

complaint

Mr M complains that Moneybarn No. 1 Limited, trading as Moneybarn, has not provided him with correct information about the balance required to voluntarily terminate his agreement with it. He is also unhappy that it has unfairly applied charges to his account, it has unfairly charged him for damage to his car, it has ignored his phone calls and unreasonably chased him for payment whilst his complaint was being investigated.

background

Mr M had entered into a conditional sale agreement with Moneybarn to acquire a car in late April 2013. The agreement said that Mr M could voluntarily terminate the agreement if he paid £7,539.31 (one half of the total amount due) plus any overdue instalments. The agreement also said that the car was to be returned in good order and that Mr M was to be responsible for paying the cost of all damage except any due to fair wear and tear. Additionally, the agreement said that Moneybarn could charge Mr M £25 for each payment not paid on the due date.

Mr M wanted to voluntarily terminate his agreement with Moneybarn and asked it for a settlement figure. On 22 December 2014, Moneybarn told him in error that he was only £299.34 short of the required payments under this option. Mr M made his monthly payment of £297.63 on 31 December 2014, after which he believed that he had a balance of £1.71 left to pay. Mr M then sent a letter terminating his agreement to Moneybarn in late January 2015, but Moneybarn didn't receive it. Mr M rang Moneybarn on 12 February 2015 as he hadn't received a response to his letter. He was told to email his termination request, and was also told that he now needed to pay £322.63 to terminate his agreement. Mr M was concerned that Moneybarn had increased the amount due as it hadn't received the letter he had sent it in January 2015. He thought that this was unfair. He complained to Moneybarn. Its final response letter on 10 April 2015 confirmed the amount due of £322.63 (plus the cost of the damage to the car) but it agreed to waive a late payment fee of £25. But, on 13 April 2015, Moneybarn sent another letter and a statement to Mr M which said that he now needed to pay £639.51 to end his agreement.

The adjudicator explained that the correct cost for Mr M to voluntarily terminate the agreement had always been half the cost of the finance (£7,539.31) plus £495.00 for the charges that had been applied over the life of the agreement and the costs for damage (£97.80). These totalled £8,132.11. He noted that Moneybarn had agreed to one late payment charge of £25 being waived. As Mr M had paid Moneybarn a total of £7,537.60 for repayments and charges, he still had £594.51 to pay.

The adjudicator also said that on the first occasion that Mr M had spoken to Moneybarn about the balance required to terminate, it shouldn't have included the charges paid by Mr M in its calculation of the amount of £7,539.31. Because it included the amount paid for the charges in error, Moneybarn gave Mr M an incorrect settlement figure of £1.71. Moneybarn's final response letter gave a different figure of £440.43 to pay, although this was also incorrect. But, the adjudicator said that the balance shown in Moneybarn's letter dated 13 April 2015 was correct (less the reduction of £45.00 for damage).

The adjudicator also noted that the charge for damage to the car had been calculated incorrectly using out-of-date British Vehicle Rental and Leasing Association ("BVRLA") guidelines to calculate it. Moneybarn then agreed that the overall bill for damage would be reduced by £45.00.

The adjudicator said that it was understandable that Mr M didn't trust the figures he was given as they were all different. Under the circumstances, he recommended that Moneybarn should stick to the figure given in its final response letter, and allow Mr M to settle the account for £440.43, minus £45.00 for the damage on the rear wheel, leaving £395.43 to pay.

Mr M disagreed and responded to say, in summary, that he disputed the charges which had been applied to his account, and the statement supplied by Moneybarn was inaccurate. He believed that all charges due had been paid by the end of October 2014 when he paid £782.56 for charges. After this date, all payments had been made on time so no further late payment charges should have been due. Mr M also said that three different settlement amounts had been claimed by Moneybarn, and because he had been told in December 2014 that just under £2 was due, he didn't understand why more charges were applied after the car had been collected. Mr M was also upset that Moneybarn continued to contact him whilst his complaint was being investigated by this service.

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 have considered the points raised by Mr M below.

What is the correct amount due to voluntarily terminate the agreement?

I have been through Moneybarn's statement dated 13 April 2015. I can see that Mr M has paid £495 in charges and £7,042.60 in repayments under the agreement. Mr M believes that he has paid a total amount of £8327.78, but he hasn't provided any evidence to show that he has paid this amount. He has supplied a copy of Moneybarn's statement to this service and marked all the payments he had made. But the direct debits for six of the marked payments failed, and so shouldn't have been counted.

As Mr M needed to pay one half of the finance, (£7,539.31) to voluntarily terminate the agreement, this meant that another £496.71 was due to make up the one half sum. Mr M also needed to pay any other sums due under the agreement such as the amount charged for damage to the car and this amounted to £97.80 after deduction of the £45 referred to above, making a total due of £594.51. So, I agree with the adjudicator that the statement shows the correct amount due from Mr M. But, £45 in respect of the damage needs to be deducted from the amount shown of £639.51, leaving £594.51 as the amount to pay to voluntarily terminate the agreement.

Mr M was concerned that he was disadvantaged by the fact that Moneybarn hadn't received his termination letter in January 2015. But Moneybarn told this service that the amount due to terminate the agreement on the one half rule on the date of the termination letter was no different from the amount he was required to pay on the date he handed his car back in late February 2015. This is because Mr M had not yet reached the one half mark for the amounts he paid to make his agreement repayments. The amount he had paid for charges didn't count towards the one half amount required.

Charges applied to Mr M's account were incorrect

I have been through Moneybarn's statement dated 13 April 2015 and I can see that Mr M's direct debit payment failed on nine occasions (1 October 2013, 1 November 2013, 1 December 2013, 1 January 2014, 1 May 2014, 1 June 2014, 1 July 2014, 1 September 2014 and 1 February 2015). As nine payments were not paid on the due date, Moneybarn was entitled to charge Mr M a charge of £25 for each of these under the terms of his agreement.

I note that Moneybarn applied nine charges to Mr M's account, although as a gesture of goodwill it agreed that the last charge didn't need to be paid. I think that the charges were correct. I also note that a default notice charge of £25 was applied and a recovery agent's charge was applied at the end of January 2014 for £270. So, the total charges due from Mr M amounted to £495. I have seen no evidence that these were charged incorrectly.

No charges should be due after October 2014

The only charges applied after October 2014 were the failed direct debit fee on 1 February 2015 which has since been waived, and the car damage costs which were due under the terms of the agreement. I note that Mr M signed the vehicle condition report on 23 February 2015 to confirm agreement with the items listed as damage. The report also showed that the damaged items would cost £402.96 to remedy. So, I think that Mr M should have reasonably known that the report showed that repairs were needed. The amount due for repairs has since been reduced to £97.80.

Different settlement amounts provided by Moneybarn

I can see that Moneybarn has provided incorrect information to Mr M about the correct balance due on at least three occasions and I agree with Mr M that this is unsatisfactory service. It is clear that on the first occasion, Moneybarn's agent wrongly included the total charges amount paid by Mr M when calculating the amount of repayments paid by Mr M. But I agree that the correct amount due was shown on the statement dated 13 April 2015, less £45 for the damage, making a balance due from Mr M of £594.51. Mr M has also complained about conversations with Moneybarn in late January 2015 and mid-February 2015. I have looked at Moneybarn's contact notes for details of these conversations but they don't refer to any settlement figures being given, and refer to advice about voluntary termination and the need for Mr M to email his written request to terminate.

Because Moneybarn made errors in telling Mr M how much was due on several occasions, and as a result caused Mr M confusion, I think that Moneybarn should compensate Mr M for this. I agree that the recommendation made by the adjudicator is appropriate, and that Mr M should only have to pay the amount shown in the final response letter minus £45.00 for the damage on the rear wheel, leaving £395.43 to pay. This means that Mr M has in effect received a reduction of £199.08, which I think is appropriate compensation in these circumstances.

Contact during investigation

Mr M complains about phone calls and letters received from Moneybarn chasing for payment whilst his complaint was under investigation. He also said that his calls were not returned. I have seen Moneybarn's contact notes. I can see that there was one call to Mr M about his arrears in February 2015, but no others after this. Mr M has not provided any evidence of the dates of the calls he refers to, so without this, I am unable to say that Moneybarn has acted

inappropriately. I have also seen letters sent to Mr M which were Notices of Default Sums. But as these letters are required to be sent under consumer credit legislation, I cannot say that Moneybarn acted unfairly in sending them. I can also see that there was a promise to call Mr M back on 19 March 2015, but no call back was received by him.

Complaint handling

I can see that the final response letter from Moneybarn did not correctly explain the balance due from Mr M and so I think that this was an unsatisfactory response to his complaint and resulted in more confusion for Mr M. I also note that Moneybarn was using out of date BVRLA guidelines which resulted in it unfairly charging Mr M more than it should have done. It didn't realise this until our adjudicator pointed this out. I also note that Moneybarn failed to call Mr M back in March 2015 as set out above. For these reasons, I don't think that Moneybarn has satisfactorily handled Mr M's complaint and I think it should pay £100 compensation. It should credit Mr M's account with this amount.

I can see that Mr M has experienced some financial difficulties and may be unable to promptly pay the whole amount required to terminate his agreement. I would urge him to contact Moneybarn to discuss this if this is the case. I would remind Moneybarn of its duty to treat cases of financial difficulty positively and sympathetically.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Moneybarn No. 1 Limited, trading as Moneybarn, to:-

1. Reduce the final amount required from Mr M to terminate his agreement to £395.43; and
2. Credit Mr M's account with it with £100 compensation.

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

Roslyn Rawson
ombudsman