the information we do have, I think it's likely Miss B spoke to the broker before the agreement was signed.

Having carefully considered all the evidence, on balance, I'm not persuaded that A applied for the conditional sale agreement with Moneybarn, without Miss B's authorisation. So, while I know it'll disappoint Miss B, I don't think it's unfair for Moneybarn to hold her responsible for the amount owed under the agreement.

The outstanding balance owed.

I can see from the account statements of the loan that the proceeds from the sale of the car reduced the outstanding balance in June 2021. In light of my conclusions about Miss B's responsibility towards the conditional sale agreement, it means Moneybarn may choose to ask Miss B for further repayment.

In doing so, I remind Moneybarn of their responsibilities to Miss B. In that they should treat her financial circumstances with due consideration and forbearance. This means any repayment plan Moneybarn looks to arrange with Miss B, should be sympathetic to her income and expenditure details.

My final decision

My final decision is that I don't uphold Miss B's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 February 2023.

Sam Wedderburn
Ombudsman