

The complaint

Ms D complains Moneybarn No. 1 Limited (Moneybarn) unfairly terminated her car finance agreement.

What happened

In August 2019, Ms D entered into a 60 month conditional sale agreement for a used car.

In April 2020, she was involved in a car accident. Ms D told Moneybarn her insurer deemed the car a total loss. Moneybarn contacted the insurer to ask for the settlement to be paid directly to them.

As the car was considered a total loss, a default notice was issued to Ms D in April 2020. She was told she needed to settle the balance of £12,443 by 14 May 2020. Around the same time, she applied for a payment deferral as she was experiencing financial difficulty due to the Covid-19 pandemic. This was agreed by Moneybarn for one month.

In July and August 2020, Moneybarn sent further requests to the insurer for the settlement to be paid. As Moneybarn received no response, they decided to terminate the agreement in September 2020. Moneybarn told Ms D she would be required to return the car and pay the outstanding balance.

Ms D complained. She said she had cancelled the insurance claim and had arranged for the car to be repaired herself shortly after the accident in April 2020. She said the car had been insured and MOT'd. She also said she had tried to contact Moneybarn on many occasions but without success.

Moneybarn said they had no knowledge of the same prior to the termination and they had correctly followed the terms of the agreement. They said once terminated, it couldn't be reversed and Ms D hadn't provided evidence to demonstrate the car was no longer a total loss.

The car was collected in June 2021 and sold for £2,650, the net proceeds were paid towards the agreement. However Moneybarn said Ms D was required to pay the shortfall balance of £10,145.

Our investigator recommended the case wasn't upheld. They concluded Moneybarn had acted fairly and in line with the terms of the agreement as they weren't told the insurance claim had been cancelled and the car repaired.

As an agreement couldn't be reached, the complaint has been referred 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.

Having done so, I've decided not to uphold Ms D's complaint.

I'm aware I've summarised this complaint in far less detail than has been provided and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues. This reflects the nature of our service as an informal alternative to the courts. I'm satisfied I don't need to comment on every detail to be able to reach what I think is a fair outcome in the circumstances of this complaint.

As a starting point, I've reviewed the terms of the agreement. In summary it says in the event the car is considered a total loss by an insurer, all unpaid payments and the total amount payable under the agreement must be paid. It goes on to say any insurance settlements must be paid to Moneybarn within a reasonable period of time and this would be offset against any balance owed. If this money wasn't received, Moneybarn is entitled to recover the balance from the consumer following the issue of notice required by law.

Ms D told Moneybarn in April 2020, the car had been considered a total loss by her insurer. Based on the above terms, this meant the total agreement amount became payable. As I would expect, Moneybarn contacted the insurer to ask that the settlement payment be paid. Having read the correspondence, I can also see they said they don't allow the customer to retain the salvage of the car unless the agreement is settled in full. I would've expected Moneybarn to have clearly explained the above terms to Ms D and what it would mean in terms of the agreement but there is no evidence they did so.

Moneybarn sent a default notice in April 2020. Having read it, it makes it clear that if the car had been considered a total loss, the agreement would be terminated as there was no longer an asset to secure the agreement to. It stated the balance to settle the agreement in full was due by 14 May 2020. For the reasons explained above, I consider Moneybarn acted reasonably and in line with the terms by issuing a default notice and requiring the payment of the full balance.

In response, Ms D contacted Moneybarn to ask about a payment deferral and asked them to contact her by phone as she needed advice about the car. Their system notes show an entry was inputted by them to say the car was a total loss, a default notice had been issued and a payment plan could be set up to pay the balance. I would've expected Moneybarn to have made this clear to Ms D and responded to her requests but there is no indication they did so. Equally, there is no evidence Ms D told Moneybarn that the insurance claim had been cancelled and the car had been repaired in response to the default notice.

Matters were confused further by Moneybarn agreeing to a month payment deferral. Given the default notice, it's unclear why that was agreed. I would've expected them to have identified a default notice had been issued and explained to Ms D to reiterate why a payment deferral would not have been appropriate in the circumstances.

In June 2020, there is a further conversation between Ms D and Moneybarn but this appears to centre on the payment deferral as Ms D asked for it to be extended. Based on what Ms D has told our service, the car had been repaired by that time but there is no evidence to suggest she made Moneybarn aware of the same. Equally, at the time of the call, I can see there was a system note to say if Ms D wanted to retain the salvage of the car, she must settle the agreement in full but this doesn't appear to have been communicated to Ms D. I consider this a missed opportunity by both parties to discuss the car and the agreement.

Moneybarn sent further emails to the insurer in July and August 2020 asking that the settlement payment be paid but no response was received. As it had been many months since the default deadline had passed and the agreement hadn't been settled, I'm satisfied

Moneybarn acted fairly in deciding to terminate the agreement based on the information they knew at the time.

I note it was only after the termination in September 2020 that Ms D brought to Moneybarn's attention that the car had been repaired. They requested evidence of the same but there is no indication this was provided by Ms D. Our service also requested copies of the same but it hasn't been forthcoming.

Following the termination, Moneybarn gave Ms D a number of options including one that meant she could keep the car. They said:

"Entering into a consent order with us, which is a payment plan sealed by the court in which the arrears and court costs will be paid on top of the normal monthly instalment over the next 12 months. This will allow you to keep the vehicle as long as all the payments are made on time"

In the circumstances, I find Moneybarn acted reasonably by providing such an option as it would've allowed Ms D to keep the car and set up a payment plan. As Ms D didn't indicate she wanted to do the same, I find it was fair for Moneybarn to proceed to collect and sell the car. As I would expect, the net sales proceeds were applied thereby reducing the outstanding balance. I consider this fair in the circumstances.

Based on what I've seen, I find there were faults by both parties. Moneybarn missed opportunities to discuss the situation with Ms D to reiterate why the agreement would come to an end despite her repeated requests for them to contact her. Ms D failed to let Moneybarn know that she had cancelled the insurance claim and repaired the car.

However given Ms D had initially told them the car was a total loss I believe the onus was on her to let Moneybarn know that she had cancelled the insurance claim, arranged for the car to be repaired and provided evidence of the same. I consider that the overriding issue here. Despite receiving a default letter setting out Moneybarn's intentions to terminate the agreement and the deadline being May 2020 to satisfy it, Moneybarn were only made aware of the cancelled insurance claim once the agreement had terminated.

Taking everything into account, I believe Moneybarn acted fairly and in line with the terms in deciding to terminate the agreement.

I appreciate my decision will disappoint Ms D and I sympathise with the situation she now finds herself in. I would like to remind Moneybarn, if she is still experiencing financial difficulty I expect them to treat her with due consideration and forbearance.

My final decision

For the reasons set out above, I've decided not to uphold Ms D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 October 2022.

Simona Charles
Ombudsman