

The complaint

Ms B complains that Moneybarn No. 1 Limited failed to support her when she fell into financial difficulty.

What happened

In October 2021 Ms B entered into a regulated conditional sale agreement to finance her purchase of a used car. The amount of credit was £4,809, the total amount payable was £9,010:48, and the agreement was to last for five years. She was to make monthly payments of £152:72, which she made by direct debit. (She says she couldn't really afford this, but her complaint about Moneybarn's decision to give her credit is the subject of a separate complaint, so I won't deal with it here.)

By September 2022, four of her direct debits had bounced. Ms B asked Moneybarn about her options for returning the car and ending the agreement, on the ground that she was struggling to make her payments. She says she was advised to sell the car instead of handing it back, but she was unable to sell it at a suitable price. In October she was served with a repossession notice. At this point she complained. Meanwhile she returned the car and entered into a formal "breathing space" arrangement, but she says that during that period Moneybarn continued to write to her to demand full repayment of the loan (minus the proceeds of the sale of the car).

Moneybarn did not uphold Ms B's complaint. It told her it had sent her a default notice in June 2023, and it had discussed her options with her on the phone and in an email. Her disposable income had been too small to afford a repayment plan, so they had suggested that she exit the agreement and return the car so as to minimise her liability. But she had said that she needed the car and did not want to give it back. The deadline in the default notice (which Moneybarn had extended) then expired, with no arrangement in place or payment made to reduce the arrears, and so Moneybarn had terminated the agreement in July. Moneybarn did not agree that it had done anything wrong.

Being dissatisfied with that response, Ms B brought this complaint to our service. She says that Moneybarn did nothing to help her, and she feels traumatised by what has happened.

Our investigator did not uphold this complaint. She said that Ms B had not accepted Moneybarn's offer to let her exit the agreement until after Moneybarn had terminated it following the expiry of the default notice deadline. She said Moneybarn had warned Ms B that that could happen. Moneybarn had put the account on hold for a while to give Ms B time to think about what to do. So the investigator concluded that Moneybarn had been entitled to terminate the agreement, and had done so correctly.

Ms B did not accept that decision. She argued that she had asked to return the car many times, but had been talked out of it. Had she returned it, she would only have owed Moneybarn around £800 (taking into account the proceeds of the sale of the car), which she was willing to agree to a payment plan for. She asked the investigator to reconsider.

The investigator did not change her mind. She said there was no evidence to show that Ms B had phoned Moneybarn earlier than February 2023. If Ms B had struggled to reach them by phone, then she had known that she could email them instead. By the time she had asked Moneybarn to let her hand back the car in July 2023, it was no longer possible because Moneybarn had already terminated the agreement. The investigator had listened to all of the available call recordings, but although Ms B had asked about the exit options available to her, she had never asked to implement one or to return the car. And the call handlers had never prevented her from returning the car.

Ms B asked for an ombudsman to consider her case. She pointed out that she had returned the car in perfect condition, and that she had been trying her best in difficult personal circumstances.

I wrote a provisional decision, which read as follows (I have made one small edit).

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.

Having done so, I am minded to uphold it in part.

Exiting the agreement

Ms B's options for exiting the agreement were as follows.

Voluntary termination is a statutory right under sections 99 and 100 of the Consumer Credit Act 1974. In summary, when this right is exercised, the consumer gives the car back to the lender, and then her liability under the agreement is reduced to half of the total amount originally repayable. Under voluntary termination, Moneybarn is entitled to keep the proceeds of the sale when the car is sold on, without using them to reduce the amount Ms B owes. But taking into account the payments which Ms B had already made, her outstanding liability would have been £2,366:60 if she had chosen this option.

An alternative is *voluntary surrender*, which is when the car is sold (by the lender) and the proceeds of the sale are used to reduce the outstanding balance. After Moneybarn terminated the agreement itself and repossessed the car, the car was sold at auction for £3,200; this left Ms B still owing £3,935:84.

So voluntary surrender would not have helped Ms B very much, but voluntary termination would have been a good option for her. However, neither of these options would reduce her liability to £800; she appears to have arrived at this figure by combining both options, but they are mutually exclusive (and I also think her calculations were off by about £700).

Selling the car herself was never an available option, because she didn't own it. I was rather surprised to learn that when Ms B told Moneybarn on the phone that she was trying to sell the car herself, the call handler did not remind her that she was not entitled to do that. That was certainly a failure to give her the correct advice. However, since she did not manage to find someone to buy it at a price that was acceptable to her, she did not sell the car.

In the same phone call, which was in May 2023, the call handler told Ms B that if she chose to voluntarily terminate the agreement, then the amount she would have to pay would be reduced to £2,366:60. (This was the same amount as had been provided to her earlier in writing.) Ms B replied to say that she did not think that was the right option for her, so she would keep on trying to sell the car.

I have therefore thought about whether the lender's failure to tell Ms B that selling the car herself was simply not an option made any difference to how things turned out. If I was satisfied that she would have returned the car to Moneybarn but for her attempts to keep selling it herself – because Moneybarn had allowed her to think she could do that – then I could uphold this complaint.

In June 2023 the default notice was sent to Ms B, and this warned her about what would happen if she did not take action by the deadline in the notice. She phoned Moneybarn twice to discuss her options, and on the first of those June calls the deadline was extended by a week, to 5 July. During that call, the call handler told her that she had three options, and she explained what they were: (1) voluntary termination, (2) voluntary surrender and a repayment plan for the outstanding balance (this was called "Moneybarn handback"), and (3) sell the car herself to a dealer, who would then settle the agreement on her behalf, but only if she could sell the car for £4,929:56 (this was called "early settlement", and would involve a reduction of the interest owed under the agreement, and the balance being paid off in full). Since the car was ultimately sold for only £3,200, I don't think that this option was realistic – and Ms B said in this call that none of the dealers she had spoken to had offered her anything close to the settlement figure – but also, as I've said, Ms B did not own the car yet, so she was not entitled to sell it.

In the terms and conditions of the agreement, clause 4 says:

"Title in the goods, (ownership) will only pass to you when you have paid the Total Amount Payable along with any other sums due under the terms of this Agreement."

Clause 3 deals with early settlement, but it does not authorise the customer to sell the vehicle to raise the necessary funds.

So of the three options offered, only one of them – voluntary termination – was really viable. But the outcome of the first June call was that Ms B ruled out voluntary surrender, and said that she would choose between the other two options, and that she would continue to speak to dealers to see if she could sell the car, as that was her preferred option. But she didn't rule out voluntary termination, since she was expecting to receive a pension pay-out which would be enough to pay back the £2,366:60. The call handler gave her a few extra days to think about it, but also warned her that if she did not make a decision by then, then Moneybarn would terminate the agreement. I have listened to the call recording, and Ms B appears to have understood that, and she said she would call back before the deadline.

The next call was made shortly before the deadline. Ms B said she needed to know more before she made up her mind what to do. Her options were discussed, and an income and expenditure assessment was carried out, but the call ended without Ms B choosing what she wanted to do. And after that, she did not get in touch with Moneybarn again until 29 July, which was two weeks after the extended deadline had expired. By then, of course, it was too late for Ms B to ask for either voluntary termination or voluntary surrender.

I'm entirely satisfied that Moneybarn was entitled to terminate the agreement itself after 5 July. It had followed the necessary procedural steps, and it had given Ms B enough time to decide what to do, and she had failed to make a decision in time.

But nevertheless, I do not believe that she would have failed to choose voluntary termination if she had not been led to believe that there was a suitable alternative, when there wasn't. She had ruled out voluntary surrender, and was torn between voluntary termination and selling the car herself. I am satisfied that if she had known that selling the car herself was not

allowed under a conditional sale agreement, then she would have chosen voluntary termination, and I'm satisfied that she would have done so well before the deadline – possibly as early as May 2023, but certainly before July.

If that had happened, then Moneybarn would not have terminated the agreement and defaulted the account.

I think that a fair remedy would be to require Moneybarn to treat the agreement as if it had been voluntarily terminated in June 2023, and to reduce Ms B's liability to £2,366:60, and amend her credit file accordingly. But I will reconsider this in the light of any further submissions I may receive from the parties.

Breathing space

I now turn to Ms B's complaint about the correspondence she received from Moneybarn during the breathing space period.

The email Moneybarn sent Ms B about her breathing space period included the following text explaining that it might still correspond with her during that period:

"If you do receive a communication that references any arrears covered by your breathing space period, please be assured that we will not look to collect those arrears until after your breathing space has ended.

Important - we may still need to send you some communications during your breathing space period – for example we must send you statutory documents (documents which are regulated by law) such as a Notice of Sums in Arrears (NOSIA), or your annual statement. Those statutory documents may ask you to get in touch with us or take action to address your arrears, but please note you don't need to do that during your breathing space period."

So Moneybarn did warn her that the breathing space did not mean that she would never hear from them during that period. But it also told her that she would not have to do anything in response to correspondence during that period, so there was no need for her to worry about Moneybarn's letters in the breathing space. So I don't think that Moneybarn acted unreasonably, and I do not uphold Ms B's complaint about that issue.

My provisional decision

So I am currently minded to uphold this complaint in part, and to require Moneybarn No. 1 Limited to reduce Ms B's liability under the agreement to £2,366:60, to pay her £150 for her anxiety, and to report her account to the credit reference agencies as if it had been voluntarily terminated on 16 June 2023.

Responses to my provisional decision

Ms B accepted my provisional decision. However, in light of the fact that the car had still been in good condition when it was sold, she asked if her liability could be reduced to her arrears (£764), rather than to the voluntary termination figure I had proposed.

Moneybarn said it had not misadvised Ms B about the early settlement option. It explained that although Ms B could not afford to pay the early settlement figure herself and retain the car (nor could she sell it and keep the proceeds), she was nevertheless still allowed to approach a dealership and ask them to pay Moneybarn the full settlement figure and then

take ownership of the vehicle. In other words, the dealership would buy the car directly from Moneybarn, albeit at the instigation of Ms B. Ms B would then owe the dealership (not Moneybarn) the difference between the settlement figure and what the dealership had valued the car at.

(Moneybarn also said that the settlement figure was actually £4,740:76, rather than the figure of £4,929:56 which I had given in my provisional decision. But the early settlement figure changes over time. £4,740:76 was the figure in April 2023, according to an exit option letter which Moneybarn sent to Ms B in that month. In May it was £4,838:31. And in the June exit option letter – and in one of the phone calls made in June – that figure had increased to £4,929:56.)

My findings

I accept Moneybarn's explanation of how early settlement works, and that it is not a contravention of the conditional sale agreement. So that option was open to Ms B after all.

As the car was sold for £3,200, I will assume that that is what a dealership would have valued the car at if Ms B had chosen early settlement and gone through with it. Taking the June early settlement figure of £4,929:56, that would have left Ms B with a shortfall of only £1,729:56 to pay to the dealership. That would have left her £637 better off than voluntary termination would have done.

An FCA regulation says that Moneybarn:

“...must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.”

I have therefore reconsidered the evidence to decide whether Ms B understood how early settlement worked and whether Moneybarn properly explained it to her.

I have read the exit option letters, and they do not explain that there is a version of early settlement in which a dealership buys the car from Moneybarn. In those letters, early settlement only entails Ms B becoming the owner of the car. She couldn't afford to do that.

I have listened again to the three phone calls in May and June 2023 to see if the early settlement option was explained clearly enough to Ms B so that she could understand that she did not need to find a dealership that was willing to pay her the whole early settlement figure for the car.

In the May call, Ms B said that when she had tried to sell the car to dealerships, “I'm not getting close to the early settlement figure that you guys have given me, so ... I don't know what to do right now, I feel a little bit trapped.” The call handler said she understood, and agreed to put her account on hold for a week to give Ms B longer to consider her options. She said the early settlement figure at that time was £4,801:50. They then discussed voluntary termination. At no point did this call handler explain that Ms B did not need to find a dealer who was willing to pay as much as £4,801:50 for the car.

In the first June call, Ms B said that she was struggling to pay for the car and was looking for solutions. She had approached independent companies, but what they were willing to pay for the car was less than she owed to Moneybarn. She asked for advice about what to do. The call handler told Ms B that it was for her to decide which exit option to choose, but the most cost-effective solution would be to return the vehicle to Moneybarn and end the agreement. She then discussed each of the available exit options. I have already

summarised this part of the call in my provisional findings, but I will describe the early settlement part in more detail here.

The call handler said that Ms B could sell the car at an established dealer, and the dealer would settle the agreement on her behalf. She went on to say (around 18 minutes into the call):

“So in other words, how it works is, if you go to a dealership ... they will need to offer you five thousand for the vehicle, right?”

She later clarified that the exact figure was actually £4,929.56. But no part of that explanation conveyed that it would actually be possible for Ms B to sell the car for less than the early settlement figure and then pay the shortfall to the dealership.

Nevertheless, about 23 minutes into the call Ms B said that she preferred the early settlement option, but no dealers had offered her anywhere close to the settlement figure, so she would keep trying and see if she could get a better deal. She then added:

“My only concern is that if they’re offering me less than the settlement then I feel I’ll have an amount that I need to pay.”

So it appears to me, based on that statement, that Ms B still understood that it was possible for her to sell the car to a dealer for an amount less than the settlement figure and then pay back the shortfall. (And nearly 28 minutes into the call, she said that the best offer she had been able to get from a dealership had been £3,900. That would have left her with an outstanding liability to the dealership of only £1,030.)

I haven’t needed to listen to the third call again. It seems clear to me now that Ms B did correctly understand her options, and that it is not Moneybarn’s fault that she missed the deadline for choosing one. It follows that Moneybarn was entitled to terminate the agreement in July, and that I am unable to uphold this complaint after all.

My final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 20 September 2024. But apart from that, this final decision brings our involvement to an end.
Richard Wood

Ombudsman