

The complaint

Mrs D is unhappy with what she's being charged after voluntarily terminating a conditional sale agreement with Moneybarn No.1 Limited, and their communication about this.

What happened

On 1 July 2019, Mrs D was supplied with a used car through a conditional sale agreement with Moneybarn. She paid an advance payment of £1,200 and the agreement was for £10,666 over 60 months; with monthly payments of £349.68.

Over the course of the agreement, Mrs D missed a number of payments and, while she did make some additional payments in an attempt to bring her account up to date, it remained substantially in arrears. As a result of this, in April 2023, Moneybarn issued a default notice.

After taking some advice from a third-party, Mrs D asked if she could voluntarily terminate ('VT') the agreement. Moneybarn agreed to this and rescinded the default notice. The VT went through and Moneybarn explained to Mrs D that she still owed them £3,834.26 – breaking down how this figure was calculated. When the car was collected, Mrs D was also asked to sign paperwork acknowledging that she still had an outstanding balance to pay, which she refused to do.

Mrs D complained to Moneybarn about the outstanding balance, and that they hadn't provided her with a requested breakdown of the payments she'd made. Moneybarn responded to this complaint on 6 July 2023, saying they hadn't received her request for a payment breakdown. However, they provided a breakdown of the amount outstanding, and said that Mrs D still needed to pay this.

Mrs D wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation. I've noted that, on 9 October 2023, while we were investigating this matter, Moneybarn provided Mrs D with a full breakdown of all the payments owing and made during the lifetime of the agreement.

Our investigator said that, although Mrs D had paid more than 50% of the amount owing under the agreement, which allowed her to VT, this didn't mean that any arrears didn't have to be paid or were offset against anything Mrs D had paid over and above the 50%. So, the investigator said that Moneybarn were entitled to ask Mrs D to pay the arrears.

The investigator also provided a breakdown of how the arrears occurred. And they said that, while Moneybarn had sent Mrs D a letter in error with an incorrect amount owing on it, they'd apologised for this and asked Mrs D to disregard the letter. The investigator thought this was reasonable in the circumstances and didn't think Moneybarn needed to do anything more.

Mrs D didn't agree with the investigator's opinion. She said she'd tried to phone Moneybarn on a number of occasions to try and speak to Moneybarn about her account but was unable to get through to them. She said that she only received a breakdown of the arrears after the VT had gone through, and that no-one explained the 50% rule to her.

Mrs D also commented on her arrears, and that Moneybarn always wanted a “concrete guarantee” that she could make payments, which she didn’t think was fair. She thought their communication had been poor throughout the agreement, especially as they were difficult to speak to on the phone. She didn’t think the investigator had taken this into consideration, and she didn’t think it was fair she had paid “over and above what the car was worth” and that she was still being asked to pay almost £4,000.

Because Mrs D didn’t agree, this matter has been passed to me to make a final decision.

What I’ve decided – and why

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

Having done so, I’ve reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I’ve reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I’ve had regard to the relevant law and regulations; any regulator’s rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs D was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we’re able to investigate complaints about it.

In her comments on the investigator’s opinion, Mrs D has raised the issue of generally poor communication with Moneybarn, and during the investigation she’s also referred to poor communication. While I appreciate Mrs D may be unhappy with how Moneybarn have communicated with her over the course of the agreement, she only complained to Moneybarn about the VT process. And our rules don’t allow us to consider complaints when the financial business hasn’t been given the opportunity to deal with them first.

As such, my decision will focus on what happened surrounding the VT, and not how Moneybarn communicated with Mrs D since July 2019. Saying this, I have seen that Mrs D was sent regular notices of arrears (which Moneybarn are regulatory required to provide every six months). It’s also the case that Moneybarn are entitled to chase Mrs D for these arrears. And I don’t think it’s unreasonable for them to ask Mrs D to confirm how much she was able to pay and when - what Mrs D has referred to as a “concrete guarantee”- as they have an obligation to ensure any payments are affordable and to ensure they take action to stop any arrears getting out of hand and becoming unaffordable.

I’ve seen the agreement Mrs D signed with Moneybarn on 1 July 2019. This explains that the total amount payable under the agreement is £21,831.12. Under the heading “**Termination: Your Rights**” the agreement also states:

“You have the right to end this agreement ... Moneybarn will then be entitled to the return of the goods and to half the total amount payable under the agreement, that is £10,915.56. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.”

This is standard wording that has been approved by the regulator, the Financial Conduct Authority, so I can’t say that Moneybarn were putting in a clause that was deliberately unclear. By referring to “if you have already paid at least this amount”, Moneybarn are

entitled to keep anything paid over and above the 50%, and they aren't required to offset or return anything paid, in this instance, over £10,915.56. What's more, "*plus any overdue payments*" means that any arrears at the point of VT are still payable, even if 50% or more of the total amount payable has been paid.

As such, I'm satisfied that Moneybarn have acted reasonably by asking Mrs D to still pay the arrears outstanding at the point of VT, and by not offsetting the payments she's already made against this.

Mrs D has also commented that she's already paid more than the car's value. While this is noted, the total amount payable, and therefore the VT amount, is based on the cash price of the car and interest, not its value. As such, the value of the car doesn't affect Mrs D's requirement to repay the arrears.

I've seen that, in a series of emails all dated 10 May 2023, Mrs D asked Moneybarn "*how this £3k [arrears] is made up*" and "*I would like a breakdown on how you get this.*" She also explained that "*before I agree to the collection of the vehicle. I need to ensure I am happy with the figures provided.*" The following day Moneybarn confirmed in writing when Mrs D had missed payments, when she had only made partial payments, and when she'd made additional payments to clear some of the arrears.

I've noted that, in this email, Moneybarn didn't provide a breakdown of the amounts Mrs D had missed, partially paid, and/or overpaid, instead just confirming the months in which these happened. While I think they ideally should've done this, I also need to consider that I'm not looking for a perfect service, only a reasonable one. Given that Moneybarn provided Mrs D with annual statements showing what was and wasn't paid, and that Mrs D should've been reasonably aware what she had and hadn't paid, I'm satisfied that this email reasonably explained how the arrears balance had accrued. And I don't think Moneybarn need to do anything more about this.

Mrs D has also commented that she was only provided with an actual amount owing once the VT had gone through. While I understand her frustration about this, it's also the case that the arrears would include all payments due up to the date of VT. As such, until the VT has happened, Moneybarn were unable to calculate the exact amount owing, so were unable to advise Mrs D of this before then.

However, I am glad to see that, in October 2023, Moneybarn provided Mrs D with a full statement of account, covering the entire period of the agreement, so she could easily see in one document how the arrears balance had accrued. What's more, I haven't seen anything to show me that this balance is incorrect, or that Moneybarn failed to credit payments Mrs D paid to her account.

Saying this, I've also seen that a letter advising of a higher settlement figure was sent on 16 May 2023, during the VT process, and before the VT had been confirmed by Moneybarn. Mrs D queried this letter with them and, on 23 May 2023, Moneybarn apologised and asked her to disregard the letter, confirming the voluntary termination was going ahead. While receiving this letter would've been confusing, I'm satisfied Moneybarn acted reasonably in clarifying matters with Mrs D, apologising for their error. So, I won't be asking them to take any further action about this.

Finally, I want to address Mrs D's comments about being unable to speak to Moneybarn by phone, and that when she contacted them, she had to wait upwards of 15 minutes before she got through to anyone. I've also noted that, in a phone call of 12 October 2023, Mrs D explained to the investigator that this was especially a problem during the Covid-19

(coronavirus) pandemic. It's also clear from the investigation that Mrs D has had limited availability to talk on the phone due to her work commitments.

While I appreciate how frustrating it must have been for Mrs D to have to wait to speak to Moneybarn, especially when she was limited in her time to do so, like all financial businesses, Moneybarn only have a limited number of incoming phone lines and staff available to take calls. This means that at certain times of the day, such as lunchtimes and early evening, or in times such as the coronavirus pandemic which brought about its own challenges, when a large volume of people are trying to speak to Moneybarn, their call waiting times increase. As I've said, while I appreciate how frustrating this is, it's something generally outside of Moneybarn's control. As such, I won't be asking Moneybarn to compensate Mrs D for this. And, for the reasons given, I won't be asking them to reduce or waive the amount of arrears owing on Mrs D's account.

My final decision

For the reasons explained, I don't uphold Mrs D's complaint about Moneybarn No.1 Limited,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 10 April 2024.

Andrew Burford
Ombudsman