

## **complaint**

Mr B complains that Moneybarn No.1 Limited says he's liable to pay over £14,000 after he ended a finance agreement and returned the car supplied under it.

## **background**

The background to this complaint and my provisional findings are set out in my provisional decision dated 5 August 2019. A copy of my provisional decision is attached and this forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Mr B feels Moneybarn deprived him of his right to withdraw from this finance early on and he has asked me to look at that again. Moneybarn says I have misinterpreted its processes and relevant legislation - and the outcome that I have proposed is not available to other consumers - so it's not appropriate for any changes to be made to Mr B's remaining balance.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I want to assure Mr B that I have thought about everything that he's told us very carefully. I can see he has strong feelings about what happened. Mr B says (in summary) that he contacted Moneybarn within the relevant period to say he wanted to withdraw from this finance agreement - so he should have been allowed to do so at that point.

He feels the question of how he would pay for the car without the finance was between him and the dealer. And he thinks it was wrong of Moneybarn to suggest he should contact the dealer and/or the broker before it actioned his request - as they put pressure on him not to withdraw.

I accept Mr B contacted Moneybarn in time to withdraw from the finance. On balance, I am satisfied however that Moneybarn did not *refuse* to comply with his request. Instead, as far as I can see, Moneybarn told Mr B that he'd still be liable to take delivery of the car if he withdrew so he should get in touch with the dealer first - to ensure that withdrawal was the best course of action.

I don't think it was unreasonable of Moneybarn to give Mr B an opportunity to discuss things with the dealer in this situation. If Moneybarn hadn't done that, and Mr B then found himself liable to pay for the car without the ability to do so, I think Mr B would probably have wanted to know why Moneybarn hadn't warned him about this possibility.

I understand Mr B is unhappy with the actions of the broker and the dealer when he got in touch with them after he contacted Moneybarn - he says they discouraged him from withdrawing from the finance. But, I'm afraid the circumstances in which this service can look into the actions of a third party (such as a dealer or credit broker) in a complaint about a lender like Moneybarn are generally limited to what took place *before* the finance was taken out.

I appreciate Mr B feels the broker, in particular, was acting on behalf of Moneybarn when they discussed withdrawal, but I have seen nothing to show that was the case. I'm unable to look into Mr B's concerns about the actions of the dealer and the credit broker in this complaint against Moneybarn. And I don't think I can fairly criticise Moneybarn for assuming that Mr B had decided to carry on with the agreement - having heard nothing further from him about withdrawal. So, I am not persuaded that Moneybarn prevented Mr B from exercising his right to withdraw from this finance.

Moneybarn is also unhappy with my provisional findings. Moneybarn says (in summary):

- voluntary termination (VT) was the cheapest option available to Mr B at the relevant time;
- voluntary surrender (VS) is available *after* a finance agreement has been defaulted and terminated so the "handback" option offered to Mr B was the *pre-termination* alternative (as sale proceeds are applied without additional charges in the same way as VS);
- if it had used the VS process instead of VT then the sale proceeds of £10,700 would have been deducted from the outstanding balance on the account *at the time* - which was in the region of £31,000; and
- it could not have used the early settlement balance of £16,872, calculated under the Consumer Credit Act 1974 - as this would have required Mr B to settle in full within 28 days.

I accept early settlement legislation requires notice and payment within a set time. Likewise, I appreciate Moneybarn may only offer VS after an agreement has defaulted - in the usual course of events. And I don't suggest that Moneybarn is obliged to offer an early settlement rebate and/or VS to every customer who wants to end an agreement.

But, lenders like Moneybarn are required to respond positively and sympathetically when a borrower like Mr B finds himself in financial difficulties. I've considered Moneybarn's response when Mr B said he was unable to meet his monthly repayments in early 2018. And, for the reasons I have set out in my provisional decision, I remain of the view that it would have been positive and sympathetic for Moneybarn to offer to end Mr B's agreement by both deducting the sale proceeds *and* applying an early settlement rebate to reduce the outstanding balance - in light of these particular circumstances.

Having considered everything again, I see no reasonable grounds to depart from my provisional conclusions. I realise this decision will likely come as a disappointment to Mr B and I'm sorry about that. Mr B is not however obliged to accept my decision, in which case it remains open to him to pursue this matter by alternative means should he wish to do so.

### **my final decision**

My decision is I uphold this complaint and I require Moneybarn No. 1 Limited to

1. allow Mr B to end the finance agreement by way of voluntary surrender as of 22 March 2018 and amend his credit file accordingly;
2. reduce the amount owed by applying the proceeds of sale plus an interest rebate calculated in accordance with early settlement regulations; and
3. advise Mr B of the outstanding balance and arrange a suitable repayment plan if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 October 2019.

Claire Jackson  
**ombudsman**

## **copy provisional decision**

### **complaint**

Mr B complains that Moneybarn No.1 Limited says he's liable to pay over £14,000 after he ended a finance agreement and returned the car supplied under it.

### **background**

Mr B got this car with conditional sale agreement (CSA) from Moneybarn in October 2017. He changed his mind not long after as he felt the finance cost too much. He contacted Moneybarn to cancel the agreement but says he wasn't allowed to do so. He told Moneybarn he was having financial issues in January 2018.

Moneybarn agreed to take the car back under a process known as voluntary termination (VT). It told Mr B he'd still have to pay half the total amount due under the CSA by using this process, which was over £14,000. Moneybarn offered to set up a repayment plan if Mr B couldn't afford to pay this in one lump sum.

Mr B thinks this is unfair. He feels he was pressured into signing the finance agreement - and says he would never have done so if he'd realised the credit cost more than the car itself. He thinks the finance was unaffordable at the outset. Moneybarn has taken the car back now and he considers it's wrong to ask him to pay more for the vehicle.

Moneybarn says Mr B phoned on 14 October 2017 to say he was moving for work and wanted to cancel the CSA. Moneybarn explained there was no option to *cancel* but Mr B had the right to *withdraw* from the agreement. It told Mr B withdrawing from the finance wouldn't cancel the agreement to supply the car. So, he would need to speak to the dealer to see if it would cancel the sale - or find an alternative way to pay for the car. Mr B subsequently took delivery of the car and Moneybarn assumed he decided to keep it.

When Mr B said he was having financial problems Moneybarn ran through various options for ending the CSA. It gave Mr B some idea of what each option would cost and Mr B decided to VT the agreement. The car was returned and Moneybarn told Mr B he was liable to pay half the total amount due under the CSA - which worked out at just over £14,000.

Our investigator thinks the complaint should be upheld in part. He accepts Mr B said he wanted to cancel the CSA but he's satisfied he wasn't prevented from withdrawing from the finance. He thinks it was reasonable of Moneybarn to discuss termination options with Mr B. But, he notes the car was sold for over £10,000 and considers it would have been fair for Moneybarn to apply that money to reduce the VT amount.

To put things right, he says Moneybarn should reduce the VT balance by £10,700 and, if Mr B is unable to pay the new balance outstanding, agree a suitable payment plan.

Moneybarn says (in summary)

- Mr B exercised his right under legislation to VT his agreement;
- it processed this request properly and the sale proceeds are not taken into account;
- the amount Mr B is liable to pay under the VT process is set down by statute not decided by Moneybarn; and
- he remains liable to pay over £14,000.

Moneybarn asked for an ombudsman to review the matter.

### **my provisional findings**

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr B told Moneybarn he was unable to keep up with the payments due under this finance not long after he took it out. I understand he would have liked Moneybarn to simply take the car back and cancel the agreement at that stage but I'm afraid Moneybarn wasn't obliged to do so.

I've considered the CSA Mr B signed. I think the total amount of credit, the number and amount of monthly repayments and the interest rate are all displayed fairly prominently. I consider the terms – including Mr B's obligations – are reasonably clear and I'm satisfied similar information was also set out in the explanation document provided to Mr B before he agreed to the finance. I have seen nothing to show that Mr B was put under undue pressure to take out the finance.

#### *withdrawal*

I don't think there's any dispute that Mr B had the right to withdraw from the CSA within 14 days. If he had done so, he would however have needed to repay the money he borrowed from Moneybarn – and he would have remained liable to take delivery of the car. This means he would have had to pay for the car in some other way. On the information I have at the moment, I can't see that Mr B was in a position to do so.

I accept Mr B emailed the dealer ten days after he signed the finance agreement (on 14 October 2017) to say *"I am going to cancel my loan agreement.... I will wait a few months before I apply again. My deposit ...can go towards my payments for [another car]"*. I haven't seen the dealer's response but it looks as if Mr B decided to continue with the existing finance arrangement. I've seen nothing to show that Moneybarn prevented Mr B from withdrawing from the CSA and I'm not minded to uphold this complaint on those grounds.

#### *affordability*

Moneybarn was obliged to carry out reasonable and proportionate checks to ensure that Mr B was likely to be able to repay what he borrowed here in a sustainable way. What is proportionate will depend on the circumstances. In this case the car cost nearly £16,000 and the cost of credit was over £17,000. Mr B agreed to repay over £33,000 at £545 a month over five years.

Moneybarn says it asked Mr B for payslips or bank statements to verify his income and it obtained information from a credit reference agency (CRA). Moneybarn told us it won't normally approve an application if the proposed repayment is more than 25% of the borrower's net income. Based on the information it had Moneybarn was satisfied that Mr B met this criteria and the finance was affordable.

Moneybarn has provided copies of the four weekly payslips it saw at the relevant time. I'm satisfied these show that Mr B received basic pay of about £350 a week. Moneybarn also sent us a copy of a bank statement Mr B provided. This shows he received tax credits of around £800 a month – and it looks as if he had some other sources of income as well.

Moneybarn hasn't been able to provide the information it received from the CRA but Mr B has sent us a copy of his credit file. At the time Mr B applied for this CSA, I can see he had four defaults. The most recent of these was in July 2016. Mr B also has two county court judgments (CCJs) from October 2014 and December 2016. I think it's more likely than not Moneybarn would have seen this in the information it obtained from CRAs at the time.

I accept this adverse information suggests Mr B had some financial issues before he applied for the CSA. But, I'm satisfied he repaid other debts during this time. And I can't see that Mr B was over extended – in terms of other credit commitments – when he borrowed this money from Moneybarn.

On the information I have, it's difficult to say that Moneybarn should reasonably have carried out more checks here. And, even if I were persuaded that Moneybarn should have done so, I would have to be satisfied that it's likely the finance was actually unaffordable for Mr B - in order to uphold this complaint.

I have seen copies of Mr B's bank statements for the period three months before and three months after he took out this CSA. And I think it looks as if he probably had enough disposable income to afford this finance. I realise the bank statements may not tell the whole story. And I can see Mr B only had the CSA for a few months before he told Moneybarn he was struggling to meet the repayments - which might suggest there was an affordability issue from the outset.

Our investigator asked Mr B to supply more information about his income and outgoings but he wasn't able to provide that. And Moneybarn says Mr B indicated his financial situation had changed - when he first reported having difficulties in January 2018. On balance overall, based on the information I have, I can't safely conclude that this CSA was unaffordable for Mr B when he took it out. So I can't fairly find it was wrong of Moneybarn to provide the finance in the first place.

#### *termination options*

When a borrower like Mr B tells a lender that he's having financial problems we expect the lender to provide a positive and sympathetic response. Unfortunately, there are only a few options available when a borrower is unable to maintain repayments under this sort of finance. I can see that Moneybarn sent Mr B information about his options for ending the agreement as follows:-

##### *"Voluntary Termination*

*the vehicle must be returned and there may be a residual amount to clear the agreement which will vary depending on whether you've paid half the agreement value or not (plus any arrears and charges). We'll agree an affordable payment plan to clear any outstanding balance. £14,552.46*

##### *Handback*

*You hand back the vehicle to us and we'll sell it. There will be a residual amount to clear the agreement, which will be discounted by the sale value of the vehicle. We'll agree an affordable payment plan to clear any outstanding balance. £20,564.81*

##### *Early Settlement*

*You pay us the full Early Settlement Figure by a set date and the agreement ends. You become the legal owner of the vehicle. £16,872.00*

##### *Default Termination £21,974.04"*

Mr B told Moneybarn he wanted to VT the agreement in March 2018.

The right to VT this sort of finance is provided under section 99 of the Consumer Credit Act 1974 (CCA). This says a borrower can end the agreement *at any time* by giving notice. Section 100 of the CCA sets out the financial consequences of terminating under section 99 - it says the borrower is liable for *half of the total amount* payable along with any outstanding liability under the finance at the point of termination. This is reflected in the CSA Mr B signed which says

*"You have the right to end this agreement...Moneybarn will then be entitled to the return of the goods and to half the amount payable under this agreement that is £16,589.46. If you have already paid at least this amount plus any overdue instalments and you have taken reasonable care of the goods you will not have to pay any more".*

Based on the options above that Moneybarn put to Mr B, VT was the cheapest option - so I can see why he agreed to do that. Our investigator thinks Moneybarn should also have applied the sale

proceeds to reduce the VT amount by about another £10,000. But, I'm afraid lenders aren't obliged to do that under the relevant legislation. And I'm unable to reasonably require Moneybarn to do so here.

There is however another termination option - commonly referred to as "voluntary surrender" (VS) - which I think it would have been reasonable for Moneybarn to consider in this situation.

#### *voluntary surrender*

This process is not set out under the CCA in the same way as VT. But lenders can allow a borrower to end a finance agreement in this way. And we generally consider it fair to do so where a borrower finds himself in trouble financially at the sort of early stage that Mr B did here - in that he'd only made a few of the monthly payments due when he ran into financial difficulties.

Under VS the customer returns the vehicle, which is sold by the lender. The sale proceeds are then applied to reduce the outstanding balance *along with* any rebate due as the result of early settlement regulations.

Looking at the figures in the termination options Moneybarn provided to Mr B, I think it seems to have given him the option to reduce the amount owed by *either* the deducting the sale proceeds (the "handback" option) *or* an interest rebate ("early settlement").

As far as I can see (from the figures Moneybarn provided) Mr B would have had to pay £16,872 if he'd received the interest rebate alone in February 2018. So, it looks as if the amount owed would have been reduced by another £10,000 or so if Moneybarn had applied the sale proceeds towards the debt as well - meaning Mr B would be liable to pay something in the region of £6,000.

Given the short time Mr B had this agreement, the fact Moneybarn knew he was having financial issues in January 2018 and the relatively low amount he'd paid off the finance at that stage, I think it would have been positive and sympathetic for Moneybarn to have offered to end this CSA by way of VS. If Moneybarn had put this option to Mr B I think he would probably have agreed to take it - rather than end the agreement by way of VT.

On the current evidence, I am minded to uphold this complaint. I intend to find Moneybarn should reduce the balance of Mr B's account by the amount he would have been entitled to by way of early settlement (when he asked to end this agreement in March 2018) plus the proceeds of sale. If, after that, Mr B is unable to pay the balance left outstanding then I'd expect Moneybarn to arrange a suitable plan to enable him to repay what he owes in a sustainable way.

I invite the parties to consider what I've said and let me have any further submissions by the date below. After that date I'll look at all of the evidence available and make my final decision.

#### **my provisional decision**

Subject to any further submissions that I receive from the parties 5 September 2019, my provisional decision is I am minded to uphold this complaint. For the reasons I've set out above, I intend to require Moneybarn No 1 Limited to

4. allow Mr B to end the finance agreement by way of voluntary surrender as of 22 March 2018 and amend his credit file accordingly;
5. reduce the amount owed by the proceeds of sale and any interest rebate due under early settlement regulations;
6. advise Mr B of the outstanding balance and arrange a suitable repayment plan if appropriate.