

The complaint

Miss M complains that Moneybarn No.1 Limited (Moneybarn) didn't treat her fairly when she was in financial difficulty.

What happened

Miss M entered into a conditional sale agreement with Moneybarn to acquire a used car in September 2019.

Miss M made her first monthly payment for the agreement in November 2019, but the payment due in December 2019 was returned to Moneybarn unpaid.

Moneybarn tried to call Miss M about her missed payment on 5, 6 and 19 December 2019. They sent her an email on 12 December 2019 asking her to call them about the payment and sent a letter on 19 December 2019. They also tried to send Miss M a text message asking them to call her on 30 and 31 December 2019.

On 3 January 2020 Miss M's monthly payment was returned unpaid, and Moneybarn sent a letter to Miss M with a notice of sums in arrears. Moneybarn sent Miss M an email about the arrears on her account on 16 January 2020, another letter on 20 January 2020, and tried to send her a text message about the arrears on 30 January 2020 and 3 February 2020. They also sent her an email reminder about her next payment on 30 January 2020.

Miss M's payment due on 4 February was returned unpaid. On 10 February 2020 Moneybarn tried to send Miss M a text message about her arrears. They also sent her a letter and an email asking her to call them. They said if they didn't hear from Miss M within seven days, they would issue a default notice as the arrears were building to an unsustainable level. They said if a default notice was issued, Miss M would need to pay the full arrears or the agreement would be ended, and the vehicle recovered.

Moneybarn didn't hear from Miss M, and they issued a default notice on 19 February 2020. That notice required Miss M to clear the arrears on her account before 10 March 2020.

Moneybarn tried to send Miss M a text message on 24 and 25 February 2020 asking her to contact them. They tried to call her on 10 March 2020 and sent her an email on 11 March 2020 asking her to get in touch before the agreement was terminated.

Moneybarn tried to call Miss M on 12 March 2020. They didn't hear from her, and a termination notice was issued on 13 March 2020 along with a notice of sums in arrears.

On 16 March 2020 Moneybarn sent an email to Miss M confirming the termination notice and said the vehicle was at risk of repossession if they didn't hear from her.

On 20 March 2020 Miss M contacted Moneybarn. She let them know she'd had some significant recent health problems and had been handling a difficult work situation. She said she'd changed her email address, and so hadn't been receiving communications from Moneybarn.

At the end of March 2020 Moneybarn told Miss M they wouldn't be able to collect her vehicle due to restrictions as a result of the coronavirus pandemic (covid-19). They gave her until 14 April 2020 to consider her post termination options.

On 7 May 2020 Moneybarn gave Miss M until 14 May 2020 to confirm what post termination option she'd like to take.

At the end of August 2020 Moneybarn sent Miss M a notice of sums in arrears, and at the end of September 2020 they sent Miss M an email explaining that she needed to contact them within seven days, or they would proceed with recovery of the vehicle.

On 8 October 2020 Moneybarn instructed agents to recover Miss M's vehicle.

In mid-October 2020 Miss M called Moneybarn. She said she'd been trying to contact them for some time and told them she'd changed her address. Moneybarn told Miss M that if she paid 25% of the arrears balance, they could consider a consent order. Miss M made this payment and completed an income and expenditure review on the phone. Moneybarn told Miss M they'd like the balance of the agreement to be paid within the remaining timeframe of the agreement.

In February 2021 Moneybarn received an offer of payment from Miss M, which they rejected. They said it'd take 10 years to pay the agreement at the amount offered, and so it wasn't sustainable.

In March 2021 Moneybarn instructed agents to collect the vehicle.

The vehicle was repossessed in August 2021.

Moneybarn received an IVA proposal from Miss M in August 2021, and this was rejected in September 2021.

Miss M complained to Moneybarn in September 2021. She said they'd treated her with little care, despite her trying to contact them on multiple occasions, and the repossession of the vehicle wasn't necessary.

Moneybarn sent Miss M their final response to her complaint in October 2021. They said they'd tried to contact her a number of times before the agreement was terminated and provided options to try and help her to keep the vehicle, but no suitable arrangement was agreed and so their decision to repossess the car was fair. They didn't uphold Miss M's complaint.

Unhappy with this, Miss M brought her complaint to this service for investigation. She said Moneybarn had failed to engage with her around the termination of the agreement and hadn't treated her fairly.

Our investigator gave her view that Moneybarn had made attempts to contact Miss M and they didn't act unfairly in terminating the agreement. She said once the agreement was terminated Moneybarn were able to repossess the vehicle, and so she didn't ask them to do anything more.

Miss M didn't agree. She said she tried to contact Moneybarn a number of times but found it difficult to contact them, and she received poor correspondence and support from them.

As an agreement can't be reached, the case has been passed to me for a 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Miss M was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

The agreement requires Miss M to make a payment in full and on time each month. In not making her payment in December 2019, Miss M breached the terms of the agreement, and her account fell into arrears. Miss M went on to miss her January 2020 and February 2020 payments, putting her account further into arrears.

Where its customers are facing financial difficulty, Moneybarn have a responsibility to treat them with due consideration and forbearance. I can see that Moneybarn wrote to Miss M on at least four occasions about her missed payments and tried to call, text and email her a number of times, asking her to contact them to discuss the arrears on her account between 5 December 2019 and 12 March 2020. I can't see that Miss M contacted Moneybarn during this time.

So, I don't think it was unreasonable for Moneybarn to have issued a default notice. They'd been unable to contact Miss M to come to an arrangement to repay the arrears for payments missed in December 2019, January 2020 and February 2020.

In its *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*, the Information Commissioner's Office ("ICO") says in relation to payment arrangements, a default would not normally be registered unless the terms of a payment arrangement are broken. I consider this to be representative of good industry practice. And as a minimum would expect a lender to act in accordance with these principles when deciding whether to default a consumer's agreement.

In this case, I think it was appropriate for Moneybarn to report a default to Miss M's agreement as she broke the terms of her payment arrangement. And so, Moneybarn was entitled to register that the agreement had defaulted as per the ICO guidance.

The Consumer Credit Act 1974 (CCA) sets out in section 87(1) that a default notice is necessary before the creditor is entitled to terminate the agreement or recover the goods.

Section 88 of the CCA sets out that the default notice must:

- *“Specify the nature of the alleged breach*
- *If the breach is capable of remedy what action is required to remedy it and the date before which that action is to be taken*
- *If the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be repaid.”*

I'm satisfied that the default notice that Moneybarn issued was in line with the CCA requirements.

Moneybarn didn't hear from Miss M after the default notice expired, and so the agreement was terminated in March 2020. I'm satisfied that the termination was completed in line with the terms of the agreement.

Miss M has said that she didn't receive any communication from Moneybarn, and she'd moved address and changed her email address.

I can't see that Miss M contacted Moneybarn to update her details prior to the termination notice being issued in March 2020. So, I'm satisfied that Moneybarn used the correct details, those provided by Miss M, to try and contact her before the agreement was terminated and so I'm satisfied that the default and termination notices were correctly sent.

Miss M is unhappy with the support provided to her after the agreement was terminated.

As I've set out above, Moneybarn have a responsibility to treat consumers in financial difficulty with due consideration and forbearance. I'm satisfied that Moneybarn did this by contacting Miss M by post and text message on a number of occasions to try and assist her with repaying her arrears before the agreement was terminated.

When Miss M contacted Moneybarn after the agreement was terminated, they provided a number of post termination options to allow her to keep the vehicle, including completing income and expenditure assessments and the option of a consent order.

Part of treating consumers with forbearance is ensuring that arrears don't build to unsustainable levels, and that debt can be repaid sustainably. So, I don't think it was unreasonable for Moneybarn to refuse to accept Miss M's offer of repayment that would've taken twice as long to repay as the original agreement term, and Moneybarn are under no obligation to accept Miss M's IVA proposal. So, all things considered, I'm satisfied that Moneybarn did treat Miss M fairly and with forbearance when she told them about her financial difficulties.

As the agreement between Moneybarn and Miss M had been broken, and no arrangement had been made to repay the arrears, I'm satisfied that Moneybarn's decision to instruct the repossession of Miss M's vehicle was fair.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 June 2023.

Zoe Merriman
Ombudsman