

## The complaint

Mr M complains that Moneybarn No. 1 Limited (“Moneybarn”) has treated him unfairly which has led to him being held liable for an outstanding amount owed under a conditional sale agreement.

Mr M is represented in this complaint by his father, but for ease of reference I’ll refer to Mr M throughout.

## What happened

Mr M entered into a conditional sale agreement with Moneybarn for a car in January 2021. In **October 2022**, he e-mailed Moneybarn asking for his options to end the agreement and enquiring whether he could give the car back. Moneybarn didn’t reply to him.

Mr M fell into arrears under the agreement from April 2023. The account statement shows that he missed payments for April, May, June, and July 2023. Moneybarn says they tried to contact Mr M to discuss his arrears but wasn’t able to get hold of him.

Moneybarn sent Mr M a default notice on 18 July 2023 and subsequently sent him a letter on 9 August 2023 saying they had terminated the agreement and asked him to contact them to discuss the return of the car. On 11 September 2023, Mr M signed a form consenting to him voluntarily surrendering the car to Moneybarn. Moneybarn then sent Mr M a letter saying they had sold the car at auction for £5,950 and that he owed them a final balance of £6,051.17.

Mr M complained to Moneybarn. He said, in summary, that they had treated him unfairly because they hadn’t made him aware of the correct financial options about exiting the conditional sale agreement. Mr M said he could have paid the money needed to reach the 50% threshold for voluntary termination had he been made aware of this and that he was prepared to pay the amount required to reach that threshold.

Mr M also told Moneybarn that his finances were severely squeezed around February/March 2023, and this is what caused him to miss the payments to the conditional sale agreement. But he said that Moneybarn did nothing to help him with this.

Mr M subsequently sent £1,307.72 to Moneybarn which was the amount he felt was required to reach the 50% voluntary termination threshold.

Moneybarn didn’t uphold Mr M’s complaint. They said they had tried to contact him on several occasions about the arrears on the account and felt they had terminated the agreement correctly. Moneybarn also said to Mr M that a current outstanding balance of £4,743.45 was owed by him. They did though say that they hadn’t called Mr M back when he’d contacted them in October 2023 to discuss the arrears and apologised for this.

Mr M wasn’t happy and referred his complaint to us. One of our investigators looked into what happened but didn’t think that Moneybarn needed to do anything. Mr M didn’t agree and so his complaint has been referred to me for a 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.

I want to acknowledge that I've summarised the events of the complaint to quite some degree. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr M and Moneybarn that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Moneybarn supplied the car to Mr M under a regulated conditional sale agreement. Our service can consider complaints relating to these sorts of agreements.

I'm conscious that Mr M has gone into quite some detail about why he feels Moneybarn hasn't treated him fairly. This includes the circumstances around him entering into the agreement and other matters such as not seeing a copy of the full terms and conditions of the agreement, Moneybarn's position in the car finance market at the time of the sale, the accuracy of how interest and his monthly payments were calculated from an amortisation schedule he created, and the welcome pack not being received within the cooling-off period.

For me though, this case boils down to how Moneybarn treated Mr M when he fell into arrears in April 2023 and their actions in terminating the agreement and holding Mr M liable for an outstanding balance. I don't think that the matters relating to the other points Mr M has raised (some of which I included in the previous paragraph) are relevant to this. Nor do I think these points are what I consider to be the heart of the complaint. Mr M may disagree and may feel I'll be simplifying matters as a result. But I'm satisfied that this is a fair basis on which to consider his case.

As a starting point, I think Moneybarn should have attempted to reach out to Mr M when he missed his contractual payment in April 2023 and the subsequent payments. I wouldn't, for example, have expected them to terminate the agreement or try to take back the car without at first trying to establish why Mr M was missing payments and whether they could do anything to help what may have been a temporary situation where Mr M was experiencing financial difficulties.

I've looked at Moneybarn's records from this time and can see these show they sent Mr M a text message on 24 April 2023 about the missed payment for that month and encouraging him to either make a payment or to call them if he was experiencing financial difficulties so they could discuss any available options they could offer him. Moneybarn followed this up with an e-mail on 4 May 2023 in which they essentially reiterated what they'd previously sent.

Moneybarn sent further e-mails and text messages to Mr M on 12 May 2023 along the same lines as before and continued to do so throughout June and July. However, I can't see any record of Mr M contacting, or trying to contact, Moneybarn during this time. I fully appreciate that Mr M was having a difficult time personally and financially throughout these months. But Moneybarn did, as far as I can tell, try to reach out to him and weren't in my view doing so to pressure him to make payments.

I've also seen a copy of some of the letters Moneybarn sent to Mr M. This includes a 'Notice of Sums in Arrears' letter from 19 May 2023 which they were obligated to send in compliance with the Consumer Credit Act 1974. This letter again encouraged Mr M to contact them to discuss the arrears that had built up.

I think by the time Moneybarn decided to send Mr M a default notice in July 2023, they had given him plenty of opportunities to contact them to discuss the situation that had built up on the agreement. So, I think they were entitled to send this to him and were also entitled to terminate the agreement in the following month as the requirements under the default notice hadn't been satisfied, nor had Mr M contacted them about this from what I can tell.

As I've said above, I completely appreciate that Mr M was experiencing a lot of difficulties which meant he wasn't able to pay Moneybarn. But I can't ignore the fact that Moneybarn did try to contact him and didn't hear back. I'm not blaming Mr M for the subsequent termination of the agreement, but I think Moneybarn did all it could prior to that happening. So, it wouldn't in my view be fair to say they should have done something else that would have led to the agreement remaining in force. That, in my view, includes the main thrust of Mr M's complaint, which is that Moneybarn should have made him aware that he could have voluntarily terminated the agreement by paying what was required to reach the 50% threshold. I've noted that Moneybarn sent Mr M a letter on 7 July 2023 which set out the various options that were available to him which included voluntary termination. I've seen no persuasive evidence that Moneybarn didn't send that letter to Mr M, and I would reiterate here that it's entirely possible that Moneybarn would have made Mr M aware of this option had he contacted them before the agreement was terminated.

I would just add here that Mr M did contact Moneybarn in October 2022 about his options in exiting the agreement, and that they didn't reply. Moneybarn should have done so. But I don't think that means that Mr M was subsequently unfairly denied an opportunity to exit the agreement under voluntary termination, as he was given several opportunities to discuss this with them after he fell into arrears in the following year.

The upshot of this is that I don't think Moneybarn were wrong in holding Mr M liable for what remaining to be paid under the conditional sale agreement, after it had been terminated and the car had been sold at auction. Nor have I seen evidence that the price Moneybarn obtained for the car was unreasonable or way below market value for its condition, such that an unfair cost was passed on to Mr M.

Mr M agreed to voluntarily surrender the car on 11 September 2023. However, this was after the agreement had been terminated, and at the point of termination, Mr M lost the right to voluntarily terminate it (so wasn't entitled to pay the 50% threshold figure and walk away with nothing further owed).

Overall, I haven't seen enough evidence to make me think that Moneybarn acted unreasonably in how they handled the conditional sale agreement after Mr M fell into arrears. Nor do I think they acted unreasonably after it was terminated. Moneybarn has acknowledged there were occasions when they should have returned Mr M's calls and apologised for not doing so. I think an apology for this is reasonable in the circumstances.

For the reasons I've set out above, I won't be upholding Mr M's complaint. I would just though remind Moneybarn that they should treat Mr M with appropriate forbearance in asking him to repay what is still owed and agree a reasonable way of him paying this down. If Mr M feels that Moneybarn aren't acting appropriately or fairly about this, he can complain to them and refer this particular matter to us subsequently if he wishes.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2025.

Daniel Picken  
**Ombudsman**