

The complaint

Mr M is unhappy that Moneybarn No. 1 Limited trading as Moneybarn (Moneybarn) didn't allow him to keep a car he acquired under a conditional sale agreement, after he entered into a debt repayment plan.

What happened

In October 2021, Mr M entered into a conditional sale agreement with Moneybarn to acquire a used car first registered in January 2015. The cash price of the car was around £5,250. The total amount payable was approximately £9,721. There were 60 monthly payments, each around £165.

Mr M said that he entered into a debt repayment plan in September 2022. He said that this was a debt management plan to bring his finances in order and that it wasn't an insolvency or a bankruptcy arrangement. Mr M said that because of this Moneybarn have issued a default notice under the terms of the finance agreement. But, he said, that he kept up to date with his payments for the last year and that there would've been no problems with him making his payments towards this finance agreement. Mr M is also unhappy as he said that he wasn't given a chance to surrender the car before Moneybarn appointed repossession agents, which caused him to incur further charges. As he was unhappy about Moneybarn's actions, he raised a complaint with them and eventually referred his complaint to this service.

In October 2022 Moneybarn responded to Mr M's complaint. In summary, in this correspondence they said that they initially wrote to Mr M on 13 September 2022 after being notified that he had entered a Debt Payment Programme (DPP) with a debt charity. So, they said, that the letter they issued to him was a notice of default confirming that by entering into a debt arrangement Mr M had breached the terms of the finance agreement he had with them. They also explained that the act of applying for and obtaining a Debt Arrangement Scheme (DAS) is itself a breach of contract and a ground for them to be able to issue a default notice. So, they said, that under the terms and conditions of the agreement they can end the finance agreement when a customer makes a 'live arrangement' with their creditors.

Mr M was unhappy with Moneybarn's response, so he brought his complaint to this service.

Our investigator thought that Moneybarn acted fairly in terminating the agreement because when Mr M entered into a debt payment plan, he needed help with his finances. The investigator was of the opinion that the credit agreement was no longer affordable for Mr M at that time.

Mr M disagreed with the investigator.

As no agreement could be reached, the complaint has been passed to me to make a final decision.

After reviewing the case, I issued a provisional decision on 22 August 2023. In the provisional decision I said:

'What I've provisionally 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 the 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.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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

In summary, Mr M's main reason for his complaint is that Moneybarn didn't allow him to keep a car after he entered into a debt repayment plan with some of his creditors.

Moneybarn have said that under the terms and conditions of the finance agreement they can end the agreement because Mr M made a 'live arrangement' with his creditors, thus breaching a term of the contract. So, I've examined what the finance agreement stipulates regarding this aspect.

I can see that the agreement says that Moneybarn will be entitled to end the agreement if:

'8.1. If a bankruptcy petition is presented against you; if you petition for your own bankruptcy; or make a live arrangement with your creditors or call a meeting of them.

8.1.7 If in Scotland, you become insolvent or suffer sequestration or a receiver, judicial factor or trustee to be appointed over any of your estate or effects or suffer an arrestment, charge, attachment or other diligence to be issued or levied on any of your estate or effects or suffer any exercise or threatened exercise of a landlord's hypothec.'

I know that Mr M doesn't think this was fair because he said that he didn't enter into an insolvency or a bankruptcy arrangement. But, I think most likely, Mr M entering into an agreement with his creditors by applying for a DPP, in line with the Debt Arrangement Scheme (Scotland) Regulations 2011, would satisfy the above definitions. So, I think most likely Moneybarn was within their contractual right to end the agreement. Mr M also said that he was making all his payments towards the car finance agreement, and he doesn't think this would've changed in the near future. So I've considered if it was reasonable for Moneybarn to still exercise their contractual right to end the agreement in question considering this and the fact that he was not behind on his monthly payments.

I know that Moneybarn felt that Mr M being in the DAS legally prohibited them from enforcing monetary judgments. And, I could see how Moneybarn may have been worried about what might happen to Mr M's financial situation in the future as he needed to enter into a payment

arrangement in question, with most of his creditors. So overall, I don't think it would've been unreasonable for them to exercise their contractual right to end the agreement especially as Mr M did breach a term of the contract by entering into the DAS.

Mr M has said that the communication he had with Moneybarn wasn't compassionate to his situation as they have refused to follow reasoning – he said specifically they wouldn't entertain any communication from him or any discussion. He also told our service that Moneybarn did not allow him to hand the car over himself and that he wasn't provided enough time to make alternative arrangements. Mr M told our service that he received the Termination Notice letter dated 12 October 2022 on Friday (14 October 2022). He said this letter outlined options open to him but as the Moneybarn customer service doesn't take calls on weekends he had to wait until following Monday to make contact with them. However on that Monday, he said, he already received an email from Moneybarn saying they already appointed a repossession agent.

I've considered all of the above, but I believe that Mr M did have enough time. I can see that on several occasions Moneybarn explained what his options were. Some of this was during the calls they had with him in September 2022, and in letters they sent to him. I can see that Moneybarn's sent Mr M default notices on 13 and 21 September 2022. Also on 29 September 2022, Moneybarn emailed Mr M and explained that the Default Notice expires on 11/10/2022 so they will look to terminate the agreement and then seek to recover the car. Here they once again explained that his options were to either settle the agreement in full by paying £5,072.32 by 11/10/2022 or by voluntarily surrendering the car. And they explained that failure to choose either option will result in them appointing collection agents once the agreement is terminated, which may involve agent fees and recovery fees. This same message was explained in the default notices sent to him, and the default notice from 21 September 2022 indicated that his agreement would be terminated on or after 11 October 2022 if Mr M chooses not to pay it off. So overall, I think he was aware of his options and Moneybarn provided him enough notice before they repossessed the car.

Overall, I sympathise with Mr M for the difficulties that he is experiencing but taking all the circumstances of the complaint into account, I don't think Moneybarn needs to take any further action in relation to this complaint.

My provisional decision

For the reasons given above I intend to not uphold this complaint.'

I asked both parties to provide me with any additional comments or information they would like me to consider by 5 September 2023.

Moneybarn responded and said they have nothing further to add.

Mr M didn't respond.

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 and considering neither Mr M nor Moneybarn had any further comments to make I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

For the reasons given above and in my provisional decision I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 October 2023.

Mike Kozbial
Ombudsman