

complaint

Miss G complains about the way a conditional sale agreement for a used car was set up and operated by Moneybarn No. 1 Limited ("Moneybarn"), leading to the car being wrongly repossessed and her personal possessions not being returned to her.

background

In July 2015 Miss G entered into a conditional sale agreement with Moneybarn for a used car. However, before the end of 2015 the monthly direct debit payments she had set up started to be refused by her bank.

Following difficulties in making contact with Miss G and her failure to comply with a default notice, a consent court order was signed by Miss G and by Moneybarn in November 2016, after she had supplied evidence of her current income. Under this the court ordered the car to be repossessed, but this was to be suspended so long as Miss G paid £314.21 on 1 January 2017, and 18 further payments of £314.03 on the first of each following month.

Miss G didn't keep to this arrangement. So in June 2017, with arrears standing at £986.12, Moneybarn decided to terminate the arrangement and repossess and sell the car. Miss G wasn't present when Moneybarn's agent collected the car. She says that personal possessions to a value of some £1,800 were in the car when it was removed and haven't been returned to her. She also thinks Moneybarn's action in repossessing the car was unnecessary and inappropriate.

Our investigator didn't recommend that this complaint should be upheld. She said that Moneybarn had objected to us considering some of the points Miss G complained about because it had responded to these by letter more than six months before she brought this present complaint. So under our rules, which we were required to follow, we couldn't now consider these issues unless there were exceptional reasons for her delay.

On the issue of whether Moneybarn had legally repossessed the car, Miss G believed it had done this because it incorrectly believed she had changed the address it was being kept at without telling it. The investigator said that while Moneybarn had noted an issue about a change of address, the reason for repossession was that the payments required by the court order weren't being made.

The accounts of Miss G and the collection agent about what took place at the time of collection differed, and the investigator couldn't be sure what actually happened, or that the collection agent did anything wrong.

Although Miss G said she had left almost £1,800 of her property in the car, which hadn't been returned to her, this wasn't supported by the evidence of the collection agent or Moneybarn. They said there was nothing of significant value left in the car. On balance, the investigator hadn't seen enough evidence to say the items Miss G described were in the car when it was collected. Moneybarn had also offered to return by recorded delivery post any of Miss G's property that was still in the car, if she returned the car keys in her possession so it could get into the car. But Miss G refused this offer.

Miss G responded to say, in summary, that:

- she didn't see one of Moneybarn's responses until some weeks after it was first issued and so any time limit should only run from when she actually saw the response;
- basically her car was repossessed by Moneybarn because it thought, wrongly, that she had changed address;
- Moneybarn misdirected documents to her for over six months in 2016;
- the original agreement and the suspended order were both unaffordable as she got paid weekly rather than monthly and so her figures suggested she had more income than in fact she had;
- she didn't understand how she still owed money after her car had been sold;
- Moneybarn had refused some payments and prevented her from paying on occasions; and
- she wanted the calls from the Moneybarn employee who arranged to return her property to be listened to.

my findings

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

Like the investigator, I think Moneybarn dealt with the issues about whether in 2016 it was communicating with an old address, and whether it should have sought a consent order from the court in 2016, in its letters dated 21 October and 25 November 2016. I think it's likely that Miss G received those responses because they were sent to what is her current address. So I don't think our rules allow us to look back at those issues again now.

From looking at Moneybarn's records, although it did think at one stage there was an issue about the address where the car was kept, I'm satisfied that the reason for repossessing the car was that Miss G failed to make the payments she had agreed when she signed the consent order.

Miss G would have been well aware of the payments she had to make, and the consequences of failing to make them. It was her responsibility to ensure the payments were made and on time. So in June 2017, with arrears standing at £986.12, Moneybarn was entitled to repossess the car as it did.

Although Miss G now says the payments in the court order, and the original payments, were unaffordable, I haven't seen any evidence to show this was the case at the time they were agreed, or that Moneybarn was mistaken about her income.

Moneybarn sent Miss G a statement showing why the sale of the car didn't realise enough to repay her debt to Moneybarn, and what was still owed. If she hasn't got a copy of this she should ask Moneybarn for a further copy, and to explain to her how it is made up. If Miss G is now in financial difficulties, Moneybarn should discuss with her an affordable arrangement to repay this over a mutually agreed timescale.

I note from Moneybarn's records that on several occasions it arranged to take one off payments from Miss G when the direct debit arrangement she had set up failed. So I'm not persuaded that the repossession arose because Moneybarn refused payments from Miss G.

Like the investigator, I haven't seen enough evidence to say that personal property of the value and nature Miss G claims was in the car when it was repossessed. I'm also satisfied

from Moneybarn's records that it offered to return any of her property that was in the car by recorded delivery post to Miss G if she returned the car keys she still held. But she didn't agree to this. In the circumstances, I don't think it would assist for me to listen to any phone calls Moneybarn may still hold about this.

my final decision

My decision is that I don't uphold this complaint, and make no order against Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 7 March 2018.

Lennox Towers
ombudsman