

The complaint

Mrs A is unhappy with how Moneybarn No. 1 Limited treated her when she got into financial difficulty in relation to a conditional sale agreement taken to finance a car.

What happened

In March 2020, Mrs A entered into a conditional sale agreement with Moneybarn to acquire a used car. The car cost £23,500 and Mrs A was due to make repayments of £708.04 a month for 60 months.

Shortly after taking the agreement, Mrs A was in touch with Moneybarn about financial difficulties due to COVID-19 and a payment deferral was put in place for an initial three months. Further payment deferrals of two months and one month were later agreed in 2021. Mrs A also got into arrears on the account during this period.

In February 2022, the arrears under the agreement were paid off as a lump sum.

Mrs A said she later again got into financial difficulty due to a combination of employment issues, the car being stolen, it requiring various repairs, and serious ill health. She explained this situation eventually led to losing her home.

In summary, this led to Mrs A getting into further arrears on the account from around May 2022. Various payment arrangements were put into place, but arrears continued to grow over the following months.

At the beginning of March 2024 Moneybarn wrote to Mrs A following a conversation about the account, where Moneybarn said it wouldn't agree any further repayment plans. It said Mrs A could settle the agreement, voluntarily terminate the agreement or voluntarily surrender the car. It gave estimated costs for each choice and explained if Mrs A didn't pick an option it would terminate the agreement.

In April 2024 Mrs A emailed Moneybarn and said she could afford to pay a maximum of £300 to £500 a month towards the agreement. She said giving the car back was not an option. She also raised a complaint.

Moneybarn issued its final response to the complaint in May 2024. This said, in summary, that Mrs A owed £11,823.66 in arrears and £4,956.28 from the payment deferrals.

Moneybarn urgently advised Mrs A to contact a nonprofit debt advisory service and to contact Moneybarn to discuss her options. It said it was not upholding the complaint.

Moneybarn also wrote to Mrs A later in May 2024, saying that due to the level of arrears a payment plan wasn't a suitable option. It explained it was important for Mrs A to exit the agreement as soon as possible to avoid further arrears increasing. And it also directed Mrs A to some health charities.

Mrs A was unhappy with this and referred the complaint to our service.

Mrs A told our service she'd lost her home and accrued severe debt to pay for the car. She told us she'd been diagnosed with various health problems. She said she relied on her car to maintain employment so couldn't consider giving it up. And she said she had to pay out £7,000 for repairs to the car.

Our investigator issued an opinion and didn't uphold the complaint. He said, in summary, that he thought Moneybarn had acted reasonably when dealing with Mrs A when she was in financial difficulty.

Mrs A disagreed. She said, in summary, that the repayment plans weren't affordable and Moneybarn didn't check this. She said it didn't apply forbearance. She said Moneybarn were being greedy by not accepting £500 a month towards the agreement. And she said the exit options given weren't fair as she would be left without a car and still owing Moneybarn money.

Our investigator said he had considered the points raised by Mrs A even if he hadn't specifically commented on them.

As Mrs A disagreed, the complaint was passed to me to decide. I sent Mrs A and Moneybarn a provisional decision on 13 March 2025. My findings from this decision were as follows:

Mrs A complains about issues in relation to a conditional sale agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity. So, I'm satisfied I can consider Mrs A's complaint about Moneybarn.

Mrs A has raised various complaints to Moneybarn. I should explain to both parties that in this decision I am only considering how Moneybarn treated Mrs A once she got into financial difficulty on the account and the related issues covered in the final response from 6 May 2024.

I'd firstly like to explain to Mrs A and Moneybarn that in my findings, as I've done in the background above, I'm going to focus on what I think are the key points and the crux of the complaint. Where I haven't commented on a specific issue or point made this isn't because I haven't considered it, nor that I find it unimportant. I've carefully thought about everything both parties have said and this approach reflects the informal nature of our service.

What I need to consider here is whether Moneybarn treated Mrs A fairly and reasonably, and in line with its obligations as a lender, when she got into arrears on the agreement.

I've reviewed what happened in relation to Mrs A's account. A lot of the history below is taken from Moneybarn's contact notes, and I should explain to both parties that this is only a summary of the key points.

Mrs A's very first payment under the agreement was returned from her bank. And I can see Moneybarn were in frequent contact with her at the time. Payment deferrals were arranged due to COVID-19 for a total of six months during the first year she had the agreement. But Mrs A still got into arrears.

A payment plan was then put in place for the arrears in July 2021 after discussing Mrs A's circumstances. The notes don't reflect that an income and expenditure report ('I and E') was completed to check if this was affordable.

A further discussion about her circumstances and the arrears was held in October 2021, where the account was put on hold to allow Mrs A to make up payments.

A payment wasn't made until December 2021 when Moneybarn spoke to Mrs A. Contact notes from the time say that Mrs A said she wasn't struggling financially and refused to enter into a repayment plan. The notes say Mrs A was self-employed and was awaiting invoices to come in before making a payment to the account.

In January 2022 Moneybarn spoke to Mrs A and the agreement was put on hold to allow her to make a 'double payment' later in the month. No payment was made.

In February 2022 Mrs A told Moneybarn the car had been stolen and recovered. It agreed to put the agreement on hold for around three weeks to get things in order and agreed to contact her to complete an I and E and to agree a repayment plan.

A default notice was then issued on the account around the same time for arrears of £2,115.44. Moneybarn explained this was due to the car being shown as written off on a database. Moneybarn spoke to Mrs A later in the month and she said a family member was going to pay the arrears in full.

Mid way through February 2022 the arrears were paid off and the monthly repayment made.

The account then again went into arrears in May 2022. System notes show Mrs A said this was due to a change in salary date. A payment plan was set up at this point, but the notes don't reflect that an I and E was completed or that the plan was checked to be affordable.

Moneybarn spoke to Mrs A in August 2022 as the account was further in arrears. It was agreed with Mrs A that she would settle the arrears in full at the end of the month, which wasn't done. An email sent around this time explained "The arrears on your agreement are now building up to an unsustainable level."

At the end of September 2022 Moneybarn spoke to Mrs A about her situation including her employment and her health as the account was again further in arrears due to nonpayment.

Mrs A told it she was now working part time. It appears Moneybarn allowed her more time to pay off the arrears at this point. But I can't see an I and E was completed to check this was affordable.

In October 2022 an I and E was completed but the notes say this was "negative". From information I've seen, I believe this showed Mrs A was over committed by several hundred pounds on her monthly outgoings. Later in the month, the notes show a conversation was held around Mrs A's living situation, family, health and finances. It was agreed for Mrs A to contact Moneybarn once she knew more about additional funds she said she was expecting in December 2022. The account was put on hold.

A conversation was held in November 2022 and a repayment plan put in place after Mrs A said this was affordable – but the notes don't reflect that Moneybarn confirmed this. Later in the month a payment was again missed.

Another conversation was held later in November 2022, where another I and E appears to have been completed. Notes suggest this showed available funds but the notes also state "concern for affordability". Moneybarn recommended Mrs A sought independent financial advice due to the situation. A discussion around payment dates was held and another payment plan was entered into as Mrs A said she was expecting additional income from February 2023.

The December 2022 payment failed. In January 2023 Moneybarn got in touch with Mrs A to say the payment plan had failed.

Moneybarn was in touch with Mrs A about this again in February 2023. No repayments were made in these months.

In March 2023 Moneybarn spoke to Mrs A who said she had spoken to a third party debt advice service to set up a debt management plan. 'Breathing space' was applied to the account for two months to allow Mrs A to consider next steps.

When this ended in May 2023, Moneybarn spoke to Mrs A about her health, employment and finances. Mrs A told Moneybarn the third party would be in touch with it.

In June 2023, a further repayment plan was agreed with Mrs A. At this stage, no full repayments had been made since November 2022. The notes don't state that an I and E was completed or that this was checked to be affordable.

The plan failed in September 2023.

In October 2023 a default notice was issued explaining the arrears on the account were £8,363.72. A further repayment plan was entered into following a conversation with Mrs A. The notes don't reflect that an I and E was completed or that this was checked to be affordable. This failed later the same month.

In November 2023 a further conversation was held where the repairs to the car were discussed along with Mrs A's finances and health. There are some notes that say affordability was assessed but not what the result of the conversation was. A further repayment plan was entered into.

In December 2023 Moneybarn spoke to Mrs A and attempted to complete an I and E but states she refused. The following month in January 2024 the repayment plan failed.

In March 2024, Moneybarn said it would not be willing to enter into further repayment plans.

I've carefully thought about all of this. Having done so, I strongly disagree with Mrs A that Moneybarn should have, or should now, arrange further repayment arrangements. I say this as it's quite clear Mrs A is not going to be able to repay the level of arrears on the account in a reasonable time. Mrs A told Moneybarn she could pay £300 to £500 a month towards the agreement. But even without considering the arrears, the lower end of this offer would cover less than half of the normal monthly repayments.

That being said, that does not mean I think Moneybarn acted appropriately here. I can see how it was trying to keep Mrs A mobile and in her car. I know how important this was, and still is, to Mrs A from her correspondence with Moneybarn and our service. And I can see from the system notes that Mrs A frequently told Moneybarn that she was expecting her situation to improve.

But, at the point Moneybarn told Mrs A it would no longer agree any further repayment plans, arrears had grown on the account to nearly £12,000 – not including the payment deferrals.

This strongly suggests to me that Moneybarn should've taken action to stop this situation getting worse much earlier than it did. So, I've thought about whether this was the case.

Having reviewed the contact notes and the history, I think it should've been obvious to Moneybarn much earlier that allowing the agreement to continue and to enter into further repayment plans with Mrs A was causing further arrears to accrue and was putting Mrs A into a worse financial position.

It's also worth explaining that there are notes on the system to suggest Moneybarn agree with this. I'm not sure if it was ever sent, but I can see a template was added to Mrs A's contact notes that states:

"When you previously fell behind with your agreement repayments, you contacted us for support, and we set up payment plans with you as a way for you to gradually repay your overdue balance. After reviewing how and when we set up those payment plans with you, we're now clear we shouldn't have put them all in place. We should have taken earlier steps to end your agreement."

There is also some suggestion that around this time Moneybarn reduced Mrs A's balance by £150 to reflect this. But I'm satisfied this does not go far enough to put things right.

The repayment plans Mrs A kept entering into appear to have been for small monthly amounts on top of her monthly payments, but these gave no chance of repaying the arrears in a reasonable time. I accept Moneybarn could take token payments for a short time to allow Mrs A to get back on her feet. But these agreements for small amounts kept being approved. As an example, in October 2023 Mrs A was in arrears of around £8,400. But the overpayment was set to £40.13 a month. At this rate, even assuming no further interest or charges, the arrears wouldn't be repaid for over 17 years.

Moneybarn had various obligations at the time, including those set out by the Financial Conduct Authority ('FCS') in the Consumer Credit Sourcebook ('CONC').

CONC 7.3.5B states:

"A firm must take all reasonable steps to ensure that any repayment arrangements agreed with customers..... are sustainable"

CONC 7.3.5C states:

"(1) A repayment arrangement is unlikely to be sustainable if it has the result that the customer cannot meet their priority debts and essential living expenses.

(2) Priority debts and essential living expenses include, but are not limited to, payments for mortgage, rent, council tax, food and utility bills"

Having reviewed the contact notes and history, I find Moneybarn breached its obligations under CONC here.

I've carefully thought about specifically when Moneybarn should've acted differently. Mrs A quickly went into arrears on the account after taking it out. But I've considered the unprecedented situation of the COVID-19 pandemic that Mrs A says was affecting her at the time. I've also considered that the arrears were cleared on the account in February 2022 – although that being said Moneybarn should've still considered that it appears this was done by a family member and not Mrs A.

Following this, the account re-entered arrears in May 2022 – only three months after being cleared - which I'm satisfied should've caused significant concern from Moneybarn about how Mrs A was going to sustain the repayments.

In October 2022, an I and E was completed which showed Mrs A not only couldn't afford to pay back any arrears, but also that she couldn't afford the repayments under the agreement.

At this point, Mrs A had only made three repayments in the seven months since the arrears

were previously cleared. And Moneybarn should've had in mind the history of the account before this.

I appreciate Mrs A was having serious health problems at this time. And I've thought about the information she was telling Moneybarn. But thinking about all of this, I'm satisfied it should've been clear to Moneybarn in October 2022 that Mrs A was unlikely to be able to keep making the repayments and any repayment arrangement for the arrears was very unlikely to be sustainable at this point. It follows I think it should've been clear at this time that it wasn't reasonable to agree further repayment arrangements and to continue to allow further arrears and interest to build up on the account.

I've then thought about what should've happened at the time and what I think Mrs A would've likely done if I thought Moneybarn acted correctly.

I will say upfront that I appreciate what I'm going to set out here directly goes against Mrs A's wishes. But I think it's very clear that while it was incredibly important to Mrs A to keep the car, allowing the agreement to continue has caused her financial difficulty and put her in a worse situation.

In October 2022, once Moneybarn should've realised it wasn't sustainable for Mrs A to continue with the agreement and there was no reasonable chance of her repaying the arrears, it should've discussed Mrs A's options. This would've included voluntary surrender and voluntary termination. I think it likely Moneybarn would've issued a default notice on the account. And this would've set out that Mrs A had to pay the full amount due under the agreement before a set time.

I've then thought about what would've likely happened if this was the case. Having done so, I'm satisfied it's likely the agreement would've been terminated. I say this as I'm satisfied Mrs A didn't have the funds to repay the balance in full. And I'm satisfied Mrs A has made it very clear she would not have considered handing the car back voluntarily.

This also means I think it's likely a default would've been recorded on Mrs A's credit file. I'm satisfied this would be in line with the 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' from the Information Commissioner's Office (ICO). This states in relation to recording defaults:

"As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears."

Of course, if Mrs A believes she would've taken a different course of action at this time, she should explain in response to this decision.

I now need to consider what should be done to put things right considering the above.

I think it's fair and reasonable that Mrs A's liability under the agreement should be calculated to reflect what it would've been when the account should've defaulted.

I've seen a letter from Moneybarn explaining it would terminate an agreement 20 days after issuing a default notice if unpaid. As above, I think it should've issued a default notice following the conversation on 20 October 2022. So, Moneybarn should calculate what the balance of the account would've been had the agreement been terminated on 9 November 2022. It can assume here that this amount would be calculated in line with the "Default Termination" option it mentioned in a later letter.

It's also key to point out here that if the agreement was terminated, the car would've been

recovered. So, it's fair and reasonable for Moneybarn to now collect the car from Mrs A.

I appreciate things have moved on since then and Mrs A has had use of the car. So, I think it's reasonable Mrs A is still liable for some payments during this time. But I don't think the monthly repayments under the agreement are a reasonable reflection of what fair usage for the car should be. I say this because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Mrs A had of the car and the costs she would likely have incurred to stay mobile. In doing so, I think a fair amount Mrs A should pay is £350 for each month she had use of the vehicle post 9 November 2022 up to the point it is returned.

I've considered that Mrs A says she hasn't had use of the car over this full period due to faults with it needing repair. But, these issues fall outside of the scope of this decision. So I am not making any findings on this here.

I'm also satisfied that Moneybarn has caused distress and inconvenience because of what it did wrong. I again have considered that the course of action I think it should've taken goes against what Mrs A wanted at the time. But, by allowing her to retain the car and get further and further into arrears, I'm satisfied this has caused her undue stress.

Mrs A had to frequently speak to Moneybarn, over a period of well over a year, about her personal circumstances and the outstanding funds. She's also had to deal with the stress of receiving communications about ever increasing amounts owed. And I've considered the impact of this was likely exaggerated for Mrs A in particular, due to the serious ill health she was suffering with at the time.

Thinking about this, I find Moneybarn should pay Mrs A £750 to reflect the distress and inconvenience caused.

I gave both parties two weeks to respond with any further information or evidence before I made my final decision.

Mrs A responded at some length and made various points, which I'll detail below. But ultimately she said she wasn't willing to accept the decision.

Moneybarn got in touch and explained it had been copied in to Mrs A's response and so would await the case being closed.

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 response to my provisional decision, Mrs A sent several emails and raised a lot of different points. I'd firstly like to say that I was sorry to read about her ongoing health issues and I hope she is doing okay.

I hope Mrs A won't find it disrespectful, but I won't go into every point raised here. That's because I'm happy some of the issues she's brought up were already specifically covered off in my provisional decision. And some others, such as the mechanical issues the car has had and the original interest rate charged, fall outside of the scope of this decision and what I can comment on. I do want to reassure Mrs A that I've carefully thought about everything she's

said, even if I haven't mentioned it below.

That being said, I will still summarise the key points Mrs A raised. She said:

- She didn't feel the outcome reached was in her favour
- She won't be able to keep her job without a car
- It would be unfair to hand the car back and still owe money to Moneybarn
- She believes the agreement broke 'European rules'
- She didn't realise when taking the agreement that she could only exit it while remaining in serious debt
- Moneybarn weren't flexible and didn't allow her reasonable time to repay the arrears

I've very carefully thought about all of the above.

In general terms, as I explained in my provisional decision, I do appreciate what I set out goes against Mrs A's wishes with regards to keeping the car. And I understand how strongly Mrs A feels about this. But, I'm still satisfied keeping it would be the wrong thing to do.

With regards to the options to exit the agreement, the contract Mrs A entered into did allow her to hand the car back before the end of the term. I won't go into full details about this here, but one of the things that would affect what, if anything, would be owed when Mrs A handed the car back would be the payments made towards the agreement. The reason Mrs A would now exit the agreement and still owe a balance is due to the payment history and arrears on the account.

I disagree that Moneybarn weren't flexible here and that it didn't allow Mrs A time to repay the arrears. In fact, I would argue it was actually far too flexible. And having reviewed everything, I still think it should've ended the agreement much earlier.

Having thought about everything again, including all that Mrs A said in response to my provisional decision, I still think this complaint should be upheld. And I'm still satisfied what I thought was fair to put things right is still reasonable under the circumstances of the complaint. This is due to the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Moneybarn No. 1 Limited to put things right by doing the following:

- End the agreement
- Collect the car from Mrs A at a time and date suitable for her
- Treat the agreement as though it was terminated on 9 November 2022 and the account defaulted
- Limit Mrs A's liability* under the agreement to –
 - what would've been owed if the agreement was terminated on 9 November 2022, and;
 - £350 a month post this date for fair usage until the car is returned

- Pay Mrs A £750 to reflect the distress and inconvenience caused

*If Mrs A has paid more than this figure, Moneybarn should repay Mrs A any overpayments. The repayment to Mrs A should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Moneybarn considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs A how much it's taken off. It should also give Mrs A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

If Mrs A has paid less than this figure, Moneybarn should treat her situation with forbearance and due consideration. This should include arranging an affordable repayment plan if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 23 April 2025.

John Bower
Ombudsman