

Complaint

Miss Y complains that Moneybarn No.1 Ltd (trading as “Moneybarn”) unfairly entered into a conditional sale agreement with her.

She’s said that she attempted to exercise her right to withdraw from the agreement within the 14-day period because her circumstances had changed and the monthly payments would be unaffordable for her. However, Moneybarn unfairly refused to accept this and made her enter into an agreement which she couldn’t afford to make the payments for and she ended up with a significant amount to pay despite having lost the car.

Background

In October 2021, Moneybarn provided Miss Y with finance for a used car. The cash price of the vehicle was £5,979.00 and Miss Y applied for finance to cover the entire amount. Moneybarn accepted Miss Y’s application and agreed to enter into a conditional sale agreement with her. The conditional sale agreement had interest, fees and total charges of £5,092.35 and the total amount to be repaid of £11,071.35 was due to be repaid in 59 monthly instalments of £187.65.

In November 2021, Miss Y complained about the quality of the vehicle supplied under the agreement and in particular she was unhappy with issues she was having with the clutch. However, we’ve already explained that we won’t be looking into those matters as part of this complaint and why this is the case.

After Miss Y’s complaint about the quality of the car, Moneybarn subsequently took possession of the vehicle, as Miss Y had built up arrears, in July 2022. The vehicle was eventually sold and Moneybarn informed Miss Y that she had £8,175.35 left to pay on the agreement. In August 2023, Miss Y complained to Moneybarn saying that she was unhappy with having this balance to pay when she had tried to exercise her rights to withdraw from the agreement.

Miss Y’s complaint was considered by one of our investigators. He thought that Moneybarn had treated Miss Y unfairly by failing to action her request to exit the agreement. So he recommended that Miss Y’s complaint should be upheld.

Moneybarn disagreed with our investigator and the complaint was subsequently passed to an ombudsman for review.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully thought about everything I’ve been provided with, I’m upholding Miss Y’s complaint and directing Moneybarn to put things right for her. I’d like to explain why in a little more detail.

I've started my consideration of the complaint by looking at Miss Y's rights under the conditional sale agreement.

Did Miss Y have the right to withdraw from the agreement?

I think that it would be helpful for me to start by explaining that Miss Y's conditional sale agreement contained the following information on her 'Right of withdrawal':

"You have the right to withdraw from this Agreement (without giving us any reason) within 14 days beginning with the day you are informed by us in writing that this Agreement has been signed by Us.

You may exercise this right in person or by informing us in writing at the following address: Moneybarn (Withdrawal Request), Athena House, Bedford Road, Petersfield, GU32 3LJ or via email at customerservices@moneybarn.com, or by calling our customer Services Team 0330 555 1230.

If you withdraw from this agreement you must repay to us the amount of any credit without delay and in any event within 30 days after giving notice of withdrawal (interest accrues from the date that the credit was provided until the date you repay the credit). ..."

This section of Miss Y's credit agreement is effectively meant to highlight the implied terms of s66A of the Consumer Credit Act (1974) ("CCA"), which are incorporated into all relevant agreements. And having considered this information, I'm satisfied that Miss Y did have the right to withdraw from her conditional sale agreement.

I'll now consider the steps Miss Y took in relation to these provisions.

Did Miss Y exercise, or attempt to exercise, her right to withdraw from the conditional sale agreement?

There is no dispute that Miss Y contacted Moneybarn on the telephone number highlighted in the section above on 26 October 2021. So Miss Y used one of the methods of withdrawal listed on her agreement. On Moneybarn's final response, it states that this was on day 14 of Miss Y's 14 days to do so.

However, while the copy of the conditional sale agreement shows that Miss Y electronically signed her agreement on 12 October 2021, I've not been provided with anything to indicate that Moneybarn informed her in writing that it had signed the agreement on that same day. Furthermore, even if this was the case, it would mean that the 14 days actually started the day after.

In any event, even if Miss Y had only got in contact on day 14, there is no dispute that at the time Miss Y contacted Moneybarn, she was still within her period to withdraw from the credit agreement. Moneybarn has supplied us with a recording of Miss Y's phone call with it. I've listened to its content and I'll now set out my thoughts in relation to this.

Miss Y's phone call with Moneybarn on 26 October 2021

Having listened to the phone call, it is clear (and there can be no dispute) that the purpose of Miss Y's phone call was to cancel her contract for the car she purchased. The advisor attempted to clarify what Miss Y meant and find out whether she wanted to return the car or cancel the transaction.

At this point, Miss Y confirmed that she hadn't yet taken delivery of the vehicle as it was proving problematic to go to Leicester to do so. Most importantly, Miss Y went on to explain that she had a change in circumstances which resulted in the transaction no longer being suitable and meant that she was not able to go ahead with the transaction.

The advisor informed Miss Y that it was possible to unwind the agreement but that in order for this to be done, Miss Y had to contact the supplying dealer and get it to return the funds. Having listened to the instructions, this, at the very least, leaves the impression the supplying dealer has to consent to her exiting the agreement.

For example, the advisor states that Miss Y would have to contact the dealer to say she didn't want to go ahead and if the dealer was happy to sell the vehicle on elsewhere it would need to pay the funds back to Moneybarn and the agreement would be unwound. The advisor also stated that going ahead without the dealership's agreement would require Miss Y to make a complaint.

The advisor also mentioned that some dealerships had a tendency not to speak to consumers at this point and it would be better to keep things on friendly terms, which again would leave a reasonable person concluding that exiting the agreement would only be possible with the supplying dealer's permission.

When Miss Y argued that the 14-day withdrawal period referred to on the agreement looked different to what he had described, the advisor then tells the customer the 14-day period set out on her agreement was in relation to withdrawing from the conditional sale agreement, not the sale. And this was only if Miss Y wanted to keep the car but withdraw from the credit agreement.

I'll now proceed to consider Moneybarn's actions in response to Miss Y's phone call.

Why I'm satisfied that Moneybarn's response to Miss Y's phone call was not fair and reasonable

In the first instance, I think it's worth me noting that, in its response to our investigator, Moneybarn 'doubled down' on its position that Miss Y wasn't entitled to exit the agreement at the time of her phone call. It has said that it was not in a position to tell the supplying dealer to take the vehicle back, as it might have incurred costs.

I'm afraid that I don't agree with Moneybarn's analysis for multiple reasons.

Firstly, it's clear that Miss Y had the right to withdraw from her contract with Moneybarn without providing a reason. It is fair to say that this is not the same as cancelling the purchase for the vehicle itself. However, Moneybarn seems to be overlooking the fact that by entering into the conditional sale agreement with Miss Y, it was the party buying the vehicle from the supplying dealership – not Miss Y.

The effect of the conditional sale agreement was that it would effectively be hiring the vehicle to Miss Y until the loan was paid in full and at which point it would sell the vehicle to Miss Y. If it had already paid the funds to the supplying dealer then it was the owner of the vehicle not Miss Y at this stage.

It is therefore unclear to me why Moneybarn refused to end its agreement with Miss Y when it was clear that she said that she no longer wanted to go ahead with it and she was entitled to change her mind in this way, even without a reason. I accept and appreciate that it's possible that other contractual obligations may have existed between Miss Y and the

supplying dealer – depending on what the terms and conditions of Miss Y's order form with the supplier contained.

But Moneybarn wouldn't have known this and, in any event, even if there were any such obligations, these would have been a matter between Miss Y and the supplying dealer. I don't think that it was fair and reasonable for Moneybarn to have refused a correctly served withdrawal notification, in order to protect the supplying dealer's position as it appears to be arguing here.

For the sake of completeness, I would also make it clear that it was incorrect to insist on Miss Y returning the funds before she could withdraw from her conditional sale agreement. The terms of Miss Y's agreement - as well as s66A CCA - provided Miss Y with a period of 30 days from when she provided her notice of her intention to withdraw in order to repay the funds.

The wording of the provision makes it clear a customer does not need to repay before they can withdraw. So, in these circumstances, it was incorrect for Moneybarn to insist on the supplying dealer repaying the funds before it would accept Miss Y's notice of her intent to exercise her right to withdraw.

Moneybarn's failure to react Miss Y's notification about her change in circumstances – an additional reason why Moneybarn failed to act fairly and reasonably towards her

As I've explained, Miss Y was not required to provide a reason for wanting to exit the agreement, in order to be able to do so. That said, I think that Moneybarn failing to act on the reason why Miss Y said she wanted to withdraw from the conditional sale agreement, is a further reason why it failed to act fairly and reasonably towards her.

I say this because having listened to the call recording it's clear that Miss Y said that one of the two reasons she no longer wished to go ahead with the conditional sale agreement was because her circumstances had changed as her mother had had a fall and was moving in with her. In my view, Miss Y had clearly made Moneybarn aware of a life event that which displayed the characteristics of making her a vulnerable customer (she was assuming caring responsibilities), as set out in the regulator's guidance.

Indeed, I note that the regulator's guidance makes it clear that a firm taking particular care to ensure it meets the needs of a vulnerable customer, is central to whether it meets its Principle 6 obligations to pay due regards to the interests of its customers and treat them fairly.

In these circumstances, Moneybarn ought to have identified that Miss Y's circumstances made her more susceptible to potential harm and it was then incumbent on Moneybarn to have taken additional steps to help her, rather than place any additional and unnecessary barriers to her exiting an arrangement which she clearly explained was no longer suitable for her.

As it did not and instead referred Miss Y back to the supplying dealer, despite her having made it clear that this would not only cause her significant inconvenience, but also that she was finding it extremely difficult to do so, means I'm not persuaded that Moneybarn met its Principle 6 obligations to Miss Y - to pay due regards to her interests and treat her fairly.

Bearing all of this in mind, I'm satisfied that Moneybarn failed to act fairly and reasonably towards Miss Y – when failing to accept her withdrawing from the conditional sale agreement - and I'm therefore upholding Miss Y's complaint.

I'll now consider how it would be fair for Moneybarn to put things right for Miss Y as a result of it failing to act fairly and reasonably towards her.

Fair compensation – what Moneybarn needs to do to put things right for Miss Y

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Moneybarn putting Miss Y in the position she'd now be in if it had accepted her withdrawing from the agreement in October 2021.

Moneybarn argues that if this would have happened then Miss Y would have been in the position where she would have either owed it, or the supplying dealer, the cash price of the car plus some interest.

I've considered Moneybarn's arguments.

What I think would more likely than not have happened had Moneybarn accepted Miss Y's notice to withdraw from the agreement

I'm not necessarily persuaded by Moneybarn's argument that Miss Y will always have had a debt to pay. I say this because Miss Y had explained that a life event meant that it was no longer suitable for her to go ahead with her purchase. I also think that it worth bearing in mind that while Moneybarn might already have released the funds to the supplying dealer, Miss Y had not as yet taken delivery of the car.

Bearing in mind Miss Y hadn't yet taken delivery of the car and the fact that Moneybarn ought to have picked up on her potential vulnerability, I think that Moneybarn ought to have made attempts to recall the funds from the supplying dealer once it accepted her withdrawal. The circumstances here mean that I think that it would have been fair and reasonable for Moneybarn to have done this, irrespective of whether this was part of its usual process.

It is possible that the supplying dealer might have refused this. But I think that if Moneybarn had explained the situation and that Miss Y had withdrawn from the agreement so it required the funds back, I think that the supplying dealer is more likely than not to have returned the funds, given Miss Y had not as yet taken delivery and it could quite easily just sell the vehicle to someone else.

So I think it's likely that Miss Y would more likely than not have been able to cancel the prospective purchase had Moneybarn acted fairly and reasonably towards her by accepting her notice of withdrawal and attempted to recover the funds, because of the reasons why she wished to withdraw.

I therefore think it's fair and reasonable to approach the matter of fair compensation from the point of view that Miss Y, as close as practically possible, should be placed in the position she would now be in had the purchase in October 2021 not taken place.

What should happen in relation to the conditional sale agreement and what should Miss Y have to pay

As I've explained, I think it would be fair and reasonable to approach how to put things right from the viewpoint that Miss Y would be in if she had never entered into this conditional sale agreement with Moneybarn in the first place.

So I think that it would be fair and reasonable to approach Moneybarn putting things right along the lines of how we would tell a firm to put things right for irresponsible/unaffordable lending cases. I think that this is especially the case seeing as one of the main consequences of Moneybarn's actions here was that Miss Y was made to remain in an agreement that her change in circumstances, which was the reason why she wanted to withdraw from it, resulted in the payments being unaffordable for her.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended. However, Moneybarn took possession of the vehicle in July 2022 therefore Miss Y does not now need to return the car. But Moneybarn should ensure that the conditional sale agreement is fully ended.

Ordinarily speaking I would typically direct a business to return a borrower's deposit plus interest in circumstances where an agreement is ended in this way. The conditional sale agreement shows that Miss Y did not pay a deposit so there isn't a deposit for Moneybarn to return to Miss Y.

This now just leaves the question of what if anything Miss Y should pay to account for the period of time that she did have use of the vehicle. In considering this matter I've thought about the fact that Miss Y did say she didn't want the car.

Nonetheless, while Miss Y wanted to withdraw from the agreement, it's fair to say that she did go ahead with it – albeit as a result of Moneybarn failing to act fairly and reasonably towards her. Therefore, I think it is fair to say that Miss Y had some use of the vehicle and I'm satisfied that it is fair and reasonable for my direction to take account of this.

Miss Y had the vehicle from October 2021 until July 2022 – so around nine months or so. I've considered what, of Miss Y's payments, it would be fair and reasonable for Moneybarn to keep in order to account for this usage. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, Miss Y's usage of the car and what sort of costs she might have incurred to stay mobile if she didn't have this car.

In thinking about this matter, I've thought about the investigator's conclusion that an amount of £70 per month would fairly and reasonably account for Mr M's usage. I've not seen any challenge to this amount from either Moneybarn or Miss Y. And bearing in mind the cash price of the car as well as the interest that was due to be charged on the agreement, I'm also of the view that an amount of £70 a month is fair and reasonable.

As this is the case, I'm satisfied that it would be fair and reasonable for Moneybarn to retain nine payments of £70, or £630. The statement of account shows that Miss Y paid more than this, so Moneybarn should return the extra that Miss Y paid, with interest at 8% a year simple, from the date that she payments above £630 to the date of settlement.

As I've said, this will mean that Miss Y will no longer have a balance to pay Moneybarn. So it should also ensure that any adverse information which it may have reported to credit reference agencies about this conditional sale agreement, is removed.

Moneybarn has made arguments in relation to costs Miss Y may have incurred if she exited the conditional sale agreement and I'll now proceed to consider them.

Moneybarn's arguments in relation to costs Miss Y might have had in the event she withdrew from the conditional sale agreement

I've noted that Moneybarn has referred to some additional costs which it believes that the supplying dealer might have incurred had Miss Y been able to exit to agreement in the way that my direction now is placing her in the position of. I don't rule out the possibility of the fact that the supplying dealer might have incurred some costs had Miss Y existed the agreement – although it does seem to me that it could quite easily have sold the car to someone else.

However, even if it is possible that such costs might have been incurred, it is the supplying dealer's agreement with Miss Y that would have dictated whether such costs could be passed on. And, in any event, I've not seen any clear evidence to see that if any such costs would have been incurred what the amount of them would be.

So, I don't think that it would be fair and reasonable for my award to be affected by this. I say this especially as the supplying dealer would, in any event, have been required to consider whether Miss Y's circumstances (which I've already highlighted) meant that it was worth seeking to recover such costs from her to begin with.

Distress and inconvenience

I've also considered the distress and inconvenience that Miss Y will have experienced in being manoeuvred into going ahead with the contract and having to take on a vehicle that was unsuitable for her.

There is no doubt that Miss Y has had to take a considerable amount of time attempting to deal with the implications of Moneybarn's actions. Firstly, she had the hassle of having to complete the transaction at what was already a difficult time for her when Moneybarn should have instead provided her with assistance. Miss Y has also had the stress brought by being unable to make her payments, as she anticipated might happen and wanted to avoid by withdrawing from the agreement and having Moneybarn take possession of the car from her.

Having considered all of this, I'm persuaded that Miss Y was caused a significant amount of distress and inconvenience as a result of Moneybarn failing to act fairly and reasonably towards her. I think that Moneybarn should pay Miss Y £500 for the distress and inconvenience caused by its actions.

Finally, in reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Miss Y might have been unfair to Miss Y under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Moneybarn to do results in fair compensation for Miss Y given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Bearing all of this in mind, I'm satisfied that it would be fair and reasonable in all the circumstances of Miss Y's case for Moneybarn to put things right by:

- ending Miss Y's conditional sale agreement should this not have been done;
- limiting the total amount that Miss Y should have to pay to £630. Any payments Miss Y made over £630 should be treated as overpayments. And any overpayments should be refunded to Miss Y with interest at 8% a year simple from the date that any such payments were made to the date of settlement†;
- removing any and all adverse information it recorded on Miss Y's credit file as a result of this agreement.

- paying her £500 in compensation for the distress and inconvenience its actions caused.

† HM Revenue & Customs requires Moneybarn to take off tax from this interest. Moneybarn must give Miss Y a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss Y's complaint. Moneybarn No.1 Limited should put things right for Miss Y in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 11 November 2024.

Jeshen Narayanan
Ombudsman