

complaint

Mr C complains about the way Moneybarn No. 1 Limited, trading as Moneybarn, handled the arrears on his account. He also said that it told him that if he voluntarily surrendered his car to it, there would be no fees to pay and that it would clear the account balance. But this was not the case.

background

Mr C entered into a conditional sale agreement with Moneybarn in May 2012. He didn't make the payments due to Moneybarn from September to December 2014. Moneybarn made many attempts to contact him about the arrears by letter, phone, email and text. But the phone number Moneybarn had for Mr C was no longer valid and they hadn't been told about his new number. In late December 2014, Moneybarn traced Mr C at his work number and spoke to him twice about his situation. Mr C explained that he had several other debts and concluded that it would be best to leave the agreement. Mr C said that he was told that if he did so, there would be no fines to pay and that his agreement balance would probably be cleared. Mr C signed a voluntary surrender form in late December 2014. By signing the form, he acknowledged that expenses allowed for in his agreement would be deducted from the proceeds of sale and that the proceeds of sale may not be enough to pay off the balance owed. But he is unhappy that Moneybarn are asking him to pay £1,310.52 as the account balance due after deduction of the sale proceeds.

The adjudicator didn't recommend that the complaint should be upheld. He noted that Mr C said that he was told if he voluntarily surrendered the car, there would be no more fees to pay and the debt would be cleared. But he also noted that the voluntary surrender form said:

"I acknowledge that the vehicle will be disposed of in accordance with the terms and conditions of the agreement between me and Moneybarn and that the proceeds of sale less all expenses allowed in the agreement will be credited to my account. I understand that the consequence of this could be that the proceeds may not be sufficient to pay off the balance owed. This would mean an additional amount will be owed by me."

The adjudicator concluded that Moneybarn had made Mr C aware that handing back the car might not clear the debt. He also said that Moneybarn hadn't acted unreasonably in rejecting Mr C's offer to pay monthly payments of £150.

Mr C disagreed and responded to say, in summary, that:

- Moneybarn didn't contact him when they said they had and the first contact he had with them was when he was contacted at work.
- It was crucial that the call about the voluntary surrender was listened to.
- The only reason he surrendered was that he would otherwise have to pay more to Moneybarn if they took him to court, and that he was told that his debt would be cleared.
- He was waiting for a refund from a debt management company and said that he could have made a payment to Moneybarn from this.
- He could have borrowed £1,000 from family to repay Moneybarn. They gave him this amount to buy a new car as he needed a car for work.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where things are not clear, or in dispute, I

make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

Mr C said that I should listen to the call with Moneybarn in which the voluntary surrender was discussed. Unfortunately the call recording wasn't available. So, I have looked at all the other circumstances in this complaint.

I have paid particular attention to Moneybarn's contact notes. It is clear from these that Moneybarn made many attempts to contact Mr C when his payments fell into arrear. I can see that emails were sent to the same email address which Mr C gave this service in his complaint form, so I have no reason to believe that he didn't receive these. I also note that Moneybarn phoned and sent texts to a phone number which differed from that in the complaint form. If Mr C had changed his phone number, I would have reasonably expected him to have updated it with Moneybarn.

I also note that when Moneybarn spoke to Mr C on two occasions in mid-December 2014, he explained to it that he had payday loans, credit card and loan debts and that his money was being swallowed by these, and that he was struggling with the arrears. In view of Mr C's other debts, I cannot be certain that Mr C would have used the refund from the debt management company or borrowed money from family to repay Moneybarn.

In addition, I note that Mr C needed his car to get to work. So, as the car was important to him because of this, if he could have borrowed money from family, I would have reasonably expected him to have done this sooner to repay Moneybarn the arrears he owed it. I would also have reasonably expected Mr C to have contacted Moneybarn to seek help with his arrears for the same reasons rather than rely on a debt management company to do so.

The contact notes also said that Mr C said that it would be best to leave the agreement. I can see that Moneybarn explained that if he surrendered the agreement, he wouldn't have to pay the court costs involved in a repossession. In Mr C's letter to this service, he said that he was told that the surrender would *probably* clear his debt. I cannot fault Moneybarn telling Mr C that the surrender would avoid the court costs involved in a repossession as this is correct. I also note that Mr C in his own words said that the repossession would probably clear the debt. On balance, I don't think that it was likely that Mr C was told that his debt would be cleared. Moneybarn's representative would have known that various fees would still remain payable for the recovery and auctioning of the car, and that further amounts would be payable under the agreement if the car wasn't in a good state of repair. The contact notes also indicated that Mr C was happy with the decision to surrender the agreement in view of his financial situation.

Moneybarn then sent Mr C a voluntary surrender form to sign. This indicated that there would be expenses due under the agreement deducted from the car sale proceeds and that there could be more to pay. If Mr C was concerned about this, I would have reasonably expected him to query this with Moneybarn, rather than sign the form without query which he did.

So, although I have sympathy for the position Mr C now finds himself in, on balance, I don't think that I have the grounds to find that Moneybarn has acted inappropriately. I can also see that Moneybarn said that it would agree an affordable repayment arrangement with Mr C. I would urge him to contact Moneybarn to discuss this. I would remind Moneybarn of its duty to treat cases of financial difficulty positively and sympathetically.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 February 2016.

Roslyn Rawson
ombudsman