

The complaint

Mrs W is unhappy that Moneybarn No.1 Limited terminated a conditional sale agreement she had with them, and that they are now looking to repossess the car they supplied to her under that agreement.

What happened

In June 2020, Mrs W was supplied with a used car through a conditional sale agreement with Moneybarn. She paid an advance payment of £1,600 and the agreement was for £11,180 over 60 months; with monthly payments of £366.53. At the time of supply, the car was around six years old, and had done 30,736 miles (according to the MOT record for 2 July 2020).

Mrs W contacted Moneybarn in November 2020 as her income had been affected by the Coronavirus (Covid-19) pandemic. She said she would be working reduced hours until January 2021 and asked for a two-month payment deferral, which Moneybarn provided.

While Mrs W paid the January 2021 payment, she missed the one for February 2021. She contacted Moneybarn to explain her income was still being affected as a result of the pandemic, and Moneybarn agreed to a further three-month payment deferral. When this second deferral period ended, Mrs W didn't resume payments and she didn't respond to Moneybarn's attempts to contact her. In August 2021, Moneybarn sent a Notice of Default.

Mrs W contacted Moneybarn in September 2021, letting them know that she'd been in touch with a debt charity about her financial circumstances. Moneybarn initially agreed to two months breathing space. Between the end of this breathing space, and February 2023, Moneybarn attempted to agree a sustainable repayment plan with Mrs W. A number of payment plans were agreed, each following an assessment of Mrs W's income and expenditure, but Mrs W was unable to maintain them.

Moneybarn sent a further default notice to Mrs W in June 2023, advising her that she was £5,547.13 in arrears and, if she didn't do something to remedy the situation, they would look to terminate the agreement and repossess the car.

On 27 June 2023, Mrs W asked Moneybarn to set up a further payment plan, as she was expecting some money that would allow her to clear the arrears. She also asked that, if she were to pay a lump sum of £3,000 towards the arrears, would this be enough to stop the termination. However, because five payment plans had failed in the last 12-months, and because Mrs W was around 15-months in arrears, with around two-years remaining on the original term of the agreement, Moneybarn weren't prepared to enter into another arrangement with Mrs W, and they terminated the agreement on 14 July 2023.

On 21 July 2023, Moneybarn offered Mrs W the option to keep the car by way of a Suspended Return of Goods Order – a court ordered payment plan based on Mrs W's income and expenditure. They also advised her that the failure to maintain payments under such an order would result in the car being repossessed.

Following this, Mrs W brought matters to the Financial Ombudsman Service for investigation, and Moneybarn put any action on hold.

Our investigator thought Moneybarn had acted in line with the guidance issued by the Financial Conduct Authority ('FCA') for both customers whose income was affected by Covid-19, and customers who were in financial difficulties. He said that Moneybarn had tried to work with Mrs W to resolve matters, and allow her to keep possession of the car, but they also had an obligation to ensure Mrs W wasn't left in a position with increasing arrears that she wasn't able to pay. So, the investigator said that, in the circumstances, Moneybarn acted reasonably by terminating the agreement and offering Mrs W the option of a court ordered Suspended Return of Goods Order.

Mrs W didn't agree with the investigator. She thought she'd been treated "*extremely unfairly*" and they refused to accept her repayment of the arrears. She thought they didn't want her to keep the car, and the loss of the car would put her income and home at risk.

Although they agreed with the investigator, Moneybarn thought they shouldn't have kept agreeing payment plans with Mrs W, when she was unable to comply with these, and that they could've acted sooner when terminating the agreement. Because of this they paid Mrs W £350 compensation (which they offset against her arrears). Mrs W thought this was an admission of guilt and they'd been allowed to get away with preying on customers.

Because Mrs W didn't agree, this matter has been passed to me to make a final 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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

It's not disputed that Mrs W's financial problems were initially caused by a reduction of hours at work resulting from the Covid-19 pandemic. However, Mrs W has explained that she's suffered further problems since this, including the loss of a loved one. And this left her in the position where she was unable to keep up with agreed payment plans and, at the point of termination, was unable to clear the arrears balance in full.

While I appreciate the position Mrs W found herself in, I also need to consider what I'd reasonably expect Moneybarn to do. With regards to the initial issue with Mrs W's hours being reduced due to Covid-19, the FCA had issued temporary guidance for firms in April and July 2020. This allowed them to grant up to a six-month payment deferral (otherwise known as a payment holiday) without the need to assess any income and expenditure. And this is what Moneybarn did. As such, I'm satisfied they acted reasonably and in line with guidance when initially dealing with Mrs W's financial difficulties.

The other relevant guidance is in the FCA's Consumer Credit Sourcebook ('CONC'), specifically CONC 7.3 – the treatment of customers in default or arrears. This is wide ranging guidance, which I won't repeat in full here. However, in summary, this requires firms to treat customers with forbearance and due consideration, allowing them time and space to bring things back up to date. However, it also requires firms to be mindful of not allowing the level of debt, and associated interest and charges, to rise whereby it puts customers in an unsustainable position and itself causes financial difficulties.

Moneybarn allowed Mrs W breathing space and tried to work with her to put a sustainable repayment plan in place to clear the arrears. And, when Mrs W was unable to keep up to date with the agreed payment plans, due to circumstances outside of her control, Moneybarn reset the situation, and put further plans in place. In doing so, I'm satisfied they acted reasonably, treating Mrs W with forbearance and due consideration.

But the FCA's guidance also requires Moneybarn not to allow the situation to get out of hand, whereby Mrs W is put in an unsustainable position. At the point they looked to terminate the agreement, Mrs W was over 12-months in arrears, and hadn't been able to maintain any form of regular payments for a substantial period of time. As such, it was reasonable for Moneybarn to conclude that, with less than half of the term of the original agreement remaining, it wouldn't be reasonable to expect Mrs W to be able to clear the arrears within the remaining term, especially as interest was being charged on the outstanding balance (something that would stop once the agreement was terminated). So, I don't think Moneybarn acted unreasonably by terminating the agreement when they did.

I appreciate that Mrs W offered to repay some of the arrears by lump sum, but this would still have left her having to increase her payments to Moneybarn to be able to clear the arrears within the original term. And there was no evidence that she was financially able to do this. So, again, I don't think Moneybarn acted unreasonably by continuing with the termination.

Moneybarn have subsequently said they shouldn't have let the situation go on for as long as it did, and they believe they should've terminated the agreement sooner. While this may be the case, it doesn't mean that Moneybarn did anything wrong by terminating the agreement, and had they acted sooner Mrs W would still have found herself in the same position – the agreement terminated and having the option of a Suspended Return of Goods Order if she wanted to keep the car.

Mrs W has explained that she needs to keep the car, and the Suspended Return of Goods Order allows her to do this. While I appreciate her reluctance to go down this route, as it may be unaffordable for her, this is something that would be put in place by the courts, not Moneybarn. And Mrs W would have the opportunity to present her income and expenditure to the courts. As such, if the courts were to grant such an order, they would also set payments at a level that was deemed to be affordable for Mrs W. Given this, I also don't think Moneybarn have done anything wrong by making this offer.

As such, for the reasons stated, and while I appreciate this will come as a disappointment to Mrs W, I'm satisfied that Moneybarn have acted fairly, reasonably, and in line with the FCA guidance. And I won't be asking them to do anything more.

My final decision

For the reasons explained, I don't uphold Mrs W's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 March 2024.

Andrew Burford
Ombudsman