

The complaint

Mr C complains about a sum of money Moneybarn No. 1 Limited ("Moneybarn") is seeking the recovery of after he decided to voluntarily terminate his conditional sale agreement ("agreement") with it.

What happened

In April 2021 Mr C entered into an agreement with Moneybarn for the purchase of a used car costing £17,450.00. Under the terms of the agreement, everything else being equal, Mr C undertook to make an advance payment of £4,000 followed by 59 monthly payments of £472.26 making a total sum repayable of £31,863.34 at an APR of 39.9%.

Between May and August 2021 inclusive Mr C should have paid Moneybarn £1,889.04 (4 monthly payments of £472.26). Instead, Mr C paid Moneybarn £130.00 putting him in an arrears position (as of August 2021) of £1,759.04.

In July 2021 Mr C called Moneybarn to discuss exiting the agreement. Moneybarn explained to Mr C that he had three options, voluntary termination of the agreement, voluntary surrender of the car and settlement of the agreement.

In August 2021 Mr C took the decision to voluntarily terminate his agreement. After doing so Moneybarn sent him an invoice for £11,801.67. This was broken down as follows:

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| • 50% of the total sum repayable under the agreement | £15,931.67 |
| • advance payment made | (£4,000.00) |
| • other payments made | (£130.00) |
| • total repayable | £11,801.67 |

In March 2022 Mr C complained to Moneybarn about the sum it was seeking the recovery of from him.

In April 2022 Moneybarn issued Mr C with a final response letter ("FRL"). Under cover of this FRL Moneybarn said it stood by the sum it was seeking the recovery of from Mr C which, following a payment of £70.49 made by Mr C in January 2022, stood at £11,731.18 (£11,801.67 less £70.49).

In March 2022 Mr C offered Moneybarn, via a third party debt charity, £5.00 a month against the debt of £11,731.18.

In May 2022, and unhappy with Moneybarn's FRL, Mr C complained to our service.

Mr C's complaint was considered by one of our investigators who concluded that Mr C's complaint should be upheld, at least in part. In summary he said Moneybarn, because of misleading information it gave Mr C in July 2021 about his three exit options, should recalculate the sum due and owing from him as if he had voluntarily surrendered the car rather than voluntarily terminated the agreement.

He also said that Moneybarn should amend what it had recorded with one or more third party credit reference agencies to reflect voluntary surrender of the car rather than voluntary termination of the agreement and to pay Mr C £100.00 for the distress and inconvenience its management and administration of the agreement had caused.

Moneybarn accepted the investigator's conclusion and explained that had it treated the car as being voluntary surrendered, rather than the agreement being voluntary terminated, then the sum due and owing from Mr C (in August 2021) would have been £9,233.34 calculated as follows:

• 100% of the total sum repayable under the agreement	£31,863.34
• advance payment made	(£4,000.00)
• other payments made	(£130.00)
• proceeds from sale of car at auction	(£18,500.00)
• total repayable	£9,233.34

rather than £11,801.67.

On receipt of the above calculation from Moneybarn the investigator considered Mr C's complaint afresh. And after doing so he came to the conclusion that it would be fairer for Moneybarn to:

- write off the sum outstanding under the agreement
- retain the proceeds from the sale of the car
- retain the payments made by Mr C under the agreement up to and including August 2021
- refund to Mr C any payments he had made under the agreement after August 2021
- pay Mr C 8% simple yearly interest on the above refunds from the date each payment was made to the date of settlement
- pay Mr C £100 for the distress and inconvenience its management and administration of the agreement has caused
- ensure the agreement status recorded with third party credit reference agencies shows it as settled with nothing owing (backdated to August 2021)

The investigator concluded the above to be and fair reasonable because had Moneybarn been clearer in explaining the three exit options to Mr C (in July 2021) then on balance Mr C would have sold the car himself and settled the agreement in full, with nothing further to pay.

He also concluded the above to be fair and reasonable because it allowed Moneybarn a gross return under the agreement of £5,180.00 (£18,500.00 sale proceeds, plus £130.00 paid by Mr C less £13,450.00 capital sum originally advanced) and a net return of £3,669.15 (£18,500.00 sale proceeds, plus £130.00 paid by Mr C less £13,450.00 capital sum originally advanced less interest for the period April to August 2021 of £1,510.85).

Moneybarn didn't accept the investigator's second view, so Mr C's complaint has been passed to me for review and 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 can confirm that I've come to the same outcome as the investigator ultimately did and for the same reasons. There is also very little I can usefully add to what has already been said.

When Mr C called Moneybarn in July 2021 he had been in possession of the car for only a few months and was already in substantial arrears. Furthermore, Mr C made it clear in this call that due to a change in his personal circumstances he was in severe financial difficulties, in discussion with a third party debt charity and "*speaking to his GP*" about his mental health.

So, in my view, Moneybarn should have taken extra care when discussing with Mr C his various 'exit' options because it should have been clear to it that choosing the 'right' option would have been very important to Mr C.

Now I accept that it wasn't for Moneybarn to advise Mr C as to what option he should take. I also accept that Moneybarn wouldn't have known the exact amount Mr C would owe it if he voluntarily surrendered the car, or what he would owe it (if anything) if he sold the car himself and settled the agreement due to the uncertainty over the car's sale price (whether at auction or sold privately).

But I think that given the very short period of time Mr C had been in possession of the car, the miles he had added to the odometer, the substantial advance payment Mr C had made and what was happening to second-hand car prices Moneybarn could and should have done more to explain the advantages of selling the car privately (himself) and settling the agreement with the proceeds. I certainly don't think it should have agreed with Mr C when he said voluntary termination is the "*best*" and "*cheapest*" option then.

In my view had Moneybarn explained more clearly the three exit options available to Mr C he would have elected to sell the car privately and to settle the agreement with nothing further payable under it. And I think this is the position Moneybarn should now place Mr C in by writing off the sum recorded in its 'books' as being outstanding and due under the agreement and by refunding him all the payments he made (together with interest) after August 2021.

For the sake of completeness, I would add that I accept that by signing the agreement Mr C undertook not to "*sell or make any attempt to sell the [car] before [he had] made all the payments required under [it]*". But given the circumstances Mr C found himself in (which he openly shared with Moneybarn) and Moneybarn's various regulatory obligations (which the investigator made reference to in his second view) I'm satisfied that it would have been appropriate, fair and reasonable for Moneybarn to have allowed Mr C to have sold the car and to then settle the agreement, rather than the other way round.

I accept that when having regard to what is fair and reasonable in the circumstances I need to have regard to not just what's fair to the consumer but what's fair and reasonable to the business. But, in this case, I'm not persuaded that by finding what I have that I'm being unfair or unreasonable to Moneybarn. I say this because even after settling this complaint in full it's my view that Moneybarn will still have returned a profit from its decision to make the advance to Mr C that it did. I would also add that by treating the car as being voluntary surrendered, or the agreement as being voluntary terminated, results in a disproportionate benefit accruing to Moneybarn that is simply unfair and unreasonable.

Finally, and like the investigator, I think it's only fair that in the particular circumstances of this case that Moneybarn pay Mr C £100.00 for the distress and inconvenience its management and administration of the agreement has caused him and that it needs to amend anything that it has recorded with third party credit reference agencies to show the agreement as settled with nothing owing backdated to August 2021.

Putting things right

Given what I've said above, I'm satisfied that to fairly and reasonably compensate Mr C Moneybarn must:

- write off the sum recorded in its 'books' as being outstanding and due under the agreement
- refund to Mr C any payments he made under the agreement after August 2021
- pay Mr C 8% simple yearly interest on the above refunds from the date each payment was made to the date of settlement*
- pay Mr C £100 for the distress and inconvenience its management and administration of the agreement has caused
- ensure the agreement status recorded with third party credit reference agencies shows it as settled with nothing owing (backdated to August 2021)

**HMRC requires Moneybarn to take off tax from this interest. If Mr C asks for a certificate showing how much tax has been taken off this should be provided*

My final decision

My final decision is that Moneybarn No. 1 Limited must compensate Mr C in line with what I've said above under the heading "*Putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 May 2023.

Peter Cook
Ombudsman