

The complaint

Mr M complains about the termination of his finance agreement, in relation to a car that was supplied through a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn (MBL).

What happened

In April 2023, Mr S acquired a used car through a conditional sale agreement with MBL. The cash price of the car was £21,200, which was also the total amount financed on the agreement. The agreement was payable over 60 monthly repayments of £720.71.

In his complaint form, Mr S said that after falling into arrears with his agreement he was unable to contact MBL to make a payment. Mr S said the wait times on the phone to MBL were over an hour, and even though he'd ask for MBL to contact him so he could make a payment, they never did. Mr S said he had health issues which impacted his ability to make the repayments, and that he wasn't seeking compensation but wanted his agreement reinstated and to keep the car.

In November 2023 MBL issued their final response to Mr S' complaint. In it they explained they were made aware of Mr S' health issues in June 2023, however that it was the payments for May and June of 2023 that weren't received, which allowed the account to fall into arrears, resulting in a default notice being issued in August 2023, and the agreement being terminated in September 2023.

MBL said they made attempts to contact Mr S via email, text and letter, but that no outcome was reached. They concluded

that they made sufficient efforts to support Mr S during his difficulties with forbearance options which weren't adhered to. MBL believed they treated Mr S fairly throughout.

Unhappy with MBL's decision Mr S brought his complaint to our service for investigation. Having considered all the information on file, one of our investigator's recommended that Mr S' complaint should not be upheld.

The investigator concluded that MBL treated Mr S fairly and with forbearance when they were informed about his financial difficulties.

Mr S responded to say he didn't accept the investigator's recommendation. He believes that MBL's lack of assistance and communication had a significant impact on his ability to make repayments and should be taken into consideration.

However, as the investigator's opinion remained unchanged Mr S asked that his complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr S complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr S' complaint about MBL.

Within the finance agreement, under the section '*missing payments*' it says:

'Missing payments may have severe consequences. We may terminate this agreement and we may take legal action to take back the goods, which may include repossessing the goods without a court order'.

In consideration of this I'm satisfied Mr S was able to understand or be reasonably aware of the potential consequences of not keeping up with the repayments on his agreement.

MBL system notes show that a reminder email and text message was sent to Mr S in May 2023 in relation to his first payment that was due later that month.

Mr S also contacted MBL a few days prior to the first repayment, to enquire about changing the repayment date advising he was going to make a manual payment. The notes show that contact was made between both parties, which included email and text messages, in relation to the first repayment, however this resulted in MBL issuing a 'notice of sums in arrears' letter to Mr S in June 2023.

The notes show that a repayment plan was arranged for Mr S. It also showed that Mr S at that point informed MBL about his health issues.

Further contact was made between both parties relating to the arrears on the account and the forthcoming repayment, which was missed as the direct debit was cancelled by Mr S.

A further repayment plan was created in July and in August of 2023 for a reduced amount, however neither payment was received.

It was at this point MBL issued a default notice, in relation to the arrears on Mr S' account and an email in September 2023 advising of the pending termination of the agreement if no further contact or payment was received. It follows that MBL terminated Mr S' agreement on 19 September 2023 as no payments or arrangements had been made with them to settle the outstanding balance.

Having considered the sequence of events here, I'm persuaded that it was likely Mr S was experiencing financial issues from the outset and that his health issues also impacted his ability to make the repayments under the agreement.

The Consumer Credit Act 1974 requires businesses to serve notice on a borrower before they can become entitled to take certain actions, including terminating an agreement or recovering possession of any goods. I can see that MBL wrote to Mr S in May, June, July and August of 2023 about the arrears on his agreement. They also wrote to him advising he may be issued with a default notice which could result in the termination of the agreement. And on around 29 August 2023 MBL issued Mr S with a default notice advising his agreement may be terminated if he failed to repay the arrears by a certain date. This led to the termination of Mr S agreement and the issue that Mr S complains about.

The Consumer Credit Sourcebook (CONC), which can be found within the Financial Conduct Authority's (FCA) handbook, says that a business must treat customers in default or in arrears difficulties with forbearance and due consideration. CONC 7.3.5 provides some examples which include, suspending, reducing or waiving interest or charges, allowing payment deferrals or accepting token payments.

From the file notes I'm satisfied that MBL provided Mr S with forbearance options, for example by arranging repayment plans with him, which included reduced payments. And in consideration of his health, I think it was appropriate that MBL gave Mr S a reasonable number of opportunities to get his repayments back on track, despite not receiving any payment from him.

The contact notes demonstrate various opportunities Mr S had of making his monthly repayments or of arranging an affordable plan.

I acknowledge what Mr S says that towards the end of his agreement he was unable to get through to MBL, however, I've considered that throughout the course of the agreement Mr S was in contact with MBL and had agreed different payment arrangements with them, all of which were cancelled due to his non-payment.

So, I'm satisfied in the whole that Mr S had the opportunity to put things right with MBL. I'm also satisfied that sufficient contact was made between each party to enable Mr S the opportunity of putting things right.

I think it's reasonable that in certain cases it may be more appropriate for a business to end a financial agreement, as it can work towards limiting the financial impact on a consumer. In the circumstances of this complaint, I don't see that Mr S was able to satisfactorily demonstrate he had an ability to repay the finance. I say this because he hadn't made any repayments from the outset and despite a number of repayment plans being created for him, he wasn't able to fulfil any of them for any period of time. I recognise Mr S' health would have played a significant role in this eventuality; however, from the evidence provided, I'm satisfied MBL acted fairly when they decided to terminate Mr S' finance agreement.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I don't uphold Mr S' complaint about Moneybarn No.1 Limited trading as Moneybarn.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 June 2024.

Benjamin John
Ombudsman