

## **The complaint**

Mr H has complained that Moneybarn No.1 Ltd loaded a fraud marker against him in respect of a finance agreement he'd taken out with it.

## **What happened**

In June 2023 Mr H entered into a conditional sale agreement with Moneybarn to acquire a used car for around £6,250. The agreement was to be paid back over 48 months.

I understand shortly after acquiring the car Mr H was involved in an accident which resulted in the car being a possible write-off. Mr H contacted Moneybarn to let it know. He said his insurer indicated he could sell the car for spare parts. Mr H sold the car and he received £1,800 in July 2023. His insurance, however, didn't settle the claim.

I understand Moneybarn loaded a fraud marker against Mr H in December 2023 for asset conversion because he'd sold goods he didn't own. It also obtained a decree for payment from Mr H in January 2024.

Mr H complained about the marker that had been loaded. Moneybarn sent a final response in May 2024 to say it loaded the marker because Mr H had sold the car to a third party less than a month after entering into the finance agreement. It highlighted the terms and conditions of the conditional sale agreement set out that the car didn't belong to Mr H until the agreement had been paid in full. So he was not authorised to sell it.

Mr H decided to refer the complaint to the Financial Ombudsman. He said he didn't realise he couldn't sell the car but accepted he'd been negligent. He said it was an honest mistake and thought the marker had been loaded unfairly. One of our investigators looked into things and thought Mr H sold the car in good faith and didn't think he'd done it with wrongful intent. He said Mr H entered into the agreement with the intention of using it himself, and not to sell it. He thought the sale of the car was an afterthought to the accident, and not the reason he acquired the car. He noted Mr H had not gained financially because he owed Moneybarn the sum under the decree, and that the marker had a knock-on effect on Mr H because his primary account was closed. He thought Moneybarn should remove the marker and pay Mr H £200 compensation.

Moneybarn didn't agree. It said it acted fairly given it wasn't in dispute Mr H sold the asset.

As things weren't resolved, the complaint has been passed to me to decide.

## **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.

Mr H acquired the car using a conditional sale agreement and our service is able to consider complaints relating to these sorts of agreements.

I'm satisfied the agreement set out that the car wouldn't become Mr H's property until he'd made all the payments required, and that he was not allowed to sell or make any attempt to sell it before then. So I think Mr H did break a condition of the agreement by selling the car. That doesn't seem to be in dispute. What's left to decide is if Moneybarn fairly loaded the fraud marker for asset conversion.

In order for Moneybarn to have loaded a fraud marker it needed to operate within the terms of the National Fraud Database Handbook which sets out certain principles of use. So Moneybarn needed to have reasonable grounds to believe a fraud or financial crime had been committed or attempted, with clear, relevant and rigorous evidence. The conduct needed to meet the criteria for one of the case types, and Moneybarn needed to have rejected withdrawn or terminated a product unless it had an obligation to provide it, or the subject had already received the full benefit. I think Moneybarn was also required to retain its evidence for the period the marker was active.

Moneybarn's contact notes indicate Mr H called it on 27 June 2023 to say the agreement started a few days prior; the car had been involved in an accident, and it was a possible write-off. The notes aren't clear, but it looks like Mr H was waiting for a claim outcome from his insurance company. Mr H was unsure if it was going to pay out because of points on his licence that I understand may not have been disclosed. I think Moneybarn sent him an early settlement figure and let him know that he'd be liable for the full balance if the insurance was invalidated. The notes indicate Moneybarn told Mr H to expect a default or termination notice but that he could enter into a payment plan. I can see Mr H also contacted Moneybarn in July 2023 because of the issues he was having with his insurance company. It looks like Moneybarn were notified of the change of keeper in August 2023.

I arranged for our investigator to ask for the call recordings between Mr H and Moneybarn from around the time of the accident, as well as the investigation file for the fraud marker recording. Moneybarn didn't respond and I explained if I didn't hear back, I'd proceed based on the evidence we had on file. So I'm basing this decision on the limited evidence I have.

Having considered everything I agree Mr H breached a condition of the agreement and that Moneybarn didn't act unfairly by seeking to pursue him for the debt. I note a decree has been issued saying the debt is owed. But I'd like to have been more certain that Mr H was intent on defrauding Moneybarn when he sold the car.

This wasn't a situation where Mr H bought a car, sold it straight away and tried to avoid Moneybarn. Mr H bought the car and it was involved in an accident unfortunately not long afterwards. Mr H contacted Moneybarn to let it know what happened. I'd like to have listened to those calls because, while I appreciate the terms were set out in the agreement, it would have been helpful to know if, as the experts, Moneybarn notified Mr H clearly about his options and what was required. It seems like Mr H put Moneybarn on notice straight away there could be an issue with his insurance. The notes indicate Moneybarn told him he'd be liable to pay the full balance and that he could enter into a payment plan. I've not seen whether it missed an opportunity to inform him what he needed to do with the goods if the insurance didn't pay out. The notes don't indicate it told him he'd need to return the car.

I acknowledge by signing the agreement Mr H ought to have known he shouldn't sell the car, but I think it's relevant that, after the accident, the car wasn't in the same condition he acquired it in. At the point he contacted Moneybarn he suspected it might have been a write-off. His understanding of his options may have been very different at that point in time because he may not have thought of the car as a runner or one that he would be required to hand back. He said the buyer wanted it for parts. It was likely a situation where Mr H was simply trying to mitigate the losses. Mr H sold the car for a fraction of what he'd acquired it for a month or so before. Plus he owed a significant balance to Moneybarn, which he's never

disputed. While I think he should have put the sales proceeds towards the Moneybarn debt, the overall circumstances don't, to my mind, seem like the actions of someone who's set out to defraud Moneybarn for financial gain.

Typically to record a marker this will mean Moneybarn needed to find dishonesty by Mr H to show his behaviour amounts to fraud. Mr H said his insurance company let him know he could sell the car. I don't know if that's right because we've not been supplied sufficient evidence of what was said. But even putting that to one side, I don't think I've seen enough to demonstrate Mr H was trying to commit fraud. He was in touch with Moneybarn about what happened. He wasn't trying to avoid the debt. I think it's more likely than not he made a mistake by selling the car rather than handing it back to Moneybarn. On balance, I agree the fraud marker should be removed.

Our investigator also recommended Moneybarn pay Mr H £200 compensation. On the one hand the marker has caused Mr H distress and inconvenience and I understand his main account was closed off the back of it being loaded. He must have been very worried about the situation. On the other hand I do have to bear in mind that Mr H breached the terms of the agreement he'd signed by selling the car. I do have to factor that in. I also need to resolve the complaint quickly and informally by deciding what I think is fair and reasonable in the circumstances. I think it likely Moneybarn did miss some opportunities to better inform Mr H of his options or requirements, particularly given he was in contact with it when the car was involved in an accident, before it was sold, and he let it know about the potential insurance issue.

Overall, I'm not persuaded the recording of the marker was reasonable and I think Moneybarn should've been fairer in its dealings with Mr H. In the circumstances, I think the £200 compensation is broadly fair to include on top of removing the fraud marker.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Moneybarn No.1 Ltd to remove the fraud marker it loaded against Mr H without delay and pay him £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 February 2025.

Simon Wingfield  
**Ombudsman**