

complaint

Mrs O says that Moneybarn No. 1 Limited mishandled her car credit account when she fell into arrears.

background

In January 2017, Mrs O entered into a conditional sales agreement for a used car with Moneybarn. The agreement was for five years and Mrs O was required to pay equal monthly instalments to clear the outstanding credit and interest. If Mrs O missed any payments then Moneybarn had the right to terminate the agreement and repossess the car.

Sadly, in October 2017 Mrs O suffered a close family bereavement which meant she had to take time off from work. This led to a drop in her income, which meant she was unable to make the payments for the car. To put things right, Mrs O agreed a payment plan with Moneybarn to clear the arrears over the next eight months together with making the usual monthly payments.

Unfortunately Mrs O didn't make any payments under the agreed plan. So Moneybarn sent her a number of emails, letters and texts asking she make contact and warning her that the arrears were building up.

Moneybarn then spoke with Mrs O in December 2017. She explained she had been abroad to attend a funeral and would call back to set up another payment plan.

But Mrs O didn't contact Moneybarn, and a default notice was sent to her in January 2018. Mrs O was also called by Moneybarn that month and again said she would call back later that evening. But she didn't do so.

In February 2018, Mrs O called to make a payment to Moneybarn. She was told that the agreement was now with the Asset Management Team and she would need to talk to them. Mrs O told Moneybarn that she had sent it the death certificate of her family member to show this was the reason she hadn't been able to work, and had gone into arrears. She said she would phone back later.

One week later Moneybarn called Mrs O. It explained that the account had been terminated and gave her options about what she could now do. Mrs O said she didn't think the account should have been closed as she had suffered two family bereavements in close succession and had been unable to work as she'd been helping her family. She said she had been told that the "Bereavement Team" would be in touch with her. This phone call was followed up by an email from Moneybarn again setting out the options available to Mrs O. These options were for her to settle the finance in full, agree to a Consent Order (so long as affordability was satisfied) or to voluntarily terminate the agreement and have the car sold at auction.

Mrs O complained to Moneybarn about its decision to terminate the agreement. She said she didn't want to agree to the Consent Order until her complaint had been investigated. Moneybarn agreed to hold off on any action while it investigated Mrs O's complaint.

In April 2018, Moneybarn completed its investigation and didn't uphold Mrs O's complaint. It said it had tried to contact Mrs O several times via texts, emails and phone calls but had no response. Twice Mrs O had said she would call back and failed to do so. Moneybarn

said it didn't agree that Mrs O had been told the "Bereavement Team" would call her as it didn't have one. It said it wasn't able to allow the build-up of arrears on agreement without a full understanding of Mrs O's financial situation and she had failed to provide the information within the timescales agreed. It said it was appropriate in the circumstances to terminate the credit agreement and this was in line with the terms and conditions.

On the same day that the final response letter was sent to Mrs O dismissing her complaint the car was repossessed and removed from her property. Mrs O wasn't aware her complaint had been concluded or that the car would be collected when this happened. She was distressed by the actions of Moneybarn and complained to this service.

Our adjudicator partially upheld Mrs O's complaint. Moneybarn told the investigator that usually its letter explaining that the complaint had been closed and the car would now be collected would have been received a few days before the car was actually collected. But due to an available slot with the team that repossessed the car this had happened quicker than usual. The investigator said that Mrs O should have been notified about what was happening and this failure would have caused her unnecessary distress and embarrassment. He said Moneybarn should pay Mrs O £150 compensation for this.

He also said that looking at the notes he thought it was likely that had Mrs O known her complaint had been closed she would have agreed to sign the Consent Order papers earlier as she wanted to keep the car. This would have meant the car wouldn't have needed to be removed. So if there were costs charged to her for collecting the car from her home these should be deducted from her account.

However, the investigator also said he thought Moneybarn had acted fairly and reasonably in terminating the agreement. Mrs O hadn't made contact for some time and hadn't called back when she said she would.

Moneybarn agreed with our investigator's view and paid Mrs O the £150 compensation. But Mrs O disagrees as she is unhappy that a Consent Order has now been made as this has meant more costs for her to meet.

As the parties couldn't agree the complaint has been passed to me. I issued a provisional decision as Mrs O asked me to look at the Consent Order that had been made when her credit agreement had fallen into arrears. This wasn't something Mrs O had originally asked the investigator to look at.

My provisional decision was along the following lines. I've seen a copy of the original agreement and also of the Consent Order signed by Mrs O in April 2018.

Under the agreement, if Mrs O failed to make payments then Moneybarn was entitled to repossess the car. It was agreed that Mrs O defaulted and that arrears on her account grew from October 2017.

I was sorry that Mrs O had two close family losses in quick succession. I appreciated this would've been both a shock and a very distressing time for her. It also led to her not being able to work which had an impact on her finances and caused her to default on this agreement.

While I could understand that at the time this credit agreement wouldn't have been a priority, I'd seen that there had been numerous efforts by Moneybarn to make contact with

her. Mrs O didn't respond, and when she did in December and January she then didn't call back as she said she would. Moneybarn also sent her a default notice which explained the consequences of not paying.

Mrs O said she was told that after providing the death certificate that the "Bereavement Team" would call her back, but Moneybarn said it had no such team in place and her account was being handled by the Asset Management Team.

This service expects consumers to be treated with care and respect when they struggle to make repayments. Looking at all the efforts made by Moneybarn to make contact with Mrs O I was satisfied it had acted appropriately when it decided to terminate the agreement. I believed it would've been irresponsible for Moneybarn to allow the account to have built-up further arrears in this situation.

However, its handling of the actual repossession of the car would've inevitably caused Mrs O unnecessary distress. Moneybarn had accepted that Mrs O should've been given advance warning that her complaint had been closed and the car was about to be collected. It had agreed that £150 compensation to Mrs O for the way that was handled was fair. Looking at the impact this would have had on Mrs O, I was satisfied that was fair and reasonable amount.

Mrs O agreed to sign the Consent Order in April 2018 and the order was formally made at the County Court in June 2018. This Order allowed Mrs O to keep the car so long as she made monthly payments that covered the outstanding credit amount. This Order was to last for a little under four years. If she failed to make a payment then Moneybarn was entitled to take the car back.

A Consent Order is a court order and so isn't something I could ask to be amended or overturned. Nor could I interfere with it.

I appreciated Mrs O was unhappy that Moneybarn had obtained this Order, as it incurred extra costs and the monthly amount Mrs O had to pay was now higher than originally set under the credit agreement. But a Consent Order could only be made with agreement of both parties, and Mrs O had signed the relevant paperwork. She'd agreed to the monthly payments and also to paying the costs of the Order itself. The payments were set after looking at Mrs O's income and outgoings. Mrs O had been free to decline to sign the Order.

I'd seen that Moneybarn gave Mrs O three options. I appreciated that all of the options (paying the credit amount of in full, entering into a Consent Order or voluntarily terminating the agreement) weren't particularly beneficial to Mrs O as they'd all involved taking on extra debt. But the Consent Order allowed Mrs O to keep the car and so I could understand why she would've found this to be the best and most suitable option of the three.

As Mrs O had defaulted on her credit agreement, I couldn't reasonably say that Moneybarn shouldn't have offered her the option of the Consent Order.

Looking at the evidence I intended to partially uphold Mrs O's complaint about Moneybarn's handling of her account. However, I wasn't going to ask it to do more than pay Mrs O the £150 compensation for the distress and inconvenience caused to her by removing the car when it did, and to waive any charges for removing the car (if it hasn't done so). I understand that the compensation has already been paid by Moneybarn.

Moneybarn said it agreed with my provisional decision. Mrs O hasn't responded. So neither party has asked me to look at anything again.

my findings

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

I haven't changed my view and for the reasons given above I'm partially upholding Mrs O's complaint. I'm asking Moneybarn to pay Mrs O £150 compensation for the distress and inconvenience caused to her by removing the car when it did. And to waive the car's removal charges if it had passed these on to Mrs O.

my final decision

For the reasons given above I'm partially upholding Mrs O's complaint. I'm asking Moneybarn No. 1 Limited to pay Mrs O £150 compensation for the distress and inconvenience caused to her for removing the car when it did. I understand that this amount has been paid. I'm also asking Moneybarn No. 1 Limited to waive any charges for removing the car if it passed these on to Mrs O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 12 April 2019.

Jocelyn Griffith
ombudsman