

complaint

Mr T complains about the mishandling of a conditional sale agreement he had with Moneybarn Limited to buy a car. He's unhappy that a default notice was issued.

background

In April 2013 Mr T entered into a conditional sale agreement with Moneybarn to buy a car. The agreement was for four years and had set monthly repayments.

In December 2015 Mr T's direct debit was returned by the bank. Mr T contacted Moneybarn and explained he was temporarily unable to work, but would clear the arrears the following month when he would be going back to work.

Moneybarn asked Mr T to complete an income and expenditure assessment as it appeared from what he'd said that he would also miss January's payment. Mr T provided the information requested, but did miss January 2016's payment.

Moneybarn decided on the figures given by Mr T that he would be able to clear the two months' arrears in one payment in February and set up a direct debit for the full amount. But shortly before that payment was due Mr T contacted Moneybarn and said the payment wouldn't be covered as he didn't have the funds available. He said he'd been overly optimistic about his income. Mr T offered to clear the outstanding arrears over the following two months, paying half off each month.

Moneybarn declined Mr T's offer and said it thought based on the figures he'd provided that he could clear the whole sum off in one month. Mr T complained to Moneybarn as he said it had originally agreed to his proposal during a phone call and that it was now being unreasonable. Moneybarn disagreed and in April 2016 Mr T complained to this service.

Our adjudicator opened a complaint file for Mr T and contacted the business. He also wrote to Mr T saying that Moneybarn would get in touch with him directly and that this service wouldn't do anymore until it heard back from him.

In May 2016 Moneybarn sent this service a copy of its final response letter to Mr T which it had sent him in April 2016.

There weren't any further developments and Mr T continued to make his monthly payments, but didn't clear the two months of arrears. In August 2016 Mr T missed another month's payment. Mr T told Moneybarn he'd been unemployed for a few weeks but had some interviews lined up. Moneybarn told Mr T it would have to review his account due to the level of arrears his account was now in.

Moneybarn decided to issue a default notice due to the level of the current areas and as there was a real possibility that further month's payments would be missed. Moneybarn told Mr T that if he found a job then it would re-consider.

Mr T was sent the default notice that gave him 21 days to clear the arrears or the agreement would be terminated. Around a week before the notice was due to expire Mr T wrote to Moneybarn saying he had found a new job which would allow him to pay the month's arrears off at the end of September and then resume his monthly payments as before. He also asked why, if there was an unresolved issue with this service, that Moneybarn wanted to issue the default notice.

Moneybarn decided that as it didn't know any details about Mr T's new job or his financial standing that the default notice would remain in place. Mr T complained that Moneybarn had been "over-zealous" in applying the notice but Moneybarn disagreed. So Mr T came back to this service.

Another adjudicator investigated Mr T's complaint. She didn't recommend it should be upheld. The adjudicator said she thought that Moneybarn had acted reasonably when it turned down his offer in February 2016 to clear the original two month arrears. It needed more information that Mr T hadn't provided. And with those two months' payments remaining outstanding she didn't think Moneybarn had been unfair in issuing the default notice in August 2016.

Mr T disagreed with the opinion of our adjudicator. He said his first complaint made in April 2016 hadn't been addressed. He'd asked for a copy of the call which he thought would show Moneybarn had agreed to his proposal to clear the arrears. He said he thought Moneybarn had been overzealous issuing the default notice when he had an outstanding complaint with this service over the two months' worth of arrears.

The adjudicator listened to a copy of the phone call between Mr T and Moneybarn when Mr T had offered to clear the arrears in instalments. She didn't agree with Mr T that Moneybarn had agreed to this proposal. She thought it was clear that how the December and January arrears would be cleared hadn't been resolved. The adjudicator also said that by issuing the notice it prevented further charges and interest accruing on the account so she still didn't think Moneybarn had acted unfairly.

Mr T said he thought Moneybarn would be setting up a new direct debit to take the arrears internally. It had also stopped mentioning the two missed payments until the default notice had been issued on his account.

The adjudicator said even though Mr T had an unresolved complaint about the arrears arising from December and January, Moneybarn would've still reasonably expected Mr T to address them. And although she appreciated Moneybarn's contact about those arrears was sporadic Mr T was aware these payments were outstanding and taken no action. She didn't think Mr T would've acted any differently if Moneybarn had sent further notifications about those arrears.

The adjudicator said that Moneybarn had grounds to be concerned about Mr T's financial circumstances. And so it had been reasonable for Moneybarn to be satisfied that Mr T wouldn't be able to continue to pay as agreed.

Mr T disagreed with the opinion of our adjudicator and so the complaint has been passed to me.

my findings

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

It's agreed that at the time the default notice was issued Mr T had accrued three months of arrears on his account. I appreciate that two of those months were the subject of a complaint but that wasn't about whether they were owed rather it was about how they should be cleared.

I've listened to the phone call between Mr T and Moneybarn in February 2016. Mr T told Moneybarn he wouldn't be able to pay the arrears off in one payment and offered to do it over the following two months. I don't agree with Mr T that Moneybarn agreed to this offer. Moneybarn advises him that he will need to cancel the direct debit that's been set up for this one payment and then he will need to contact it again for it to re-look at his account and set up a new payment plan. I think it's clear that the call was advising Mr T what to do in the short term but that Moneybarn needed to review what would be acceptable after he'd cancel the direct debit payment for the arrears. So the question of how the arrears were to be paid was unresolved at the end of the call.

Mr T also told Moneybarn his income was the same as he'd declared in his completed income and expenditure assessment form. The change was the dates the money was going to be going into his account. As Moneybarn had assessed that Mr T was able to clear the full arrears in one go I think it was reasonable for Moneybarn to refuse to agree for the arrears to be spread-out over a two month period and maintain it needed to be cleared in one payment. So looking at this part of Mr T's complaint I'm not upholding it.

I appreciate that when Mr T made contact with this service in September he thought the issue of the repayments was still being investigated. And I accept that this service wasn't as clear as it could've been about what was happening with that. I've seen that the adjudicator has apologised to Mr T for the confusion.

But the issue for me though is whether Moneybarn acted fairly and reasonably when it issued the default notice. I understand that this agreement has now been terminated so it no longer exists.

When Moneybarn issued the default notice Mr T had missed August's payment on top of two earlier ones. Mr T told Moneybarn he'd been unemployed since the June. He was unclear when he would be able to pay. It had already spoken with Mr T on the phone. And from the notes made by Moneybarn about that call, I think Moneybarn was clear that it was worried about the missed payments and how Mr T would be able to meet his obligations. I also think Moneybarn's concerns were reasonable in the circumstances. I don't think Moneybarn acted unreasonably in issuing the default notice.

I've seen that Moneybarn has made some efforts to talk with Mr T about the earlier arrears although these weren't regular. But when Mr T missed the payment in August 2016 it would've been reasonable for him to discuss how he was now going to cover all the arrears. Looking at the notes made by Moneybarn I don't think Mr T has helped the situation. He hasn't been clear about his financial circumstances or about his new employment. He hasn't explained how he was going to cover the outstanding payments.

So although I appreciate this service's handling of Mr T's complaint has added a layer of confusion, Moneybarn was entitled to have concerns over Mr T's ability to meet his obligation under the agreement. By triggering the default notice it was able to terminate the agreement if the arrears weren't paid and this would also protect Mr T from extra costs and interest being accrued on his account. I think Moneybarn has acted fairly and reasonably and I am not upholding Mr T's complaint.

my final decision

I'm not upholding Mr T's complaint against Moneybarn Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 February 2017.

Jocelyn Griffith
ombudsman