

complaint

Mr P complains that Moneybarn No. 1 Limited didn't give him sufficient notice when it terminated his conditional sale agreement.

background

In June 2015 Mr P entered into a conditional sale agreement with Moneybarn. He fell into arrears in February 2016, and he'd been sent a number of default notices which led to Moneybarn terminating the agreement in May 2018.

Mr P said Moneybarn cancelled the conditional sale agreement in May 2018 because they said he was in arrears. He said he received the warning of the cancellation (and what to do about it), and the cancellation notice on the same day, even though he said they were dated a week apart. He said this meant they'd already cancelled the agreement before he had the opportunity to do anything about it.

Mr P said he brought the account up to date in order to avoid termination. He said he made the required payment immediately, as required in the default notice, by direct bank transfer. He said he called Moneybarn soon after to let them know. He said they acknowledged the payment, but said it was too late because the termination notice had already been issued.

He said he had evidence that demonstrated that Moneybarn did not follow the correct procedures when he received a warning notice and closure of account on the same day. And he said this was despite him making the payment they demanded from him on time.

He said Moneybarn couldn't find records of the calls he'd made. He said this was because he'd been calling them from his work phone and the outgoing number was blocked.

He said Moneybarn have started proceedings in the County Court but agreed to postpone until this service had considered his complaint.

He said he wanted Moneybarn to provide him with the settlement figure that would've applied had he cancelled the contract. He said this would mean he'd pay interest only up to the date at which he settled and not for the whole period of the original contract.

Moneybarn said they'd terminated the agreement in May 2018. They said they'd issued a default notice to Mr P in April 2018 because the account was arrears. They said they'd made multiple attempts to contact Mr P, but these had been unsuccessful.

They said Mr P made a payment of £750 after the termination, but the account still had arrears of £962. They said Mr P then contacted them to ask what options were available to him. They said he chose to enter into a consent order to allow him to retain possession of the car that was the subject of the agreement.

They also said Mr P had made several requests since June 2016 to change the date of his monthly payment, but they'd explained to him why this wasn't possible.

Our investigator didn't uphold Mr P's complaint. He felt that Moneybarn had told Mr P what action may happen after it issued a default notice in April 2018. He said the account wasn't settled by the due date in May 2018 and that was why the account was terminated.

Mr P disagreed. He said our investigator had relied on the overall history of the account and not on the immediate issue he was unhappy with. He said Moneybarn had not followed the correct procedures. He said he received a warning notice and a closure of account letter on

the same day, and he said he'd made the payment they'd said would prevent the closure of the account.

So the matter has been passed to me for a final 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'm not upholding this complaint, for the same reasons as our investigator. I'll explain why.

In determining a complaint, I'm required to consider all the available evidence and arguments to decide what's fair and reasonable in the circumstances of the case. In doing so, I take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The rules and guidance relevant to this type of credit agreement are set out in the FCA's Consumer Credit handbook, CONC. For ease of reference, I've highlighted some of these below.

CONC 7.3.4R states that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration. And 7.3.5G explains that examples of forbearance could include deferment of payment of arrears or accepting token payments for a reasonable period of time in order to allow a customer to recover.

CONC 7.3.6G states that where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

CONC 7.3.14R states that a firm must not take disproportionate action against a customer in arrears or default.

CONC 3.3.1R states that communications from firms must be clear, fair and not misleading.

The conditional sale agreement sets out Mr P's contractual obligations. The agreement includes the following:

Missing Payments

Missing payments may have severe consequences. We may terminate this Agreement and we may take legal action to take back the goods, which may include repossessing the goods without a court order. We may also take action to obtain a charging order on property owned by you which may lead to us obtaining a court order for the sale of your home. If you miss a payment your credit rating may also be affected and you may find it harder to obtain credit in the future.

8. Our right to end the agreement

8.1.1 you fail to pay the advance payment (if any) or any of the payments as specified on the front page of this agreement or any other sum payable under this agreement

I'm satisfied that Moneybarn acted in line with the requirement to treat customers in arrears fairly. Mr P started missing payments in February 2016. I can see that Moneybarn contacted

him by text and by email, advising him of the missed payments, and invited him to contact them to agree payment plans.

After that Mr P made payments by card or bank transfer. But these were irregular amounts, at irregular intervals, with no payment in some months, and the account remained in arrears.

I can see that Moneybarn discussed affordability with him on several occasions. Mr P told them he could afford the agreement but they still asked him to provide Income and Expenditure information so they could satisfy themselves the agreement remained affordable – in line with the expectations in the Handbook.

They also considered Mr P's request to change the payment date. When he made this request in June 2016, they explained this was possible, but to avoid missing a payment (which would be reported to the credit reference agencies) he'd need to make two payments in the one period. Mr P chose not to do this and stay with the original payment date he requested.

Moneybarn made Mr P aware that *"the vehicle may be at risk"* on numerous occasions from February 2016. This warning was given in emails, text messages, and in formal notices – such as the Notice of Sums in Arrears, and the Default Notices issued to Mr P by Moneybarn over the period.

In December 2017 and February 2018, Moneybarn warned Mr P that the arrears were *"building up to an unsustainable level"*.

In December 2017 they wrote to Mr P advising him he was £1,700 in arrears, and explained what he needed to do if he wanted to keep the car. This included making future payments on time and in line with the agreement.

This led to Mr P and Moneybarn agreeing a payment plan, where he would pay £1,000 by bank transfer that day, and £700 on 20 January 2018. This was on top of his normal monthly payments. But because he missed his next monthly payment, Moneybarn cancelled the payment plan and invited him to contact them to agree a new payment plan.

Similar letters and notices were issued in February, March, and April 2018 as no payments had been made.

The messages invited Mr P to contact Moneybarn, and the message was clear:

"We want to help you stay in the vehicle, and avoid further arrears and charges. If we don't hear from you soon, we'll need to send a Default Notice which could lead to us ending the agreement and recovering the vehicle".

Mr P did make some payments in response to these messages but the amounts he paid were never enough to clear the arrears.

So I think it was reasonable for Moneybarn to issue the default notice on 23 April 2018. This notice was clear about the steps Mr P needed to take, and the consequences of not doing so. It explained the agreement had been breached, arrears and charges were due, and that Moneybarn would terminate the agreement *"with immediate effect"* if payment wasn't received by 14 May 2018.

I can see that on 14 May 2018 they sent a reminder by email as Mr P had not contacted them.

And on 16 May 2018 they issued the termination notice. This ended the agreement and instructed Mr P to contact Moneybarn to arrange return of the vehicle.

Mr P said that he also received another letter on the same day, that explained his arrears and what he needed to do, and giving him time to pay. He says sending the termination notice on the same day was unfair because it didn't give him that time to pay. I've seen the letter he's referring to – it's a Notice of Sums in Arrears letter, the same as he'd received on previous occasions.

Even if I accept that receiving both letters on the same day may have been confusing, I don't consider it to be unfair or misleading – and there's no evidence that it was deliberate as Mr P suggests. The termination notice clearly stated in the opening sentence: "*Further to the Default Notice served by us in respect of the above, you have failed to pay the amount owed and demanded*". And the default notice was clear about the remedy required, and the action that would follow if payment wasn't made.

Moneybarn told Mr P the amounts he had to pay, and he was given three weeks to contact them and/or make the payment. He failed to do so – Mr P says he called Moneybarn on several occasions after he received the default notice. He said these were from his work number and that's why Moneybarn can't trace those calls. But I'm still satisfied he had sufficient time to make contact, and could have used other means given the urgency of the situation.

As he'd been in breach of the agreement since February 2016, I'm satisfied it was reasonable for Moneybarn to terminate the agreement. They'd issued the appropriate notices as required under the Act, they'd considered whether the agreement remained affordable to Mr P, and given him the opportunity and time to put things right, as required by the FCA Handbook.

And they did so in line with the terms of the agreement that Mr P entered into. So I won't be asking Moneybarn to do anything more.

my final decision

For the reasons given above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 June 2021.

Gordon Ramsay
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