

complaint

Mr K complains that Moneybarn No. 1 Limited have treated him unfairly in relation to how it has dealt with what it says are the breaches of his agreement with it.

background

Mr K had a car supplied under a conditional sale agreement by Moneybarn. Mr K fell behind with his repayments. He suggested he was unaware of this because Moneybarn failed to contact him by email as he had previously told it that it must do.

Eventually, Mr K found out that Moneybarn intended to go to court to repossess the car. Mr K offered to repay the arrears so he could keep the car. The parties were going to do this by way of a consent order. However, Moneybarn asked for information to show that the car was taxed and it insured before it would agree to this. When it found that the car had been taxed and insured overseas it refused to continue to negotiate with him. Mr K indicated this was unfair because according to him, it knew before this that he had taken the car overseas. But it was only now it was objecting to what he had done.

Moneybarn went to court and got an order to repossess the car. Mr K told us he was told by Moneybarn that it had made a mistake in repossessing the car. Mr K also told us Moneybarn was refusing to accept repayments from him because it only wants the full amount or nothing. Mr K objected to this inflexible approach.

Further, Mr K also objected to Moneybarn adding what he called "*legal fees*" to the amount he owes. As a result the debt keeps on growing. He thought this was wrong because Moneybarn did this without telling him and without telling him why it is adding these fees. He suggested he had already made repayments that came close to the original cash price of the car. He thought this had not been properly taken into account by Moneybarn in its dealings with him.

In terms of what should happen next. Mr K offered to let Moneybarn keep the repayments he has made so far. He suggested he'd also be willing to pay a further £2,800 in instalments. That would mean he would repay the full original cash price of the car. He didn't agree it was correct he should pay Moneybarn the amount it is asking for. This is because as he sees it that would mean he was paying it around £20,000 for a car that even at the beginning of his agreement was worth only half that amount. Mr K would only be willing to do this though if Moneybarn agreed to remove the negative information which it has registered on his credit file. Mr K thought this information had prevented him from getting new credit.

Moneybarn's stance was it had done nothing wrong. It had contacted Mr K in the way he told it that it could (mail, email, text messages, and by phone). It had let him know about the arrears as they built up. And it had tried to get him to resolve the arrears issue but he had not.

Moneybarn suggested it had not been aware that Mr K had taken the car overseas. By doing this Mr K had breached his agreement with it. In addition, it had agreed with Mr K that it would ask for a consent order from the court along with him subject to several provisos. One of the provisos was he should prove that the car was taxed and insured in line with the agreement. I've already summarised above what happened when Mr K did that. The other provisos were that he should before they went to court, send it information about his financial

situation and make a payment to it. However, he did neither. On that basis it went to court and got a court order to repossess the car.

Dissatisfied, Mr K came to our service.

Our investigator looked into Mr K's complaint. He didn't recommend upholding it. In short, based on all the information he had available to him he didn't agree that Moneybarn had acted unfairly. The agreement had been breached. Mr K knew this. He had agreed he would follow certain steps in order to apply for the consent order with Moneybarn. But he hadn't followed through. So Moneybarn had got an order to repossess the car instead. Moneybarn was insisting he act in line with the relevant terms of the conditional sale agreement. Mr K was unhappy with this, but Moneybarn was entitled to do this. In summary, our investigator concluded he had no proper basis to tell Moneybarn it had to act differently.

Moneybarn accepted our investigator's recommendation, Mr K did not. In brief, he responded to say, he was disappointed. He repeated that he needed Moneybarn to contact him by email only and he had told it this. But it chose to contact him by email only to tell him about the arrears. It would not use email for any other purpose. He also repeated what he had already said about Moneybarn's refusal to accept his payment proposals.

Mr K added that due to the nature of his role he was obliged to take the car overseas. He suggested because he is in a profession that benefits from special protection Moneybarn ought not to have been able to use this against him.

We could progress no further at this stage so I was asked to take a look at Mr K's complaint and to make a 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 have finished my review of Mr K's complaint. I am not upholding it. I realise this is likely to upset Mr K. That is not my intention, far from it. Please let me explain why I have reached this decision.

It appears that the parties agree that Mr K had run up arrears on his account. He suggested, originally at least that he was unaware of this because the business didn't contact him by the only reliable means of communication he had - that is email.

However, Moneybarn's records show Mr K was emailed several times about the arrears as and when they built up. It also seems from these records that the emails did not bounce back this suggest they reached him. I have no reason to doubt the accuracy of these records. And it seems Mr K does now accept that Moneybarn told him about the arrears by email. Nothing I have seen shows that Mr K cleared the arrears in response or showed that he did not owe them. In these circumstances, I think it was reasonable that Moneybarn took steps to stop the arrears growing further and to get its car back via the courts.

Mr K and Moneybarn both agree that at first they agreed they'd seek a consent order from the court, so that Mr K could keep the car. But this was conditional on three things. These were Mr K making a payment to Moneybarn, Mr K providing information about his current financial situation, and Mr K providing proof of having taxed and insured the car in line with

the conditional sale agreement. This is where things began to go even more awry for Mr K I think.

As far as I can see he didn't make the payment Moneybarn asked for. He says he did provide information about his income and expenditure Moneybarn says he didn't. But I think this made no difference because he had already it seems broke one of the three conditions. Thirdly the information he provided about the road tax and the insurance show he'd not taxed and insured the car in the UK as he was obliged to do. Mr K says he told Moneybarn about taking the car out of the country prior to all of this, so it is unfair that it turns around now and says this is a breach of his agreement. But he does not explain when he told Moneybarn this and neither has he demonstrated that it agreed. If the agreement had been varied in this way I'd have expected to see this variation documented somewhere. But I have seen no such record. On this basis I find it unlikely that Moneybarn had agreed to him taking the car out of the country as he did and taxing and insuring the car overseas. It follows that as he did not keep to the conditions Moneybarn had imposed and he'd accepted, I think it is fair that Moneybarn refused to apply for the consent order.

Instead Moneybarn got an order from a court to repossess the car. Mr K objects to what he calls legal fees being applied to his account. But if these are the costs that the court awarded, I've no power to waive these only the courts can. Further Mr K indicates that Moneybarn told him it had made a mistake in applying for the court order. He had not explained the nature of this "mistake". Moneybarn hasn't told us it made a mistake in going to court. But this is by the by I think. Because if Mr K thinks the order granted by the court is flawed in some way, again, this is a matter for the courts. I can't change the court order or say Moneybarn can't rely on it. I don't have this power.

Mr K appears to be offering to pay only the original cash price of the car. But that is not what he agreed under his agreement with Moneybarn. He is obliged to pay far more than this. Moneybarn can agree to accept less but it is not obliged to. And in the circumstances I can't see why it would be fair and reasonable to say Moneybarn must accept thousands of pounds below what it is owed by Mr K. Mr K may find it unfair that Moneybarn is insisting on the full debt but that is what it is entitled to ask for.

That said, if Mr K can't pay the full amount in one go. I'd expect Moneybarn to come to an arrangement with him about how he will pay the full amount over time. He will need to speak to Moneybarn directly about that. I would also expect Moneybarn to give Mr K a full breakdown of the precise amount it is asking him for and why, if it has not already done that. Given what Mr K has said about his communication needs I would expect Moneybarn to contact Mr K only by email until such time as he says otherwise.

I don't agree in the circumstances that Moneybarn has acted unfairly. On that basis if it has asked the credit reference agencies to register information about how he has conducted the account, I can't fairly ask it to remove it. When it reports to credit reference agencies Moneybarn must provide accurate information, which from what Mr K says it has done. Although I have not seen a copy of his credit file so I don't know exactly what information it has asked to be registered.

Mr K does a very valuable role which benefits the nation. It would look very closely at any action that Moneybarn had taken against Mr K that arose because of his role and how he is obliged to perform it. However, it seems this is not the case here. Rather, as I have set out above, he was taken to court due to arrears. I think he ought to have known he had arrears. Moneybarn applied for a court order to get its car back because he did not comply with the

conditions that were set by Moneybarn for it to support getting a consent order. It seems that Moneybarn is now only asking Mr K to comply with the terms of the credit agreement that he freely entered into with it. None of this seems to have come about due to Mr K's profession and the requirements of that profession. In these circumstances I think I have no proper basis to tell Moneybarn it has to behave differently.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 May 2020.

Joyce Gordon
ombudsman