

complaint

Miss G complains that Moneybarn No. 1 Limited misrepresented her conditional sale agreement. She also complains that it did not treat her appropriately when she experienced financial difficulties.

background

In October 2015 Miss G entered into a conditional sale agreement with Moneybarn for a used car. According to Miss G, at first she was offered a five year agreement with lower repayments than the three year contract she accepted in the end. But she rejected this offer because she considered her financial situation to be good, so she did not need the lower repayments. Instead she decided to go with a three year term. This meant her repayments were higher, but it also meant that she would pay the finance off more quickly. But, crucially, she suggests she was told, in a phone call before she accepted the contract, that if she wanted to extend the term to five years at any point, she just had to ask. It seems Miss G's stance is that she only went ahead with the deal because she received this reassurance.

During the course of the agreement, for reasons that have not been explained Miss G began to build up arrears on the agreement. Then, in March 2018, Miss G found her financial situation had changed, her income had dropped quite significantly and apparently suddenly. On that basis she asked Moneybarn about extending the contract term to five years but was told this was not possible. Moreover, Moneybarn denied that this had ever been offered as an option. Nonetheless, Miss G still wanted to reduce her repayments. To this end she made an offer to pay £500 per month, an offer she thought had been accepted. Only to find out later, she told us that not only had the offer not been accepted but Moneybarn intended to take her to court because she was in arrears. Miss G suggests that at this point Moneybarn gave both her and the court incorrect information about the amount she owed it. Although she did offer to clear her debt based on her own estimate of what she owed it.

It seems Moneybarn declined Miss G's offer. Instead Moneybarn went to court and it obtained a court order to repossess its car. But by borrowing from friends Miss G was able to pay off the finance and buy the car. But she told us, when the car was in Moneybarn's possession the CDs she had left in the car went missing the car was damaged. Miss G also tells us she lost money when she was without the car as she was not able to work. Miss G wants compensation for all of this. She also asked for compensation for the distress caused to her and her family.

Moneybarn sees things very differently from Miss G. As I have already mentioned, it does not accept that it ever told Miss G that she could change the term of her agreement from three to five years should she wish to do so. Further, it thinks it did treat Miss G reasonably when she told it about her money troubles. It did not agree that allowing Miss G to pay less than she owed it each month would be the right thing to do, especially given she was behind with her payments. In any event, it assessed her income and expenditure and based on what she told it, it appeared she could both continue to make her contractual repayments and pay off the arrears. On that basis it declined her request to reduce her repayments. Also, it suggested it had information to show she accepted she had left nothing in the car. It didn't agree it had damaged the car. Finally, Moneybarn did not agree that it had to pay her for missing work.

Miss G complained to our service.

One of our investigators looked at Miss G's complaint. She did not recommend upholding it. In summary, our investigator said that she'd listened to the calls that had been recorded when the deal was set up, and she'd not heard anything in those calls to suggest Moneybarn had misrepresented the agreement. Neither did the written agreement talk about allowing Miss G to increase the length of the agreement at will. In conclusion, she was not persuaded that the contract had been misrepresented to Miss G by Moneybarn.

Further, our investigator, looked at what happened when Miss G told Moneybarn that she was struggling financially. When our investigator, looked at the communications between Miss G and Moneybarn she concluded that Moneybarn had acted reasonably. And she didn't agree that Moneybarn had agreed to reduce the repayments to £500 per month only to go back on this. Moreover, from the information Miss G had provided it did appear she could afford to make her repayments and clear the arrears. Our investigator pointed out that Moneybarn was not obliged to accept less than the contractual repayments, even if Miss G thought it should have done.

Our investigator explained that we were not looking at the actions of the court, and in any event we had no power overturn anything the court had ordered. That said we could look at some of the events leading up to and after the repossession of the car.

Our investigator looked at what Miss G had said about the amount she owed, and what Moneybarn said. Our investigator thought Miss G had not taken account of everything she owed when she calculated what her debt was. On balance, this explained why Miss G and Moneybarn had come up with two different figures.

In addition, our investigator did not think that Moneybarn had lost Miss G's CDs. Indeed, when the car was repossessed Miss G signed a document to say that she had removed from the car all the property she wished to retain. Also, in the circumstances our investigator was not persuaded that the damage to Miss G's used car was caused by Moneybarn. Neither did she agree that Moneybarn had acted unfairly in how it released the car. For all these reasons, our investigator did not agree she had any proper basis to tell Moneybarn it had to take any further action. For completeness, she also pointed out we have no power to ask Moneybarn to make a payment to Miss G's family for distress and inconvenience.

It appears that Moneybarn accepted our investigator's recommendation. Miss G did not. Miss G suggested that Moneybarn had not sent us all of the relevant telephone call recordings, from the time she contracted with Moneybarn. Her position remains that she was told when she set up the contract that she could extend the term to five years at any time.

Miss G asked that an ombudsman take a look at her complaint.

my findings

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

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

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.

why I don't find that the agreement was misrepresented to Miss G by Moneybarn

Miss G suggests the conditional sale agreement was misrepresented to her by Moneybarn. In this context, misrepresentation means a false statement of fact that Miss G relied on which induced her to enter into the contract. As I have already mentioned, Miss G says the misrepresentation was that she was promised by Moneybarn that if she wanted to change the term of her agreement from three to five years, she could do so, at any point.

If I was satisfied that Moneybarn had misrepresented the contract to Miss G, I would think it was fair and reasonable to ask Moneybarn to put this right. So, I have taken a look at what happened when Miss G applied for the finance, as this is key.

Miss G and Moneybarn both agree that Miss G made her application by telephone.. Moneybarn have sent us recordings of what it says are all the relevant calls. I've listened to all of the recordings I have. There is no conversation in the calls I have listened to where Moneybarn says what Miss G says she was told. Miss G counters that we don't have all the relevant call recordings. That is possible but I don't think that is likely because the sequence of calls I have listened to all seem to follow on from each other.

Moreover, Moneybarn appears to have no wholesale policy of permitting customers to change the length of their agreements at will. Therefore, it seems unlikely to me that one of its advisors would have offered Miss G a product feature that was just not available.

Further, if the ability to increase the term of the agreement was so important to Miss G I would have expected her to notice, at the time, that the contract does not provide for this. I accept that many of us might find it somewhat tedious to read through the terms and conditions of an agreement before signing it - particularly so when we think we already know what the contents are. But it does offer an opportunity for mistakes to be corrected and potential misunderstandings to be avoided.

For all these reasons, on balance, I'm not persuaded that the agreement was misrepresented to Miss G.

why I don't agree Moneybarn acted unreasonably in the light of Miss G's money troubles

Miss G has told us about how Moneybarn behaved when she began to struggle with the repayments. In particular, Miss G appears upset because she did keep on making payments towards her agreement, albeit sometimes she did not pay the full contractual amount. She suggests that Moneybarn jumped the gun by going to court when the arrears built up and she did not clear them.

Moneybarn is obliged to act fairly, with due consideration and forbearance towards consumers who are in financial difficulties. With the cooperation of the consumer, this may

include developing repayment plans or accepting reduced payments, freezing/refunding interest, or even writing off all or part of the debt. But no individual lender is obliged to do any of these things. Specifically, Moneybarn was not obliged to accept Miss G's offer of reduced payments. All the more so because she was already in arrears. Moneybarn indicated it was wary about the possible "knock-on" effects of accepting reduced payments. I can see why, Miss G would still have needed to pay off the full amount at some point and clear the pre-existing arrears. Miss G's money troubles did not seem to be temporary. So, by accepting reduced payments which would have made her debt situation worse it's arguable it would only have served to store up trouble for her later on. I don't agree that Moneybarn acted unreasonably here.

Where a consumer is experiencing financial difficulties both parties need to work together, it is a two-way street. Moneybarn's records show, and I have no reason to doubt their accuracy that Moneybarn did try to reach out to Miss G so it could get a better understanding of her financial position, but she was, at times, reluctant to participate.

However, there was some engagement, in response to a request from Moneybarn, Miss G sent in information about her financial situation, this information indicated that she had sufficient money both to pay her full contractual repayments and pay off the arrears. That being so, it find it was reasonable that Moneybarn did not agree to accept reduced payments for this reason too.

Further, in general, I think it is fair and reasonable that parties should be entitled to rely on the terms of the contract that they freely entered into. Miss G had agreed to pay monthly contractual repayments of almost £700 per month, Moneybarn was merely asking her to keep to the payments she contracted to pay.

For all of these reasons I find Moneybarn acted reasonably when it refused to accept Miss G's proposal to pay £500 per month and or extend the term of her agreement.

Miss G has suggested that Moneybarn did initially accept her offer to pay £500 per month and then changed its mind without telling her. But I find this unlikely given what I have gone through above about why Moneybarn didn't agree that accepting her offer to make reduced payments was in anyone's best interests.

Moreover, it appears that prior to going to court, Moneybarn had sent Miss G correspondence (as it is obliged to do) about the arrears and it told her what it might do if she did not clear them. It also gave her time to pay it. Miss G has not told us she did not receive these communications. In the circumstances, I can't fairly find that Moneybarn rushed to go to court without exploring other options or following the correct regulatory process.

Our investigator has already covered in great detail, why Miss G and Moneybarn had different figures about what she owed it. I don't think there is anything to be gained by me going through all that again, in fine detail. Miss G has not told us the calculations our investigator went through were incorrect. Miss G's figure did not include the fees that had been added including the court fees. Miss G is not an expert in this area, it is perfectly understandable that she might have made this mistake. But, I'm satisfied that this explains the difference between the figures, and I am also satisfied that Moneybarn did not take action against her based on inaccurate calculations.

The information I have seen shows that Miss G signed a form saying she had removed all items that she wanted from the car before it was repossessed. Miss G has not told us she did not sign this form. We have also asked Moneybarn about how the car was processed and stored while in its possession. It has told us its agent took possession of the car on its behalf. The agent photographed the car when it was repossessed, I have seen these photos, they don't show the CDs Miss G mentions. Moneybarn also tells us that the car was held securely in area covered by CCTV. On balance, in the circumstances, I find it unlikely that Miss G's CDs were in the car when it was repossessed and that Moneybarn's agent lost them or disposed of them.

In any event Miss G is expected to mitigate her own losses. It seems there was a period of several weeks between the order to repossess the car and the repossession. Miss G ought reasonably to have known, I think that if she did not pay off the amount Moneybarn was asking for the car would be repossessed. That being so, I would have expected her to remove her CDs from the car.

I don't doubt that Miss G needed her car for work. Indeed, she went to great lengths to get the money together so she could keep the car and that supports what she says about this. However, Miss G suggests Moneybarn did not release the car quickly enough after she had paid it. I can well imagine that this was frustrating for her. But it appears she made the payment on a weekend and the car could not be returned to her until the Monday after the weekend. This is unfortunate but I don't think it was reasonable in the circumstances for Miss G to expect the car to be returned any sooner, if the people who needed to do this were not working on the weekend, which appears to be the case.

I've not seen anything to suggest that Moneybarn gave Miss G inaccurate information that led her to believe she'd get the car straightaway, she seems to have assumed this. But I can't fairly hold Moneybarn to account for that. It follows, that I don't find that Moneybarn must compensate Miss G for the work she missed as she did not have a car.

Also, again, I think Miss G ought to have mitigated her losses, she knew unless she paid Moneybarn the car would be repossessed. She also knew she needed her car for work. But it was not until the car was repossessed that she paid it. That was her choice to make. But I can't fairly and reasonably hold Moneybarn responsible for this.

I've seen the details of the repairs Miss G paid for. Her car was used when she acquired it and she had driven it for several years before the repairs were done. Any car is going to need maintenance for wear and tear. There is nothing about the nature of the repairs that makes me think it is more likely than not that the work was caused because the car was not properly looked after by Moneybarn. It follows I don't think I have any proper basis for asking Moneybarn to refund Miss G for these repairs.

I recognise Miss G has been through some tough times, her income decreased unexpectedly through no fault of her own, she was taken to court, she did not feel that she was treated correctly by Moneybarn, she had to pay to repair her car, she lost money due to missing work. But for the reasons I have gone through above, I cannot fairly or reasonably find that Moneybarn did not treat her correctly when she was experiencing financial difficulties, neither can I find that she made losses due to this. Further I cannot fairly or reasonably ask Moneybarn to make a payment to her for distress or inconvenience. Neither do I have any power to ask Moneybarn to make any such payment to her family. Under our rules I just cannot do that.

I realise Miss G will most likely be disappointed with my decision. That's not my intention, far from it. But this decision brings to an end what we, in trying to resolve this particular complaint with Moneybarn informally, can do for her. I'm sorry we can't help Miss G any further.

For completeness I'll add that right from the beginning of her agreement Miss G was late with payments to her agreement. The pattern of her late payments might suggest that this agreement was unaffordable. However, Miss G did not raise this as an issue, so I have not looked at this point.

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 Miss G to accept or reject my decision before 19 April 2021.

Joyce Gordon
ombudsman