

The complaint

Mr A is unhappy with how Moneybarn No.1 Limited terminated a conditional sale agreement he had with them.

Mr A has been represented during the claim and complaint process by Mrs A. For ease of reference, I will refer to any comments made, or any action taken, by either Mr A or Mrs A as “Mr A” throughout the decision.

What happened

In November 2019, Mr A was supplied with a used car through a conditional sale agreement with Moneybarn. He paid an advance payment of £151.39, and the agreement was for £17,848.61 over 57 months; with 56 monthly payments of £621.99.

Mr A's income was affected by the coronavirus (Covid-19) pandemic and, in May 2020, Moneybarn agreed a three-month payment deferral, otherwise known as a payment holiday. However, Mr A wasn't able to resume full payments and his account went into arrears. This resulted in a default notice being issued in January 2021.

A number of different payment arrangements were set up, but these failed as Mr A wasn't able to maintain the agreed payments. And this resulted in further default notices being sent in May 2021, July 2021, and December 2022.

Mr A spoke to Moneybarn in January 2023 about a new payment arrangement, but Moneybarn said he needed to supply proof the car had a valid MOT before anything could be arranged. On 6 February 2023, another default notice was issued, alongside a termination notice. And Mr A was given until 15 February to provide proof of the MOT, complete an income and expenditure form, and make a payment towards the arrears.

The MOT took place on 11 February 2023 (although proof wasn't sent to Moneybarn) and, on 14 February 2023, Mr A contacted Moneybarn to explain he'd been ill following an accident. He explained he was unhappy with the termination notice, but Moneybarn said their position remained the same.

Moneybarn terminated the agreement on 20 February 2023 and advised Mr A what they'd done. In response, Mr A provided them with a copy of the MOT certificate and a completed income and expenditure form. However, Moneybarn didn't rescind the termination. The car remains in Mr A's possession and it's my understanding that he continues to use the car but hasn't made any payments since the termination came into effect. As the car has not been returned, I understand that Moneybarn have continued to charge interest on the outstanding balance, meaning the amount owed by Mr A continues to increase.

Mr A complained that they'd terminated the agreement while he was ill, and unable to comply with their request for information. Moneybarn didn't uphold the complaint, so he brought it to the Financial Ombudsman Service for investigation.

Our investigator thought that Moneybarn had acted reasonably. She said there was a history of missed payments on the account and, at the point the agreement was terminated, Mr A was £5,747.43 in arrears. She also said that the guidelines set down by the regulator, the Financial Conduct Authority (FCA), had been followed, and terminating the agreement stopped Mr A's financial situation becoming worse.

With regards to the timing of the termination the investigator said that, although Moneybarn had incorrectly indicated in a call in January 2023 that the arrears could be added to the end of the agreement; they'd made it clear in February 2023 what Mr A needed to do to avoid termination, and when this needed to be done by.

The investigator also said that, as Mr A was being represented in his complaint, it was reasonable for Mrs A to be able to provide Moneybarn with a copy of the MOT certificate, and details of the income and expenditure, before the deadline set by Moneybarn. So, she didn't think Moneybarn needed to do anything more.

Mr A didn't agree with the investigator. He said that he hadn't missed a payment in months when the agreement was terminated and was able to increase payments from £200 to £800. He said the MOT was done late due to a national shortage of MOT slots, and this was the first available appointment. He didn't think it was acceptable that Moneybarn couldn't provide a copy of the call in January 2023, where he was told the arrears could be added to the end of the agreement, and he considered it was "*critical*" that we listened to this call.

Mr A also said that Moneybarn showed no interest in terminating the agreement until they were out of a negative equity situation, and that he should be allowed the opportunity to clear the arrears over the remaining 18-months of the agreement.

Mr A asked for an ombudsman to make a final decision, but he also contacted Moneybarn to say he would like to take this matter to court. As such, Moneybarn have started possession proceedings. We have asked for these proceedings to be stayed in order for this decision to be made.

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. Mr A 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.

The basic facts of this case aren't disputed – Mr A fell into financial difficulties due to Covid-19, which resulted in his agreement with Moneybarn going into arrears. Various payments arrangements were made, and most of these failed because Mr A wasn't able to maintain the agreed payments. However, the arrangement made in October 2022 was maintained. As with all such arrangements, they don't run indefinitely, and Moneybarn have an obligation to

review Mr A's financial circumstances on a regular basis to ensure that any payment arrangement is sustainable and doesn't cause any additional financial distress.

In addition to this, the FCA's guidelines require Moneybarn to treat customers in financial difficulties with forbearance and due consideration, as well as allowing them to terminate an agreement when doing so will mitigate further adverse consequences for their customer. At the point of termination, Mr A was more than 9-months in arrears on an agreement that had around 18-months remaining on the original term.

When the last payment arrangement was set up, it was agreed that it would be reviewed in December 2022. This was the point Mr A said that his childcare financial commitment would be reduced, and he would be in a position to increase payments. Given this, I'm satisfied that December 2022 was a reasonable review point. Mr A was required to contact Moneybarn in December 2022 but didn't do so. As such, another default notice was issued.

This default notice prompted a call from Mr A, which took place on 22 December 2022. I've listened to this call and Mr A asked if the payment arrangement could continue, as the childcare payments didn't change until February 2023. Moneybarn said they would need to review the income and expenditure, and Mr A provided this information. However, as Mr A had only maintained two consecutive payments, and as the money Mr A was able to pay towards the arrears wouldn't clear the arrears balance within the remaining term of the agreement, Moneybarn couldn't renew the payment plan. And a 30-day hold on the account was agreed.

Mr A contacted Moneybarn again on 23 January 2023. Moneybarn haven't been able to provide a copy of this call, and Mr A doesn't think it's fair for a decision to be made without listening to this call. He says this because he was told on this call that he would be able to add the arrears to the end of the agreement. And he thinks it's critical that we hear this. However, Moneybarn don't dispute this was the case, and they acknowledge telling Mr A this. Therefore, as this key piece of information isn't disputed, I'm satisfied I'm able to make a decision without listening to this call.

I also don't consider it reasonable for Mr A to rely solely on the information within this call about the arrears being added to the end of the agreement. I say this because, in the call of 22 December 2022, it was explained that renewal of the existing payment arrangement would result in the arrears not being paid before the end of the agreement, which wasn't something Moneybarn could do – something Mr A acknowledged on this call. Also, calls and correspondence after the call of 23 January 2023 made the deadline for Mr A providing information clear, otherwise the agreement would be terminated. And any ability to add the arrears to the end of the agreement doesn't affect the fact that Mr A was still required to provide documentation, or that the agreement can still be terminated.

What also isn't disputed is that, on this call, Mr A was told that a new payment plan couldn't be arranged as the car no longer had a valid MOT certificate. With regards to the MOT itself, I've noted Mr A's comments about the difficulties of obtaining an MOT in early 2023. However, I've also looked at the MOT history for the car. When the car was supplied to Mr A, it had an MOT that expired on 4 September 2020. However, the next MOT wasn't done until 17 November 2020. It's my understanding that the rules put in place due to the national lockdowns during 2020 allowed for MOTs to be extended in certain circumstances.

The next MOT was due by 17 November 2021, but this wasn't done until 18 January 2022, some two months late. So, the MOT that's relevant to this complaint needed to be done by no later than 18 January 2023, and could be done anytime after 18 December 2022 while still preserving the original MOT date. So, when Mr A spoke to Moneybarn on 23 January

2023, and was advised that he would need to provide an MOT certificate when making a new payment arrangement, this document should already have been available.

Mr A has said there was a shortage of MOT slots, which caused the delay in the MOT being done. However, I think it highly unlikely that, knowing that the MOT expired on 18 January 2023, and that it's a legal requirement to have an MOT on a car of this age, that Mr A wasn't able to find any MOT test centre who were able to do an MOT before 11 February 2023.

I've also noted that, under the terms he agreed with Moneybarn, Mr A had an obligation to maintain the car in good working order and condition. Which would include ensuring it always had a valid MOT certificate. So, the failure to ensure the car met this legal requirement (as was the case between 17 November 2021 and 18 January 2022) could be considered a breach of the agreement, which itself would allow Moneybarn to terminate the agreement, regardless of any arrears or other arrangements that may be in place.

Moneybarn's case notes show they put matters on hold until 3 February 2023, to allow Mr A to provide the MOT certificate and a new income and expenditure document. When this wasn't provided, they issued a termination notice on 6 February 2023. Mr A contacted them following this and an extension to provide the MOT and income and expenditure was given to 15 February 2023.

Mr A contacted Moneybarn again on 14 February 2023, to appeal against the termination of the agreement. At this stage the MOT had been done, so the certificate could've been provided. What's more, the income and expenditure document could also have been provided – Mr A did this during the call on 22 December 2022, so he would've known it was something that could be done during a conversation with Moneybarn.

I've noted Mr A's comments about him being ill following an accident around this time, so he was unable to provide the documents. However, I'm not satisfied this was the case. For the reasons already given, I'm not satisfied that the MOT due by no later than 18 January 2023 (and where you'd reasonably expect Mr A to have booked a test ahead of the MOT expiring) couldn't be done at any MOT test station (and an internet search shows more than 30 MOT test centres local to Mr A's postcode area) before 11 February 2023.

I'm also not satisfied that Mrs A couldn't have provided Moneybarn with the MOT certificate, and updated them with the income and expenditure details, within the timeframe allowed. Especially as during this time she was able to contact Moneybarn to complain about the agreement being terminated.

As such, given the above, I'm satisfied that it wasn't unreasonable for Moneybarn to terminate the agreement when they did, and I don't think they acted outside of the FCA's guidelines for dealing with customers in financial difficulties. So, I won't be asking them to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 December 2023.

Andrew Burford
Ombudsman