

## **complaint**

Mr R complains that Moneybarn No.1 Limited treated him unfairly, when he needed help with the repayments due under a conditional sale agreement he has with them.

## **background**

I set out the background to this complaint and my provisional conclusions by way of a provisional decision, a copy of which is attached, and forms part of this final decision. I also explained why I didn't propose to uphold the complaint or to require Moneybarn to take any further action to settle this complaint.

I invited Mr R and Moneybarn to let me have any more arguments or evidence they wanted me to consider, before making my final decision. Moneybarn had no further comments to add to my provisional decision. Mr R didn't accept my provisional decision and said, in summary:

- He'd made several points in his correspondence with us, that hadn't been considered. These points are that he wasn't given the correct missed payment notifications by Moneybarn and they gave him false information about payments taken by direct debit.
- Moneybarn terminated his agreement without warning him and the termination notice was sent after it had already happened. And that a manager had admitted guilt, by reversing the termination decision.
- He wasn't contacted by Moneybarn when they promised to return his calls and emails. He also says that a repayment plan was cancelled with no reason, before a payment had ever been taken.
- Moneybarn ignored a complaint he made in November 2020 and had told him the proceeds from the sale of his car, wouldn't be used to reduce the balance of the loan.
- Moneybarn haven't treated him fairly and have caused him distress and anxiety by breaking industry rules.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, while I realise Mr R will be very disappointed, I've come to the same conclusion I set out in my provisional decision, for the same reasons.

I acknowledge though, that Mr R has been dealing with his complaint against Moneybarn, since he first agreed a repayment plan in March 2018, some three years ago. I also agree it must have been very difficult for him, during this time. But, I'd like to reassure Mr R that even if I didn't previously mention the points he raised in September 2019, I did carefully consider them.

In October 2018, Moneybarn wrote to Mr R and apologised that a direct debit wasn't set up, when he arranged a repayment plan earlier in that year. So, I agree with Mr R, where he says Moneybarn didn't take the repayments as planned. But, I think Moneybarn treated Mr R

fairly, by refunding the charges that had been applied to his account since March 2018, arranging a further repayment plan and allowing him to continue using the car.

Having considered Moneybarn's contact records, I can see they wrote to Mr R frequently from March 2018 onwards, about the arrears built up on his loan account. So, I think Moneybarn kept Mr R informed about the balance of his account. And I think there was an onus on Mr R, to have recognised that he still needed to try to make payments to Moneybarn.

I can see that Mr R did engage with Moneybarn, when he told them he was working away from his home and about a bonus he was due to receive from his employer. But, the loan account statements don't show any payments from Mr R, from September 2018 onwards. So, I don't think Moneybarn have treated Mr R unfairly, by allowing him to keep using the car for the following two and a half years.

I've thought about why the first repayment plan failed in March 2018 and the steps taken by Moneybarn to correct this. I agree that Moneybarn acknowledged that they could have handled that better and they prevented the termination of the loan agreement to try and put things right. But, I don't think they need to take further steps now.

Moneybarn have recently sent Mr R a letter explaining his options. This letter tells Mr R that he is able to voluntarily terminate his agreement. The letter explains the cost to him, once the proceeds from the sale of the car have been deducted from what he owes. Mr R says Moneybarn have told him the opposite.

Having looked closely at the letter, I don't think Moneybarn have made any threats, to not use the proceeds of the sale of the car, to help reduce what Mr R owes to them. There are other options available to Mr R, where he can own the car outright. But, that will mean he has to repay the whole of the loan agreement, as he was always required to do, when the agreement started in March 2017. I don't think that is unfair, given Mr R will then be the legal owner of the car.

I acknowledge where Mr R says he is experiencing distress and anxiety. And I sympathise with what he's told us. But, in all the circumstances, I don't think Moneybarn have treated Mr R unfairly, where they have asked him to repay the balance of his loan account.

Should Mr R choose one of the options where he still has a responsibility to repay Moneybarn, I remind them of their obligations to treat his financial circumstances positively and sympathetically.

### **my final decision**

For these reasons – as well as those set out in more detail in my provisional decision – my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 April 2021.

Sam Wedderburn  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr R complains that Moneybarn No. 1 Limited treated him unfairly, when he needed help with the repayments due under a conditional sale agreement he has with them.

### **background**

In early March 2017, Mr R signed a conditional sale agreement with Moneybarn, which enabled him to acquire a used car. Mr R continued to make the monthly payments due under the agreement over the following year, until his bankers had difficulties with the direct debit. At this point, Mr R contacted Moneybarn and discussed a repayment plan, which allowed him to continue to make repayments towards the agreement, but also repay any arrears that had built up.

Both Moneybarn and Mr R acknowledge that there were some difficulties in setting up the direct debit, for the repayment plan. Before these difficulties could be resolved, Moneybarn wrote to Mr R and said that they would terminate the agreement, if payments were not made towards the agreement.

Mr R complained to Moneybarn in July 2018 and said that they were treating him unfairly. Over the next few months, Mr R arranged to make two debit card payments to his account, along with one regular monthly repayment. Moneybarn responded to Mr R complaint in October 2018 and acknowledged that they could have helped Mr R sooner and made it easier for him to make repayments.

To try and resolve Mr R's concerns, Moneybarn agreed to refund all the fees charged to the account since the repayment plan was agreed. They also asked Mr R to contact them to arrange another plan, so the arrears on the conditional sale agreement could be repaid.

Moneybarn's notes show that a second repayment plan was agreed in November 2018. But they say payments weren't made to the account, so they sent a subsequent termination notice to Mr R. After discussing with Mr R, Moneybarn agreed not to terminate the agreement, so long as Mr R resumed the repayments.

Mr R complained again to Moneybarn and said that they had caused delays in responding to him and had caused distress by sending him termination notices. Mr R also told Moneybarn that he would be able to repay some of the arrears from a bonus he was due to receive from his employer.

In April 2019, Moneybarn wrote to Mr R with their final response and again acknowledged that they hadn't returned some of his calls. As a gesture of goodwill, they offered a £20 gift voucher to Mr R. Moneybarn also explained that Mr R hadn't made any repayments since October 2018 and despite this, they had allowed him to keep using the car.

A third repayment plan was agreed by Mr R with Moneybarn, but he says it was cancelled before he could make a further payment. By this time, Mr R had already brought his complaint to us. One of our investigators looked into Mr R's concerns and found that Moneybarn had tried to treat Mr R fairly, by agreeing to repayment plans. They concluded that Mr R hadn't made any payments since September 2018 and that Moneybarn had apologised when they had caused delays.

Mr R didn't accept the investigator's findings and said Moneybarn should have advised him of the missed payments and given him warnings about terminating the agreement. He also said that it was Moneybarn who cancelled the repayment plans and they hadn't answered his emails. He said they kept him waiting on hold, when he tried to call them.

The investigator didn't change their conclusions and now the case has been referred to me, to make a decision.

## **my provisional findings**

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

Quite some time has passed since the investigator reached their conclusions and I acknowledge the impact this may have had, on both Mr R and Moneybarn.

### *the repayment plan arranged in March 2018*

Moneybarn's notes from the end of March 2018, show that Mr R called them and spoke about some problems he'd been having with his bank. He said the direct debit for his agreement, hadn't been paid. Mr R made a card payment directly to Moneybarn, but his account was still in arrears. Moneybarn arranged a repayment plan, whereby Mr R would pay £9 a month, in addition to his regular monthly payment, in order to clear the arrears by September 2018.

I have considered how Moneybarn treated Mr R here. I accept their letter to Mr R confirming the repayment plan, could have told him the total amount he needed to pay, to service the agreement and the arrears. But, I think the letter was sufficiently clear to tell him they would collect the regular payment, plus an additional amount to repay the arrears over the next six months.

The statement of Mr R's account with Moneybarn shows the next payment was made in July 2018. It was around this time Mr R complained to Moneybarn, that they hadn't taken the payments they were supposed to.

Moneybarn responded in October 2018 and apologised for not taking a new direct debit instruction in March 2018. They also refunded the fees that had been charged to the account since that date. Moneybarn arranged a further repayment plan with Mr R to help him pay down the arrears. Although Moneybarn told Mr R that they may terminate the agreement, due to no payments being received, they allowed the agreement to continue and for him to keep the car.

I agree that Moneybarn took an unreasonable amount of time to get back to Mr R, to answer his concerns about the payments he missed. It took them around three months to reply and I can see how this was frustrating and worrying for him. But, I think Moneybarn's response recognised that, and sought to help Mr R bring his account back up to date.

Mr R says that Moneybarn didn't tell him about the missed payments on the account. Between March and October 2018. But, I can see from Moneybarn's records of contact with Mr R, that they did try and speak to him on several occasions about his account during this time. I also think there was an onus on Mr R to have acknowledged that payments weren't being made from his bank account.

Moneybarn's notes show that Mr R explained to them that he was working away from home during 2018. So, I can understand why he may have found it difficult to keep an eye on what was happening with his accounts. Having considered everything though, I don't think Moneybarn treated Mr R unfairly when his account with them fell into arrears in 2018.

### *the termination notice sent to Mr R in November 2018*

Mr R made a repayment to his account at the end of September 2018, but missed payments in the following two months. Moneybarn's records show that they spoke to Mr R about a repayment plan, at the end of October 2018. But, the notes say it was left for Mr R to call them back on the same day to make a payment, reinstate the direct debit and discuss his income and expenditure details.

There isn't a record of Mr R calling Moneybarn back or making contact with them. Consequently, in early November 2018, Moneybarn sent another termination notice to Mr R. Both Moneybarn and Mr R acknowledge that after the termination was sent, they came to an agreement, where by a new repayment arrangement was made and Mr R was allowed to keep the car.

Moneybarn say they attempted to contact Mr R, to let him know the status of his account throughout the final months of 2018. I can see from Moneybarn's contact records that regular text messages and emails were sent to Mr R about his account. But, rather than the arrears notices prompting contact from Mr R, I think it was the termination notices, which alerted him to the need to come to an arrangement with Moneybarn.

Having considered everything, I don't think Moneybarn treated Mr R unfairly in this period. I think they made Mr R aware of the arrears on the account and allowed him to retain use of his car. This was despite the account running with around five months of missed repayments.

Mr R wrote to Moneybarn in December 2018 and explained that the threats of termination of his agreement were causing him distress. He also said he'd be able to repay the arrears on his account over time and by using a bonus payment from his employer. Similar contact between Mr R and Moneybarn happened throughout January 2018, where Mr R said he had difficulties with his bankers in making a payment to his account.

Repayments weren't made to Mr R's account, although regular messages about the arrears were sent to him. Moneybarn replied to Mr R about his concerns until in April 2019. They accepted what Mr R had said about the termination messages, but reiterated that he hadn't made any payments since September 2018. Moneybarn explained that they needed to arrange another repayment plan and also sent Mr R a gift voucher, for the delay in replying to his concerns.

It took Moneybarn nearly five months to get back to Mr R. So, I think Moneybarn took an unreasonable amount of time to respond to his concerns, after he raised them in December 2018. But, I don't think they stopped talking to Mr R about his conditional sale agreement. I can see from Moneybarn's contact records that they continued to send Mr R emails and text messages about the arrears.

While I understand why Mr R felt frustrated with the delay, I think he was given sufficient information by Moneybarn to know that he needed to make payments to his account. I don't think Moneybarn caused confusion, to such an extent that he was unaware of his responsibilities to talk to them about the arrears and make the repayments due under the agreement. I think Moneybarn showed that they wanted to reach an agreement based on Mr R's financial circumstances, so I think they treated him fairly here.

#### *the repayments under the agreement since April 2019*

Moneybarn have provided us with a statement of Mr R's agreement, from when it started in March 2017. I can see that Mr R last made a repayment to the agreement in September 2018, over two years ago. I can also see that Moneybarn refunded all the late payment fees charged since early 2018.

Over the last year, Moneybarn say they haven't pursued Mr R for repayment, in light of the circumstances relating to the global pandemic. I can see from Moneybarn's records that they explained this to Mr R, near to the end of 2020. The records also show that there's been little in the way of communication between Moneybarn and Mr R about a further repayment plan.

I've considered that Mr R still has possession of the car and is able to use it, despite not making payments towards the agreement for a significant period of time. I can see that Moneybarn sent Mr R a letter in January 2021, giving him options and an outline of costs, depending on whether or not he wants to keep the car.

In all the circumstances, I think Moneybarn have treated Mr R fairly in the time since April 2019. I think Moneybarn have given Mr R reasonable options, where he can return the car, or reinstate the repayments towards the agreement.

*Moneybarn's overall treatment of Mr R*

I agree with Mr R that the repayment plan in March 2018 could have been clearer with the total amount he was expected to pay. I also agree that Moneybarn took too long to reply, on each occasion he raised concerns about his agreement with them.

Mr R has explained that he found it frustrating being left on hold when trying to call Moneybarn. And I accept that it must have been distressing for him to have received termination notices, so soon after trying to sort things out.

But, having considered everything that's happened since the time Mr R started to experience difficulties with repayments in March 2018, I think Moneybarn have treated him fairly. I think Moneybarn have kept Mr R informed about the arrears, allowed him to keep using the car despite not receiving repayments and they haven't allowed the balance he owes to increase.

I think Mr R was aware of his responsibilities under the agreement and that Moneybarn have given him fair and reasonable options, depending on what he chooses to do now. Although I don't think Moneybarn need to do anything further to settle Mr R's complaint, I remind them, of their responsibility to treat Mr R's financial circumstances positively and sympathetically.

**my provisional decision**

My provisional decision is that I don't uphold Mr R's complaint – in the sense that I don't propose to require Moneybarn to take any further action to settle this complaint.

Sam Wedderburn  
**ombudsman**