

The complaint

Mrs and Mr W have complained about the charges that Moneybarn No. 1 Limited (Moneybarn) applied when they handed back a car, which they acquired under a conditional sale agreement.

What happened

In August 2018, Mrs and Mr W entered into a conditional sale agreement with Moneybarn to acquire a used car first registered in 2014. The agreement was for approximately 60 months. In 2021 Mrs and Mr W said that they arranged for the car to be picked up on 26 March 2021, but the recovery team came on the 25 March 2021; the day before the arranged appointment. Mrs and Mr W said they couldn't allow the car to be collected on that day as they still needed to put new tyres on the car. They said that the recovery driver told them that, as he was in the area, he decided to come the day before and would now be unable to return the next day for the scheduled appointment. So, they said they called to rearrange but Moneybarn agents didn't turn up for the scheduled collection on 30 March 2021.

Mrs and Mr W said they were reassured the agents would come and collect the car on another date – at this point they said they told Moneybarn that they had moved but that they will leave the car at the previous address with the keys. But Mrs and Mr W said that again the agents didn't turn up, so they moved the car to their new property, and they said that they have emailed Moneybarn their new address again. They said that Moneybarn finally picked up the car in August 2021. At which point Moneybarn asked them to pay nearly £1,000 in charges for court costs and recovery of the car. Mrs and Mr W also said that this affected their credit score which caused them a lot of stress and frustration. As they were unhappy with the situation, they raised a complaint with Moneybarn.

In December 2021, Moneybarn wrote to Mrs and Mr W and said that an appointment was arranged for the car to be collected on 25 March 2021. When the Recovery Agent from British Car Auctions (BCA) arrived, the agent was informed that the car was not ready as repairs were being carried out. So, Moneybarn said that as a result of this, an appointment was rebooked for the 30 March 2021. Moneybarn said that unfortunately an administration error occurred which resulted in the recovery on the 30 March 2021 not taking place and that their agents attempted to contact Mrs and Mr W in order to rebook the recovery. But despite their attempts no contact was made, so as a result of this a Return of Goods order was applied for and approved in July 2021 and the car was duly recovered on 23 August 2021.

In this correspondence, Moneybarn apologised for the administrative error and agreed to reduce the balance owing by £50 to account for the distress and inconvenience this had caused Mrs and Mr W. They also said that they can confirm that no recovery fee was charged for the failed recovery attempt made in March 2021. But they said that the recovery and legal fees, applied to their account following the collection of the car in August 2021, are justified as per the terms and conditions of Mrs and Mr W's agreement. So, they said that there is a balance of £944.71 to be paid.

Moneybarn also said that what they reported on Mrs and Mr W's credit file is correct. Moneybarn said that, prior to Mrs and Mr W's request to Voluntary Terminate (VT) their

agreement, the arrears status reported was in line with the level of arrears which had accrued on the account. Moneybarn said that since March 2021 however, a 'U' has been reported which is a neutral marker used when a VT is requested.

Unhappy with Moneybarn's response Mrs and Mr W brought their complaint to our service.

Our investigator didn't think that Mrs and Mr W's complaint should be upheld. The investigator thought that the outstanding charges remained payable because Moneybarn didn't act unreasonably when they took steps to recover the car.

Mrs and Mr W disagreed with the investigator, 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, 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.

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

Mrs and Mr W are unhappy because they don't think the recovery and legal fees (£944.71) applied to their account following the collection of the car in August 2021 are justified. They think Moneybarn shouldn't be asking them to pay this and they don't think this amount should be reflected on their credit file under their credit agreement. So, I've considered whether those amounts were fairly applied.

From Mrs and Mr W's credit agreement I see that it was their obligation to keep Moneybarn informed of their current address. I can also see that Moneybarn were entitled to charge costs and fees if they needed to instruct tracing agents and issue court proceedings to recover the car in question. Moneybarn received returned undelivered post when trying to get a hold of Mrs and Mr W in May 2021. So, on 5 May 2021 they sent an email to Mrs and Mr W asking for their new address. I can also see that Moneybarn agents tried to contact Mrs and Mr W twice on 12 May 2021 and left a voicemail both times. Again, five days later, on 17 May 2021, Moneybarn's agents left a voicemail requesting a call back. And on 27 May 2021, Moneybarn's agents left a voicemail and sent a text message. They also tried to call on two more occasions, on 8 and 21 of June 2021, without success. As Mrs and Mr W weren't responding, I think it was fair and reasonable for Moneybarn to instruct tracing agents and issue court proceedings to recover the car. Therefore, I think the recovery and legal fees were justified and applied fairly.

I know that Mrs and Mr W said that they did provide Moneybarn with their new address sometime in March 2021. But they said they don't have proof of this as this was during a phone call, they had with Moneybarn. So, I've looked into the contact notes provided by Moneybarn and from these I can't see that Mrs and Mr W provided their new address to Moneybarn. I do see that it was only on 16 July 2021 when Mrs and Mr W emailed Moneybarn with their new address. In this email Mr W said *'I've moved house now also my*

address is' and he provides the new address. I think most likely this was the first time Mrs and Mr W provided their new address to Moneybarn. I say this based on the information contained in Moneybarn's contact notes and based on the fact that Mrs and Mr W's email from the 16 July 2021 reads as if they are providing their address for the first time.

Mrs and Mr W said that they believe that their address change shouldn't have relevance in considering their circumstances, as they left the car at their original property with the keys in it and because Moneybarn missed previously scheduled collection dates. They said that the first collection of the car was scheduled for the 26 March 2021, and that the Moneybarn agent arrived the day before, so the car was not ready for collection. Mrs and Mr W said the agent only came the day before the scheduled collection date because he was already in the area, and they said he also told them that he couldn't come the next day.

Moneybarn, on the other hand, said that the collection was always scheduled for 25 March 2021. I can see that Moneybarn's contact notes state that *'The driver called to advise the customer' Mr W 'was not expecting collection today and the vehicle is awaiting repairs (illegal tyres and body work) I have no option but to abort this collection'*. The notes go on to say that the collection will need to be rebooked once repairs are done. From this it seems most likely the collection was originally scheduled for 25 March 2021. So, without any other evidence I can't say that it was most likely Moneybarn's or their agent's fault for arriving on the 25 instead of the 26 of March 2021. And even if this wasn't the case Mrs and Mr W were still required to keep to their credit agreement obligations.

There was another collection scheduled for the 30 March 2021, and Moneybarn's agents did miss this collection. Moneybarn apologised for this administrative error and agreed to reduce the balance owing by £50 to account for the distress and inconvenience this had caused Mrs and Mr W. They also said that no recovery fee was charged for the failed recovery attempt made in March 2021. I think this is fair and reasonable, considering the circumstances of this complaint. Also, just because 30 March 2021 collection date was missed doesn't mean that Mrs and Mr W were not required to keep to their credit agreement obligations. Also, Moneybarn or their agents wouldn't be able to collect the car without someone being present for the collection.

I sympathise with Mrs and Mr W for the difficulties that they are experiencing but, taking all the circumstances of the complaint into account, I think Moneybarn has acted fairly and reasonably when dealing with their complaint. Moneybarn made numerous attempts to contact Mrs and Mr W, but they didn't receive a response, so the recovery and legal fees were justified and applied fairly in line with the terms and conditions set out by their credit agreement. Based on all the above, it is not fair or reasonable for me to require Moneybarn to take any further action.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 17 July 2023.

Mike Kozbial
Ombudsman