

## The complaint

Miss S is unhappy that Moneybarn No.1 Limited repossessed a car they'd supplied to her under a conditional sale agreement while she was making the agreed payments. She's also unhappy that they failed to take her dyslexia into consideration when they disposed of her personal belongings that were in the car.

Miss S has been represented during the claim and complaint process by Ms S. For ease of reference, I will refer to any comments made, or any action taken, by either Miss S or Ms S as "Miss S" throughout the decision.

## What happened

In August 2019, Miss S was supplied with a used car through a conditional sale agreement with Moneybarn. She paid an advance payment of £400, and the agreement was for £6,188 over 57 months; with monthly payments of £249.56.

Miss S fell into financial difficulties and struggled to make the payments to Moneybarn. In November 2021, Moneybarn obtained a court order for the outstanding amount on the agreement, plus costs. In February 2022, Moneybarn obtained an Attachment of Earnings Order, to allow them to directly deduct an agreed £80 a month from Miss S's income.

Moneybarn say they that Miss S's employer failed to comply with the order. As a result, in April 2022, they took action against the employer.

On 27 January 2023, Moneybarn received notification that the registered keeper of the car supplied had changed from Miss S to a third party, which was a breach of the terms of the agreement Miss S had signed. As such, on 15 March 2023, Moneybarn repossessed the car.

On 20 March 2023, Moneybarn emailed Miss S to advise her there were some of her personal belongings in the car. It's my understanding this was her driving licence and passport. Moneybarn asked her to contact the company where the car was currently stored to arrange collection of her belongings. The email also said, *"the belongings will be available until 27<sup>th</sup> March 2023, after this date the possessions will be disposed of."* Miss S didn't make any arrangements to collect her belongings, and, on 11 April 2023, she was advised these had been destroyed.

Miss S complained to Moneybarn about what'd happened on 11 April 2023. In her complaint she said she had difficulties with reading and writing, so was unable to read and action the email of 20 March 2023, in sufficient time to be able to collect her belongings. Moneybarn replied, saying they believed Miss S had been given sufficient opportunity to collect her belongings. Miss S wasn't happy with this response, so she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said it's reasonable to expect that, if Miss S was unable to read Moneybarn's email, she could've contacted them to ask what it was about, or to have arranged for someone to help explain the contents of the email. The investigator also said

she would've expected Miss S to have asked Moneybarn not to communicate important information in writing, and there was nothing to show she did. Because of this, the investigator didn't think Moneybarn had done anything wrong.

Miss S wasn't happy with the investigator's view and thought we were *"using my mental health and disabilities against me."* The investigator received further information about the court and repossession process, but this didn't change her mind that Moneybarn had acted reasonably. Miss S still wasn't happy and said she had continued to pay the agreed £80 a month to Moneybarn, but they'd still repossessed the car.

Because Miss S 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. Miss S 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.

I've reviewed Moneybarn's case notes, which date back to 20 April 2019, when they received Miss S's application for finance. There's nothing on these notes that shows Miss S had difficulties with reading and writing, or anything asking that any contact be either by phone or through a representative. What's more, I haven't seen anything else that shows me Miss S advised Moneybarn of her additional needs until her complaint on 11 April 2023.

I wouldn't have expected Miss S to have advised Moneybarn of her additional needs at the outset of the agreement, as it's reasonable for her to have expected things to have run smoothly. So, making Moneybarn aware of her difficulties shouldn't have been necessary. However, I've seen that Miss S raised a complaint in September 2019 about the quality of the car; she raised a complaint in October 2019 about potentially being mis-sold the agreement; she discussed an insurance claim in January 2020; and she started to have discussions about her financial difficulties from December 2019 onwards. During all these processes, Moneybarn regularly corresponded with Miss S in writing.

Given this, if Miss S was having difficulties with written correspondence, I'm satisfied she had reasonable opportunity to raise this with Moneybarn from 2019 onwards. But, because she didn't do this until April 2023, I can't say that Moneybarn did anything wrong by advising Miss S in writing in March 2023 that she needed to collect her belongings – it's not fair or reasonable to expect Moneybarn to have acted on information they were unaware of at the time.

What's more, Moneybarn's case notes clearly state that, when the repossession agent came to collect the car, Ms S was present and provided them with evidence she'd been paying the agreed £80 a month. While the repossession went ahead, as Ms S was present at the time, she would've been able to remove her belongings from the car at that point.

Given all the above, I'm satisfied Miss S had the opportunity to remove her belongings from the car at the point of repossession, and that Moneybarn made her reasonably aware when the possessions needed to be collected by, and what would happen if they weren't. What's more, Moneybarn contacted Miss S in the way they'd been corresponding with her since 2019, and in line with the correspondence requirements they had at the time. As such, I don't think that Moneybarn did anything wrong.

Turning to the repossession, I've seen the statement for Miss S's account. The Attachment of Earnings Order came into force on 11 February 2022, but no payments were made until 25 May 2022. The first payment was for £160 (presumably the April and May 2022 payments), and then the agreed £80 a month continued until the car was repossessed. Based on this, I'm satisfied that the payments due in both February and March 2022 weren't paid, and the Attachment of Earnings Order was in arrears.

However, from what I've seen on Moneybarn's case notes, it looks like the repossession took place because Miss S had breached the terms of the agreement and registered a change of keeper, not because the agreed £80 a month payments weren't being made.

I've also seen a copy of the court order dated 1 November 2021. This says, *"if you ignore this order your goods may be removed and sold, or other enforcement proceedings may be taken against you."* The Financial Ombudsman Service is an alternative to the courts, and we don't have the power to overturn a court order. As the court order says that Moneybarn may repossess the goods, if Miss S believes the repossession wasn't done correctly and in line with the court order, this is a matter she will need to raise with the courts. It's not something we have the power to deal with. So, I won't comment on this point any further.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 January 2024.

Andrew Burford  
**Ombudsman**