

complaint

Mr S complains that Moneybarn No.1 Limited has incorrectly imposed charges and issued a default notice for arrears on his account when it was in credit. He wants a refund of the charges and an acknowledgement they were wrongly imposed.

background

Mr S tells us he overpaid his loan which he says resulted in him being ahead with payments and having interest rebated. He says he stopped paying at a time when he was three months ahead with his payments. But he states that Moneybarn then imposed charges for arrears and sent two default notices. He says it's also failed to send him a statement of his account or explain how the arrears were calculated.

Moneybarn told us that Mr S had entered the agreement during 2015 and that payments fell due on a monthly basis. It said that where a partial early repayment is made it applied an interest rebate - which reduced the term over which the loan was repaid. But it said that (monthly) payments still fall due as normal and if they are not paid this will result in arrears. It said Mr S had been contacted numerous times about the arrears.

Moneybarn said it accepted that the first default notice charge, which was applied in December 2017, was made in error and said it had been reversed. It said the later default notice charge, on 4 June 2018, was correct as the arrears at the time were over £1,100. It said the arrears had increased significantly since then. And it told us it had been unable to fully discuss issues or correspond with Mr S as he'd requested it communicate by email. But as he'd sent security information from an unrecognised email address - it was unable to proceed.

I issued a provisional decision on this complaint on 30 July 2019. I said that I intended to uphold the complaint - but only in part. I found that Moneybarn should have been clearer in its explanations to Mr S as to how payments would be treated. I said that - whilst Mr S might not have received them - I was satisfied it had sent statements to Mr S. And it had been entitled to apply charges and send the default notice in June 2018 - as Mr S hadn't complied with the terms and conditions of the agreement. I said I intended to require Moneybarn to pay £100 compensation to Mr S.

Moneybarn has not replied to my provisional decision. Mr S replied saying that he didn't think £100 was enough compensation to cover the letters and emails he'd sent, or for Moneybarn's conduct in not dealing with the complaint clearly. He thought the £400 originally suggested by our adjudicator was fair.

I thank Mr S for his reply and I've noted his comments. But for reasons I'll explain in my final decision - which is set out below - I shan't be changing my provisional decision.

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 accept that Mr S has experienced a period of uncertainty and inconvenience regarding the repayment of this loan. And I understand his wish to sort things out and establish an accurate and up to date position.

Where evidence is unclear or incomplete - as some of it is here - I have to make my decision on the balance of probabilities. That is to say I decide what is the most likely explanation to account for what's happened. In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision.

In reading through the information with which I've been provided my lasting impression is that this situation could easily have been avoided. But I think this is a case where responsibility is shared and to some extent both parties have "*dug their heels in*" and not been as flexible as might have been desirable.

I'm aware that Mr S has said he didn't receive the statements of account he requested - and he repeated this in his reply to my provisional decision. But I've seen evidence that leads me to think they were sent - in December 2017 and also with the final response letter of February 2018. If Mr S did not receive them then it's unfortunate but I can't hold Moneybarn responsible for any failings of the party responsible for delivering his mail.

Some unusual features arise out of this complaint and I think it will help explain my decision if I summarise the sequence of events which has led to the present dispute.

The conditional sale agreement was inceptioned in March 2015. It required Mr S to pay an initial sum of £250 and 59 fixed monthly payments. In June 2015, Mr S chose to make a partial early settlement (PES) of £393. This resulted in a reduction of future interest payments. And also a reduction of the term over which the agreement was paid. I've seen a letter dated 20 July 2015 which Moneybarn sent to Mr S and which set out the way this PES would affect the agreement. This stated:

"The rebate represents future interest that you will no longer pay as a result of your Partial Early Settlement. It has been calculated with regard to the Consumer Credit (Early Settlement) Regulations 2004.

Our company policy is to reduce the term of your agreement whilst your monthly repayments stay the same. Below are details of your future payments:

51 payments of..... August 2015 to October 2019, followed by 1 payment of.... on November 2019."

The "*Early Settlement*" Regulations set out how a business must calculate rebates of interest when either full or partial repayments are made early. The formula used is complex and the calculation is invariably done by computer, but I believe Moneybarn calculated and applied the rebate in this case correctly.

For several months thereafter Mr S made the contractual payments - but in early 2017 he said he stopped paying because he had "*issues*". From then on Mr S made irregular payments rather than for his contracted monthly amounts. And there were a series of direct debit failures for which charges were applied.

When he complained to us in June 2018 - following the issue of the second default notice - Mr S told us he was ahead with payments on the agreement. And he produced calculations which he said supported this view. In summary, Mr S referred to the default notice of 8 January, 2018 which stated that payments totalling £13,117.20 had been made. But he said that the total of monthly payments due between April 2015 and December 2017 was only £12,777.27 (33 monthly payments) - so he couldn't have been in arrears.

I think I understand the point Mr S is trying to make and I accept it may seem paradoxical that payments for more than the original contracted amount have been made yet the account is in arrears.

The explanation for this is to be found - although it's not explicitly explained - in Moneybarn's letter of 20 July 2015.

By making a PES, Mr S benefitted by reducing the number of monthly payments over which the agreement would be paid. In other words, the savings were towards the end of the agreement. But - as the letter states - the scheduled monthly payments remained the same until the full amount was repaid. So if monthly payments were missed - as they were - arrears arose from that point and charges were applied.

Where I think Moneybarn should have been more helpful is in trying to explain things to Mr S. I don't criticise it for sending notices of arrears and the default notice of June 2018 - it was required to do so by regulation. But I think from reading the contact notes it should have realised that Mr S did not fully understand the way the debt was calculated, despite the contents of the letter. Standard format letters have their place but it seems to me that good practice and fairness require that where it's apparent - or should be - that a customer has not fully understood what was being said, then a more personalised response is necessary.

At the time the January 2018 default notice was sent the amount owing was £9,995.01. But by June 2018, according to the default notice which was sent at that time, the debt had reduced to £8,145.87. So this wasn't a case of a customer not making payments - but one where a customer was seeking an explanation so he could understand the ongoing situation.

Unfortunately matters seem to have deteriorated since then and Mr S informed us that he'd stopped making payments. He told us:

"I have no problem paying but refuse to out of principle."

And in his response to my provisional decision, Mr S re-stated that he was entitled to withhold payments until this dispute had been resolved. Mr S is entitled to his view - it's not one I share - but there's nothing in the terms of the agreement that permits the withholding of payments pending a resolution of a dispute.

The latest statement I've seen, dated 23 February 2019, shows direct debits are largely returned unpaid but that other payments - not for the contracted monthly amount - are being made. The sum owed is just over £6,600 but arrears are put at over £3,100. We would not advise a customer to stop making contractual payments as this can have a serious and detrimental effect on a credit file and the ability of the customer to access credit in the future.

Although I've not been provided with information as to whether the arrears have been reported to the credit reference agencies - I will assume that this would be the case.

Arrears can also lead to the termination of the agreement and possible repossession of the vehicle - although here this would require a court order as Mr S has paid the major portion of the agreement.

In summary, I find that Moneybarn did send Mr S account statements in December 2017 and February 2018. And as I think Mr S hadn't complied with the terms and conditions of the agreement in relation to payments I think it was entitled to apply charges and send the default notice in June 2018. Moneybarn has acknowledged it should not have applied a

default charge in December 2017 - but as that was quickly reversed I shan't be asking it to do anything else about that matter.

I do think it should have made more effort to assist Mr S with a clearer explanation as to how payments were treated. And if it had done so, I think it's possible he'd have altered the pattern of repayments to meet his obligations. So I think it should pay £100 to Mr S to compensate for this.

I'm aware Mr S doesn't think this sum is sufficient but I think it's fair and reasonable. The purpose of compensation is not to penalise a business. And I think the error made by Moneybarn is relatively minor. It didn't explain things as well as it might but it did confirm that contractual monthly payments still needed to be made.

It's to be expected that - when a complaint is made - the maker of the complaint would spend a reasonable amount of time and effort in pursuing it. So it's not appropriate to award extra compensation simply because this is the case.

I'm aware my decision will come as a disappointment to Mr S. And he is under no obligation to accept it. Although in that case Moneybarn will not be bound by it either.

But whether or not he does so, it will bring to an end our involvement as an independent resolution service.

my final decision

For the reasons given above my final decision is that I uphold this complaint but only in part.

I require Moneybarn No.1 Limited to pay Mr S £100 for failing to give him a clearer explanation as to how his account payments would be applied.

If there are arrears on the account this sum can be applied to reduce that figure. If there are no arrears then payment should be made directly to Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 October 2019.

Stephen D. Ross
ombudsman