

The complaint

Mr M complains that Moneybarn No. 1 Limited (Moneybarn) have been unreasonable in their management of a finance agreement he had with them.

What happened

Mr M took out a conditional sale agreement with Moneybarn in January 2020 to fund the provision of a car.

He experienced some financial difficulties and only made one payment after June 2023. Moneybarn terminated the agreement in July 2024 because of the arrears on the account.

Mr M thought that was unreasonable. He said he hadn't received the default notice Moneybarn said they'd sent him, Moneybarn hadn't responded to his offer to pay an additional £70 per month to clear the arrears and shouldn't, therefore, have terminated it and that they tried to repossess the car unlawfully without a court order.

Mr M referred his complaint to this service but when our investigator didn't think there was cause to uphold it, he asked for a decision by an ombudsman.

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.

I know it will disappoint Mr M, but I'm not upholding this complaint. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

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 M acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Information Commissioner's Office (ICO) guidance says that they would expect businesses to default accounts when a consumer was at least three months in arrears and usually no more than six months in arrears. By the time Moneybarn defaulted Mr M's account he was in more arrears than that, but I think that's because Moneybarn had been trying to help him. They'd agreed a payment holiday and a payment plan for Mr M. But I don't think they were unreasonable to terminate the agreement when they did. By that time, I think it was clear that Mr M was unlikely to have been able to sustainably make payments towards the debt. The offers he'd made would mean it would take too long to recover the

debt and in the meantime Mr M would suffer detriment as adverse reports would continue to be made to his credit file.

While I understand that Mr M says he didn't receive the default notice I can see that it was sent to the address Moneybarn had for him, the same one that this service has. I don't think it would be fair to hold Moneybarn responsible for any failure of the postal service and, Moneybarn have also sent evidence that they sent a text reminder to Mr M reminding him of the default. And regardless of whether the default notice was sent, I think it was inevitable that this account would default as Mr M hadn't provided information that would suggest he could repay the arrears in a reasonable timeframe.

Since Mr M referred his complaint to this service he's raised a couple of new issues. This service wouldn't usually consider new complaints before the business had. But as there are time constraints here and as Moneybarn have been made aware of those points and have had an opportunity to provide their views on them to this service, I think it's sensible and fair for me to review them.

Mr M says Moneybarn have issued court proceedings against him to recover the car. It's Mr M's position that Moneybarn shouldn't have done that because the Financial Conduct Association (FCA) say it's forbidden to do so while a complaint is being considered by this service. Mr M referred us to this section of the FCA's Consumer Credit Sourcebook:

"Complaints to the Financial Ombudsman Service and initiating legal proceedings.

CONC 7.15.10 R01/04/2014RP

A lender must not initiate legal proceedings in relation to a regulated credit agreement where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question that is being considered by the Financial Ombudsman Service."

It seems to me, as I've explained above, that Moneybarn hadn't been unreasonable to decide Mr M's complaint wasn't valid. I don't think in those circumstances, they were unreasonable to pursue court action as the car was depreciating in value and delay would mean the debt would only increase once the asset was sold and the funds were attributed to the amount outstanding.

Mr M also complained that the business has tried to remove the car without a court order. I've not seen evidence that Moneybarn forcibly attempted to remove the car, only that they contacted Mr M to see if he'd be prepared to voluntarily surrender it. That would appear reasonable given that the alternative was expensive court action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 March 2025.

Phillip McMahon
Ombudsman