
FINAL NOTICE

To: Moneybarn Limited ("Moneybarn")

Reference
Number: 702781

Address: Bedford Road
Petersfield
Hampshire
GU32 3LJ

Date: 17 February 2020

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Moneybarn a financial penalty of £2,774,400 pursuant to section 206 of the Act.

1.2. Moneybarn agreed to resolve this matter and qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £3,963,500 on Moneybarn.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, between 1 April 2014 and 4 October 2017, Moneybarn breached Principle 6 (Customers' interests) and Principle 7 (Communications with clients) of the Authority's Principles for Businesses.

2.2. During the relevant period, Moneybarn failed to treat customers fairly by not exercising appropriate forbearance (allowing a customer more time to repay unpaid rentals or charges outside of their contractual obligations) where customers fell behind with loan repayments and were in financial difficulties. Moneybarn also did not

communicate the likely financial consequences of the various termination options to customers in a way which was clear, fair and not misleading.

- 2.3. Moneybarn provides motor finance for used vehicles to predominantly 'non-standard' customers, namely customers who typically could not access finance from mainstream lenders due to their personal circumstances. Between 1 April 2014 and 31 December 2017, the Moneybarn Group entered into 71,254 regulated credit agreements.
- 2.4. Some of Moneybarn's customers were at an increased risk of financial vulnerability as non-standard customers often have a poor or no credit history, or past problems with credit due to periods of unemployment, ill-health or other adverse life events. Customers may also be 'non-standard' due to other features of their financial circumstances, for example because they are self-employed. An unexpected change in income and expenditure therefore has the potential to raise the risk of default, but also impacts non-standard customers' ability to meet their wider financial obligations. Non-standard customers were at greater risk of suffering detriment once they fell into arrears.
- 2.5. Moneybarn's arrears handling and forbearance process and procedures were therefore an essential part of Moneybarn's business particularly when dealing with a non-standard customer base. The Authority considers it to have been particularly important during the relevant period for Moneybarn to have recognised the individual circumstances of each customer and assist those customers having trouble repaying their loans to resolve their arrears with due consideration and forbearance to achieve good customer outcomes.
- 2.6. Moneybarn breached Principle 6 (Customers' interests) by failing to pay due regard to the interests of its customers and treat them fairly. Moneybarn's general approach was that it considered that it was in the customer's best interest to clear their arrears quickly to avoid charges and further devaluing of the underlying asset in cases of eventual default, and it had arrears management processes and procedures, which enabled Moneybarn to exercise the level of forbearance and consideration appropriate to their customers' circumstances, however these were not always followed in practice. In particular, Moneybarn:
 - 1) failed to allow customers the ability to clear their arrears over a realistic and sustainable period. Between 1 April 2014 and 15 August 2016, most payment plans set up were for a short term, which meant that customers had to pay

additional sums on top of their monthly instalments to clear their arrears over a short period of time, and usually within three months. 37% of customers from the sample of customer files reviewed by the Authority who fell into arrears were asked to make one-off payments to clear their arrears which on some occasions resulted in double payments;

- 2) failed to use the full range of forbearance options at its disposal and according to customers' individual circumstances. In the majority of cases the only forbearance option used was short-term forbearance repayment plans;
- 3) failed to ensure that short-term forbearance repayment plans were affordable for customers and that they had sufficient disposable income left to account for other bills and contingencies; and
- 4) terminated customers' loan agreements when the customer ultimately defaulted on the agreement, where customers could not keep up with short-term forbearance repayment plans.

2.7. During the relevant period, a total of 1,136 customers entered into short-term forbearance repayment plans and subsequently defaulted on these plans. A further 269 customers defaulted within 30 days after the end of their plans. The Authority considers some of these defaults to be attributable to the length and affordability of Moneybarn's short-term forbearance repayment plans.

2.8. Moneybarn breached Principle 7 (Communications with clients) by failing to pay due regard to the information needs of its customers when exercising forbearance and termination options and failing to communicate with its customers in a way which was clear, fair and not misleading.

2.9. Non-engagement at the arrears management stage is a common feature among customers in the non-mainstream lending market. As such, the Authority considers it to be particularly important to communicate termination options to customers in a manner which is clear, fair and not misleading and highlight the financial differences between the different termination options to help customers make informed decisions.

2.10. During the relevant period, Moneybarn had several termination options when a customer fell into arrears and it deemed the agreement to be unsustainable or where a customer was considering exiting their loan agreement, the availability of which depended on the customers' individual circumstances. In some cases, these options

had significantly different financial implications for customers. Moneybarn failed to communicate the available termination options and the financial implications associated with each option to its customers in writing. 51% of customers agreements from the sample reviewed by the Authority had their arrangement terminated by means of the most expensive option - default termination. The exit scripts used by Moneybarn staff during the relevant period:

- 1) did not contain sufficient and accurate information on the different options and the financial implications associated with each option;
- 2) contained inaccurate and misleading information about the voluntary termination option which was the most financially suitable option in most cases;
- 3) promoted one termination option over others; and
- 4) failed to inform customers clearly that not choosing a termination option could result in the loan agreement being terminated under the default termination option which was often the least financially desirable option.

2.11. The Authority considers Moneybarn's failings to be serious for the following reasons:

- 1) Moneybarn's customer base is generally non-standard and it should have been obvious to Moneybarn that there was an increased risk of default among those customers. Further, Moneybarn should have realised that not demonstrating appropriate forbearance and due consideration had the potential to be more detrimental to non-standard customers who are more susceptible to unexpected changes in personal and financial circumstances than mainstream customers;
- 2) customers needed accurate and adequate information to be able to understand the complexities of the various termination options and the different financial implications;
- 3) the election of a termination option (or failure to make an election), could have a significant financial impact on customers who were already potentially financially vulnerable; and
- 4) it did not communicate termination options to non-engaging customers in writing, in addition to its practice of attempting to telephone them, which did not

adequately ensure that customers' loan agreements would be terminated in the most cost-effective manner.

- 2.12. The Authority has taken into account the fact that Moneybarn has paid significant redress of £30,349,433 to 5,933 customers potentially affected by its failings. The Authority notes that Moneybarn has agreed to make those payments to all potentially affected customers without requiring the customer to demonstrate that they have suffered any financial detriment. In respect of customers who defaulted within a short-term forbearance plan or within 30 days of a short-term forbearance repayment plan, Moneybarn has repaid any cash paid since the start of the forbearance repayment plan and written off any outstanding debt. In respect of customers who were not terminated under the most cost-effective termination option using the approach ultimately agreed with the Authority in October 2017, Moneybarn has reduced the outstanding balance to the amount the customer would have paid under the most cost-effective termination option or repaid the difference between what the customer paid and what they would have paid under the most cost-effective termination option.
- 2.13. Whilst the Authority accepts that Moneybarn has made considerable efforts and promptly took action to improve its forbearance and termination processes and practices, in respect of the matters referred to in this Notice, Moneybarn's conduct fell short of the regulatory requirements during the relevant period.
- 2.14. This action supports the Authority's operational objective of consumer protection.
- 2.15. The Authority hereby imposes on Moneybarn a financial penalty of £2,774,400 pursuant to section 206 of the Act.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

the "Act" means the Financial Services and Markets Act 2000;

the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"CONC" means the Consumer Credit Sourcebook;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Moneybarn Group” means the Group comprising four entities which are wholly owned subsidiaries of Provident Financial PLC, two of which are authorised by the Authority;

“Moneybarn” means Moneybarn Limited;

“Provident” means Provident Financial PLC;

“SPV” means the special purpose vehicle within the Moneybarn Group that entered into loan agreements with customers and whose rights to enforce such agreements were assigned to Moneybarn;

the “Principles” means the Authority’s Principles for Businesses;

the “relevant period” means the period from 1 April 2014 to 4 October 2017;

the “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

the “VREQ” means the voluntary requirement imposed under section 55L of the Act on Moneybarn’s permission on 26 June 2017.

4. FACTS AND MATTERS

Background

- 4.1. Moneybarn is a subsidiary of the Moneybarn Group. The Moneybarn Group includes three companies authorised by the Authority during the relevant period. In August 2014, the Moneybarn Group became a wholly owned subsidiary of Provident, the ultimate holding company being the Provident Financial Group. Between 1 April 2014 and 31 December 2017, the Moneybarn Group entered into 71,254 regulated credit agreements.
- 4.2. Moneybarn and the SPV are the only entities in the Moneybarn Group that undertook regulated consumer credit activities during the relevant period.
- 4.3. The SPV was the entity within the Moneybarn Group that entered into all loan agreements with customers and assigned its rights, including the right to enforce such agreements on its behalf, to Moneybarn. Accordingly, Moneybarn was responsible for exercising forbearance and dealing with the termination of loan agreements.

- 4.4. Moneybarn provides specialist motor finance, predominantly to non-standard credit market customers in the UK, operating primarily through brokers with additional distribution sourced through its own website and independent car dealers. It offers secured car loans through hire purchase and conditional sale agreements.
- 4.5. The non-standard market is a specialist niche market, which requires a deeper understanding of customers and their financial circumstances as the customers' needs are far more varied and changeable than customers of mainstream lenders.
- 4.6. Non-standard customers include people who had a poor or limited credit history, and 'non-standard' circumstances, for example the self-employed, sole traders, customers with irregular incomes or who had experienced past financial difficulty often due to temporary life events such as bereavement, marital breakdown or job loss. Given the credit profile of many of the individuals in Moneybarn's customer base and the potential for unanticipated changes in personal and financial circumstances, the importance of ensuring fair treatment of customers was essential and that where customers fell into arrears Moneybarn proactively engaged with customers and communicated all available options clearly.
- 4.7. Moneybarn was authorised by the Authority on 3 June 2016. Prior to that date, it had operated under an interim consumer credit permission. Moneybarn was the only entity in the Moneybarn Group that had permission during the relevant period to conduct the regulated activities of debt collecting and debt administration and was responsible for the broking and administration of all consumer credit agreements entered into.

Moneybarn's policies and procedures around dealing with customers in arrears and forbearance options

Policies

- 4.8. Moneybarn's processes for dealing with customers in arrears in the relevant period included the procedures set out in the following documents:
- 1) Forbearance Policy (July 2014 to September 2017).
 - 2) Collections policy (December 2014 to September 2017).
 - 3) Forbearance Procedure (March 2015 to August 2015).

4) Dealing with Customers in Arrears Procedure (August 2015 to August 2017).

- 4.9. The processes in these documents were broadly consistent. Whilst these documents were revised and updated throughout the relevant period, the material parts and the relevant processes remained broadly the same. Details of the processes in each of the documents are summarised below.

Forbearance Policy (July 2014 to September 2017)

- 4.10. The Forbearance Policy defined forbearance as allowing a customer time to repay unpaid rentals or charges outside of their contractual obligations, if this did not worsen the customer's situation and the customer could show that the arrangement was sustainable. This policy provided that Moneybarn would show forbearance to any customer in difficulty so long as this did not worsen the customer's long-term debt including by waiving the debt or reducing it without receiving payments. Factors to be considered when assessing whether forbearance was appropriate included whether the customer was still using the vehicle (if the customer was still using the vehicle and the debt was not paid off in a short period of time, the customer's eventual debt was likely to increase due to depreciation of the vehicle's value), sustainability of the agreement and past payment record.

Collections Policy (December 2014 to September 2017)

- 4.11. The Collections Policy provided direction to Moneybarn's staff when interacting with customers or their representatives who had already fallen into arrears or were likely to fall into arrears in the future.
- 4.12. The emphasis of the Collections Policy was to ensure that all collections activity undertaken by Moneybarn had a primary focus on delivering a fair and appropriate outcome for the customer. The Collections Policy provided that where a customer fell into arrears an early contact strategy should be adopted with proactive contact attempts using various communication methods including telephone, email and SMS to get an understanding of the customer's individual circumstances, including the reason for the arrears and whether the financial impact was likely to be long or short-term. An income and expenditure assessment would be carried out where appropriate. Further, consideration would be given to any attempts made by the customer to improve their financial situation. The discussion with the customer would result in one of four solution options, namely payment of the arrears in full, forbearance in line with Moneybarn's Forbearance Policy, exit strategy to end the agreement in cases where

the longer term sustainability of the agreement could not be evidenced or legal action to terminate the agreement where it was in the customer's best interest to end the agreement. Where customers could not be contacted, Moneybarn would send a statutory notice of default allowing the customer 20 days to remedy the default and the agreement would be terminated upon expiration of the default notice. Moneybarn could suspend termination action if a customer could demonstrate that they were taking steps to clear the arrears.

- 4.13. The Collections Policy encouraged collections decisions to be made in a "fair but timely manner" and expressly stated "too much forbearance can worsen the customer's financial position".

Forbearance Procedure (16 March 2015 to 1 August 2015)

- 4.14. Forbearance was only to be used when it would result in positive customer outcomes and "not simply delay the inevitable" which would potentially increase the customer's liability on termination or repossession of the vehicle. The Forbearance Procedure required Moneybarn's Customer Services Agents to contact the customer to assess the customer's personal and financial circumstances, including the reason for arrears, the financial impact, whether the financial impact was long term or short term, steps taken by the customer to address the financial impact and income and expenditure details to assess affordability. The Forbearance Procedure stated that Customer Service Agents must consider three options as part of forbearance:

- 1) A payment plan.

A payment plan was based on the customer's disposable income and enabled a customer to clear their arrears over a period of time, within the remaining term of the agreement, when the income and expenditure assessment showed that a payment plan was affordable and sustainable. According to this procedure, it was in the customer's best interests to clear the arrears as quickly as possible to reduce the impact on the customer's credit file and any additional costs. Factors such as previously failed plans were to be taken into account. The length of the payment plan that could be authorised varied according to the level of seniority of the Moneybarn employee mandated to authorise the plan. For example, the Operations Director could agree a payment plan to clear the arrears up to the full remaining term of the loan or beyond the term of the agreement, whereas a Customer Service Agent could agree a payment plan to clear the arrears in up to

six months. Payment plans which extended over six months had to be approved by Senior Management/Team Leaders.

2) Reduced payments or payment holidays.

This option was available to support customers who were experiencing a temporary change of circumstances or affordability due to a reduction in income or an increase in expenditure, which affected their ability to maintain payments. Customer Service Team Leaders could agree reduced payments for up to two months whereas the Managing Director could agree to reduced payments beyond six months. Customer Service Agents could not agree to reduced payments and Team Leader approval was required.

3) Instalment only payments.

If an income and expenditure assessment demonstrated an ability to maintain monthly instalments, but not an ability to reduce the arrears, Customer Service Agents could agree to accept instalments only for a set period. Customer Service Agents could agree to instalment only payments for up to two months whereas the Managing Director could agree to instalment only payments for beyond 12 months.

Dealing with Customers in Arrears Procedure (August 2015 to August 2017)

- 4.15. Moneybarn's Dealing with Customers in Arrears Procedure set out the principles to be followed when establishing the appropriate course of action for customers in arrears.
- 4.16. This procedure emphasised the importance of clearing arrears in a timely manner as long term arrears could affect the customer's creditworthiness and their ability to clear any arrears which may arise in the future. Where a customer did not make a payment when it became due, Moneybarn's Customer Service Agents would contact the customer to understand why the customer was unable to make the payment and assess whether it was necessary to carry out an income and expenditure assessment and whether a payment arrangement would be suitable. Customers who had missed one payment would be asked if they had the funds available to bring the account up to date if the reason for arrears was not indicative of financial difficulty or lack of affordability. If the customer showed concerns about clearing the arrears or if the customer had missed two payments or more, Moneybarn would ask questions to obtain a better understanding of the customer's financial situation and affordability. Once the reason for arrears was understood an income and expenditure assessment

would be carried out to obtain an understanding of the customer's disposable income and other financial commitments. Moneybarn required customers to submit income and expenditure details and proof in certain circumstances (for example, offer of employment letter) before a payment plan was accepted. Moneybarn's Customer Service Agents were able to offer a range of options to customers aimed at putting in place an arrangement for the customer to clear their arrears in an affordable and sustainable manner and increase the customer's chances of successfully completing their agreement and owning their vehicle. These options included:

- 1) Agreement of payment plans based on customers' disposable income – an income and expenditure assessment had to be carried out before agreeing to a payment plan, including confirmation that the customer was up to date with their priority bills and any such commitments had been factored into the income and expenditure assessment. Customer Service Agents would seek to identify that the customer had allowed sufficient funds for housekeeping, contingencies and unexpected expenses, before calculating the customer's disposable income. The customer would be asked to make an offer of repayment that was affordable and sustainable. If Moneybarn considered the customer's offer of repayment to be too low based on the disposable income, the customer would be encouraged to make an increased payment and thereby clear the arrears in a timelier manner. In circumstances where the customer did not allow sufficient funds for contingencies and proposed to use the majority of their disposable income to clear the arrears, Customer Service Agents could suggest a lower repayment amount to ensure that the agreement was sustainable and affordable. Customer Service Agents were able to agree to a payment plan without approval from management subject to certain conditions which included the plan completing within six months or less and the plan not extending beyond the end date of the agreement. On 30 June 2017, the procedure was revised so that Customer Service Agents could only accept up to a maximum of 66% of a customer's disposable income as an offer of repayment to clear any arrears. Customer Service Agents could also accept a repayment plan which enabled a customer to repay the loan over the remaining term of the agreement.
- 2) Reduced payments or payment holidays – reduced payments or payment holidays were available for customers who were experiencing a temporary change of circumstances or affordability due to a reduction in income or increase in expenditure which affected the ability to maintain payments, if the customer could

afford to clear the subsequent arrears. This forbearance option required the approval of a Customer Service Team Leader.

- 3) Removal of charges - charges could be waived if the charge had been applied by Moneybarn in error, due to circumstances outside of the customer's control, the customer was identified as vulnerable, there were extenuating circumstances to be considered, or the customer was experiencing significant affordability issues. Charges could only be waived with the approval of a Team Leader.

4.17. Moneybarn's Dealing with Customers in Arrears Procedure stated that Moneybarn reserved the right to refuse to accept a payment in the above circumstances and would not accept a payment where it would cause detriment to a customer. Instead it would discuss exit options with the customer if an income and expenditure assessment resulted in a negative or limited disposable income, if the customer was using credit or borrowing funds to make payments or if making payments to Moneybarn would affect the customer's ability to pay priority bills. The procedure emphasised the importance of the customer choosing the right option, based on their agreement and circumstances. Payments could only be refused with the approval of a Customer Service Team Leader.

4.18. In relation to customers with whom Moneybarn was unable to make contact, the procedure stated that, if Moneybarn was unable to establish contact with customers in order to understand their situation and put in place arrangements to address the arrears, it would assume that the agreement was unaffordable. In such situations, in the best interests of the customer, it would be obliged to take action by issuing a default notice whilst continuing to seek to engage with the customer in an attempt to discuss their options for exiting the agreement at the lowest possible cost.

Forbearance in practice

4.19. The Authority has reviewed a sample of Moneybarn's customer files from throughout the relevant period in order to assess the operation and effectiveness of Moneybarn's forbearance policies and procedures. Despite Moneybarn's policies and procedures setting out a range of forbearance options, the review indicated that, in practice, Moneybarn's Customer Service Agents did not always explore all of the different options available when dealing with customers in arrears.

4.20. The sample reviewed by the Authority comprised 209 customer files, 194 of which were selected randomly by the Authority from each credit tier with a higher percentage

of customer files selected from higher risk credit tiers and those customers that had had their agreements terminated by default and 15 were provided by Moneybarn. Of the sample of 209 customer files, 143 related to customers that entered into agreements before Moneybarn improved its forbearance practices to address the Authority's concerns.

- 4.21. Customers were often dealt with in a rigid manner in that the range of forbearance options was not explored, instead customers were encouraged to clear their arrears over a short period of time, usually within three months whilst also maintaining monthly payments. 64% of customers from the Authority's review sample fell into arrears during the relevant period. 65% of customers from the review sample who fell into arrears gave a reason for their arrears which indicated that forbearance might be appropriate and 93% of these customers were not given forbearance consideration appropriate to their circumstances. 37% of customers from the review sample who fell into arrears were asked to make one-off payments to clear their arrears which often resulted in double payments. Only three customer files from the review sample evidenced payment plans extending beyond three months, albeit two of the plans were within the permissible six-month mandate of Moneybarn's Customer Service Agents.
- 4.22. The Authority did not identify from the review sample the use of any other forbearance options despite the fact that Moneybarn's policies and procedures referred to other available options including reduced payments or payment holidays, instalment only payments or waiver of charges. Charges were applied on 77% of customer files in the Authority's review sample and the Authority did not identify waiver of charges being applied as a pre-termination forbearance measure in any of these customer files.
- 4.23. Moneybarn's failure to use the full range of available forbearance options for some customers was on the basis that customers would be disadvantaged by longer forbearance periods because the underlying asset value would fall in cases of eventual default. This failure disadvantaged some customers as Moneybarn required customers to clear arrears as quickly as possible, resulting in certain accounts progressing to termination prematurely. This meant that the range of available forbearance options were not always explored or Moneybarn did not work with the customer to address the arrears over a longer term.

- 4.24. The review sample shows that termination for non-payment usually occurred when the customer had missed four or fewer payments and that in practice, the majority of payment arrangements entered into with customers were short term payment plans.
- 4.25. The Authority considers this inflexible approach of encouraging customers to clear their arrears as quickly as possible, failed to take account of customers' individual circumstances. For example, in one instance, a customer informed Moneybarn that he had been signed off work and was going into rehabilitation for three to four months, however, he was going to borrow money from his family to make his monthly payments. The customer had previously asked for his agreement to be extended, but Moneybarn did not agree to this and no forbearance options were considered other than exit strategies. In another instance, a customer's mother contacted Moneybarn and advised that the customer was an alcoholic, in rehabilitation, on benefits and was looking for a six-month payment break. Moneybarn's Customer Service Agent advised that a six-month break was not possible but agreed to a one month break, that charges for non-payment would apply and that if the customer failed to make the next monthly instalment a default notice would be issued. The Customer Service Agent did not escalate the matter to a Team Leader or a Customer Service Manager who would have had authority to agree to a payment holiday for a longer period or waive charges in extenuating circumstances.
- 4.26. The review sample indicated that customers in arrears were often encouraged to pay a large proportion of their disposable income to enable their account to be brought up to date. For example, in one instance, a customer fell into arrears and an income and expenditure assessment was carried out which showed a negative disposable income. The customer informed Moneybarn that he could not clear the arrears in one payment. However, the customer reduced his outgoings which freed up some money. A payment plan was set up by Moneybarn to clear the arrears over three months. However, this payment plan was unrealistic as it still left the customer with a negative disposable income. As a result, the arrears increased further as the customer could not make the payments and the agreement was subsequently terminated.
- 4.27. During the relevant period, a total of 1,136 customers entered into short-term repayment plans and subsequently defaulted. A further 269 customers defaulted within 30 days of the end of their plan. Some of these defaults were attributable to Moneybarn not using the full range of forbearance options available to it, resulting in the use of unnecessarily short term and unaffordable repayment plans.

Moneybarn's policies and procedures relating to termination

Termination options

- 4.28. The termination of a customer's loan agreement occurred when an agreement was no longer sustainably affordable and resulted in Moneybarn issuing a default notice and termination letter. Where a customer's agreement was terminated by Moneybarn the customer had a number of different termination options, namely: (i) fully settle the agreement (by paying the full amount owed including arrears); (ii) voluntarily terminate the loan agreement and return the vehicle; or (iii) voluntary surrender (hand back following default termination and subsequent sale of the vehicle).
- 4.29. These options each had different financial implications for customers. If the customer failed to engage with Moneybarn or did not agree to a termination option, this would result in the account being terminated by the default option, the firm default termination and enforced recovery action.

Early settlement

- 4.30. Early settlement enabled customers to pay the full amount owed under the loan agreement (including any arrears) and keep their vehicle.

Voluntary termination

- 4.31. Customers could at any time before the final instalment under their loan agreement fell due, voluntarily terminate the agreement by giving notice. Customers who exercised this option were required to return the vehicle in a reasonable condition and, if they had paid less than one half of the total amount payable under the loan agreement, they were required to pay the difference between one half of the agreement and what they had already paid plus any other post termination charges (for example, repair costs, excess mileage or loss of value due to damage). Customers who had not paid half the total amount payable under the agreement, were required to make up the difference.

Voluntary surrender

- 4.32. Voluntary surrender resulted in a customer being liable to pay the full amount outstanding under the loan agreement, plus post termination fees (but no enforced recovery costs), less any payments made on the account and the net proceeds from

the sale of their motor vehicle. The financial benefit to a customer under this option was that the customer would not be liable for any enforced repossession and litigation costs associated with termination and recovery through legal action.

Firm default termination

- 4.33. Firm default termination resulted in a customer being liable to pay the full amount outstanding under the loan agreement, plus any vehicle recovery and post termination fees or charges, less any payments made on the account and the net proceeds from the sale of the motor vehicle. This option was the most expensive for the customer and was typically exercised when the arrears had not been repaid within the prescribed time period in the default notice and the agreement had to be enforced for the vehicle to be returned.

Communication of termination options to customers

- 4.34. Moneybarn did not routinely communicate all available termination options to its customers in writing prior to implementing the changes required by the VREQ. Prior to the implementation of these changes in October 2017, the termination options were communicated to customers by telephone when Moneybarn was able to make contact with a customer in default. The Authority notes that Moneybarn promptly engaged in discussions with it in relation to the content of its customer communications regarding termination options.
- 4.35. Termination options were discussed with customers over the telephone when their agreements were deemed to no longer be sustainable or if the customer indicated that they wished to consider termination options. Customers would make their decision based on the information they received over the telephone and would not receive written confirmation of the different options available to them and the financial implications associated with each option ahead of making this decision. If the customer had not been given a default notice, they would be given time to consider a range of different options aimed at bringing to an end their agreement with Moneybarn.
- 4.36. Moneybarn's Customer Service Agents used exit scripts as a reference point when discussing termination options with customers by telephone. However, the exit scripts were high level in nature and did not contain clear information about the different

options available and, more importantly, the financial implications of each option to ensure that Moneybarn was able to meet the information needs of its customers:

- 1) Settlement – whilst the exit scripts stated that a settlement figure could be produced and provided to the customer the same day and remained valid for 28 days, the scripts failed to explain how the settlement figure would be calculated.
- 2) Voluntary surrender – the exit scripts stated that voluntary surrender was a better option for customers than default termination as any fees that the customer would otherwise have to pay, such as court fees, agent’s recovery fees and the vehicle depreciation costs during the time taken for recovery to be enforced, would not apply under this termination option. However, the exit scripts failed to explain that voluntary surrender required the full outstanding balance of the loan plus any charges and post termination fees, less any payments made on the account and the net proceeds from the sale of their motor vehicle, to be paid.
- 3) Voluntary termination – the exit scripts stated that voluntary termination *“becomes available when you pay or have paid half of the total amount payable on the finance agreement”*. Customers could interpret this statement to mean that voluntary termination is only available for customers who have paid half the outstanding balance under the agreement. The Authority considers this statement to be misleading and inaccurate because customers could voluntarily terminate their agreement at any time during the term in accordance with the Consumer Credit Act 1974.

4.37. The scripts contained no information about firm default termination. As this was the least financially attractive option for customers, the Authority considers it important to highlight to customers that not choosing a termination option would result in the customer’s agreement being terminated under this option by default. The scripts contained no information on how the balance payable under this termination option was calculated and the impact it might have on a customer’s credit rating, to assist the customer in making an informed decision.

4.38. The Authority considers that the failure to adequately address the information needs of its customers around termination options by telephone and the failure to set out those options in writing made it difficult for customers to fully consider the options available to them. This was exacerbated by the provision of inaccurate and misleading information during the telephone call, particularly the information about options in relation to voluntary termination, which may have prevented customers from choosing

a termination option which would have left them with the lowest shortfall. 51% of customers from the Authority's review sample had their arrangement terminated by means, of a firm default termination, being the option which had the greatest financial impact on a customer.

- 4.39. Given that the termination options had significant financial implications for customers depending on which option they chose or was applied to them, the Authority considers it to be particularly important that customers were given information which was clear, fair and not misleading to enable them to make an informed decision as to which termination option to choose.
- 4.40. The Authority's view is that during the relevant period the lack of adequate information relating to termination options meant that the information needs of Moneybarn's customers were not met. Further, the failure to clearly explain all of the different termination options available to customers and their financial implications in a manner which was clear, fair and not misleading meant that customers were prevented from making decisions about the various termination options and their financial implications on a fully informed basis.

Remedial Action by Moneybarn

- 4.41. Following a review of a limited number of Moneybarn's customer files and call recordings, the Authority conducted a visit to Moneybarn in July 2016 to assess Moneybarn's forbearance and termination practices and procedures. The visit raised concerns about Moneybarn's pre-termination forbearance practices on the basis that they were inappropriate and inflexible and did not comply with the Authority's rules. The visit also identified concerns about Moneybarn's termination procedures, namely that Moneybarn was failing to provide customers with sufficiently clear information with which to make informed decisions regarding termination options and failing to take account of the customer's ability to understand the complexities of the various termination options when providing this information.
- 4.42. In the Authority's feedback letter following the visit, Moneybarn was requested to outline the measures it intended to put in place immediately to mitigate the risk of any further detriment. Moneybarn was requested to provide further information regarding pre-termination forbearance and termination practices, longer term proposals to address the Authority's concerns, and review whether detriment had been

caused to customers and, where detriment had occurred, to provide clear and robust proposals to remedy that detriment.

- 4.43. In response to the Authority's feedback, in September 2016 Moneybarn made changes to its forbearance processes as a result of which Customer Service Agents had authority to agree to payment plans up to the full term of the loan agreement and Team Leaders could agree to payment plans that extended beyond the term of the agreement. These changes were made to ensure that Customer Service Agents had the flexibility towards the length of payment plans to better meet customers' individual circumstances and reduce their arrears in the timeliest manner possible. Further, the amount of disposable income which could be used for payment plans was limited in that Customer Service Agents could only set up payment plans where the payment plan offer did not exceed 66% of a customer's disposable income. If a customer wished to pay more to clear the arrears faster than this, Team Leader approval needed to be sought. This change was made to address the concern that paying additional amounts on top on monthly instalments including double payments may not be affordable for customers.

Changes made to communications around terminations

- 4.44. In response to the Authority's feedback, Moneybarn provided proposals around setting out termination options to ensure that customers received sufficient information at the termination stage to enable them to make an informed decision on the best termination option.
- 4.45. The Authority met with Moneybarn in January 2017 to discuss the proposals. In February 2017, the Authority informed Moneybarn that it did not consider the proposals to contain adequate information to help customers make informed decisions around termination options. Further, the Authority noted that the draft communication to customers seemed to suggest that voluntary surrender was a better termination option than voluntary termination and did not set out the potential financial benefits of opting for voluntary termination in appropriate cases.
- 4.46. Between February and May 2017, the Authority continued to engage in further discussions with Moneybarn to obtain a better understanding of how the different termination options would impact customers and the extent of customer detriment and how this might be estimated in a consistent and accurate way.

- 4.47. In June 2017, Moneybarn agreed to the imposition of a VREQ whereby it agreed to amend its process for dealing with loan terminations such that customers would receive information in a clear, fair and not misleading manner to enable them to make an informed decision as to which termination option to adopt including, but not limited to:
- 1) providing clear, fair and not misleading information, both orally and in writing, to allow customers to understand fully the implications on the amount which would remain outstanding on their loan under each of the termination options;
 - 2) presenting information in a clear, fair and balanced manner without any one termination option being presented as being either more attractive or in a more positive light than the other options; and
 - 3) providing full details of the customer's right to terminate their agreement early under section 99 of the Consumer Credit Act 1974.
- 4.48. If Moneybarn was unable, for whatever reason, to provide customers with sufficient information to make an informed decision of which termination option to take, then it had to agree with the Authority an alternative process to ensure that customers were not disadvantaged by the lack of information.
- 4.49. Moneybarn was also required to agree with the Authority its revised processes for terminations, including providing draft call scripts and communications to be sent to its customers.
- 4.50. Draft communications around terminations were agreed between the Authority and Moneybarn in October 2017 and the VREQ was subsequently removed in June 2018. The new processes relating to terminations was put in place in October 2017. As a result, customers were sent details of the different termination options in writing which had been outlined to them over the telephone, including how much they would have to pay under each option and an explanation of how the figures were calculated.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in the Annex.

- 5.2. Moneybarn breached Principle 6 (Customers' interests) by failing to pay due regard to the interests of its customers and treat them fairly. Moneybarn failed to exercise the level of forbearance and consideration appropriate to its customers' circumstances. In particular, Moneybarn:
- 1) failed to allow customers the ability to clear their arrears over a realistic and sustainable period and favoured the approach of customers clearing their arrears quickly as any payment plans set up were for a short term, which meant that customers had to pay additional sums on top of their monthly instalments to clear their arrears over a short period of time, and usually within three months;
 - 2) failed to use the full range of forbearance options at its disposal according to the customers' individual circumstances in that the most common forbearance options used were short-term payment plans.
 - 3) failed to ensure that short-term payment plans were affordable for customers and that they had sufficient disposable income left to account for other bills and contingencies; and
 - 4) terminated customers' loan agreements, where customers could not keep up with unnecessarily short-term payment plans.
- 5.3. Between 1 April 2014 and 15 August 2016, a total of 1,136 customers entered short-term forbearance repayment plans and subsequently defaulted on these plans. A further 269 customers defaulted within 30 days after the end of their plans. The Authority considers these defaults to be in some cases attributable to the length and affordability of repayment plans.
- 5.4. Moneybarn breached Principle 7 (Communications with clients) as it did not pay due regard to the information needs of its customers when exercising forbearance and termination options and failed to communicate with its customers in a way which was clear, fair and not misleading.
- 5.5. Moneybarn had several termination options where a customer fell into arrears and the agreement was deemed to be unsustainable or where a customer was considering exiting their loan agreement. These options had the potential to have, and in most cases did have, significantly different financial implications for customers. During the relevant period Moneybarn failed to clearly communicate the different termination

options and the financial implications associated with each option to its customers in writing. The exit scripts used by Moneybarn staff during the relevant period:

- 1) did not contain sufficient and accurate information on the different options and the financial implications associated with each option;
- 2) contained inaccurate and misleading information about the voluntary termination option which was often the most financially advantageous option;
- 3) promoted certain termination options over others; and
- 4) failed to inform customers that not choosing a termination option would result in the loan agreement being terminated under the default option which was the least financially desirable option.

5.6. The Authority has taken into account the significant redress payments made to those customers potentially affected by its failings, and the fact that Moneybarn has agreed to provide redress to all customers affected by the relevant conduct without requiring its customers to demonstrate that they have in fact suffered loss.

5.7. Having regard to the facts and matters, the Authority considers that Moneybarn has breached Principles 6 (Customers' interests) and 7 (Communications with clients). Consequently, it is appropriate and proportionate in all the circumstances to take disciplinary action against Moneybarn for the breaches during the relevant period.

6. SANCTION

Financial Penalty

6.1. The Authority's policy on the imposition of financial penalties is set out in chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.

6.2. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

- 6.3. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach, where it is practicable to quantify this.
- 6.4. DEPP 6.5A.1G(2) states that, where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, or where the Authority decides to impose a redress programme, the Authority will take this into consideration. In such cases, the final penalty might not include a disgorgement element or the disgorgement element might be reduced.
- 6.5. Moneybarn has paid voluntarily redress of £30,349,433 to 5,933 customers potentially impacted by the forbearance and termination failings that are the subject of this Notice. In addition, as part of the wider redress exercise Moneybarn Group has paid voluntarily redress of £3,117,068 to 200 customers in relation to certain aspects of its historic affordability processes. The Authority considers that, in the circumstances, it is not appropriate to make a proposal for there to be a disgorgement element within the penalty.
- 6.6. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

- 6.7. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.8. The Authority considers that the revenue generated by Moneybarn is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of Moneybarn's relevant revenue. The relevant revenue is the revenue derived by Moneybarn during the period of the breach. As explained in paragraph 2.1, the period of Moneybarn's breach was from 1 April 2014 to 4 October 2017. The Authority considers Moneybarn's relevant revenue for this period to be £49,544,417.

6.9. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach: the more serious the breach, the higher the level. For penalties imposed on firms, there are the following five levels:

- Level 1 – 0%
- Level 2 – 5%
- Level 3 – 10%
- Level 4 – 15%
- Level 5 – 20%

6.10. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.11. DEPP 6.5A.2G(6) lists the factors relating to the impact of the breach. Of these factors, the Authority considers the following factors to be relevant:

Impact of the breach

6.12. All of Moneybarn’s customers who fell into arrears were potentially exposed to the risk created by the breaches.

6.13. Moneybarn’s breaches caused a significant risk of loss to individual customers. Although the loss to each customer may not have been ‘significant’ in each case, the aggregate sums repaid to approximately 6,000 potentially affected customers by way of redress was significant.

6.14. Moneybarn’s customers were predominantly non-standard customers which meant that they were at an increased risk of falling into arrears and vulnerable due to their particular circumstances. The breaches therefore had an effect on particularly vulnerable customers, whether intentionally or otherwise.

Nature of the breach

6.15. The nature of the breach revealed serious weaknesses in Moneybarn’s forbearance and termination policies and procedures.

- 6.16. The Authority has not found that Moneybarn acted deliberately or recklessly.
- 6.17. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these factors, the Authority considers the following factors to be relevant:
- a) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach; and
 - b) the breach was committed negligently or inadvertently.
- 6.18. The Authority has also considered the factors set out in DEPP 6.5A.2G(11) to determine whether a level 4 or 5 should be applied for the seriousness of the breach. The Authority does not consider that these factors are relevant to the breaches identified.
- 6.19. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £49,544,417.
- 6.20. The Step 2 is therefore £4,954,441.

Step 3: mitigating and aggravating factors

- 6.21. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.
- 6.22. The Authority considers that there are no aggravating factors and that the following factors mitigate the breach:
- 1) Moneybarn cooperated on several occasions by providing the Authority with additional information and clarification without being asked or required to do so which enabled the investigation to proceed more efficiently;
 - 2) once the breaches had been identified, Moneybarn revised its processes and procedures relating to forbearance and termination including its communications to customers. The effect of these changes was to ensure that a broader range of forbearance options was more frequently offered to customers to achieve greater flexibility towards the length of payment plans to better meet customers' individual circumstances and reduce their arrears in the timeliest manner possible

and, following agreement with the Authority as to the approach that should be taken when doing so, all termination options and the financial implications of each were communicated and clearly explained such that customers received information which was clear, fair and not misleading; and

- 3) Moneybarn has voluntarily paid redress of £30,349,433 to 5,933 customers in relation to the forbearance and termination failings that are the subject of this Notice. In addition, as part of a wider redress exercise the Moneybarn Group has voluntarily paid redress of £3,117,068 to 200 customers in relation to certain historic affordability processes.

6.23. Having taken into account these mitigating factor, the Authority considers that the Step 2 figure should be decreased by 20%.

6.24. Step 3 is therefore £3,963,553.

Step 4: adjustment for deterrence

6.25. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.26. The Authority considers that the Step 3 figure of £3,963,553 represents a sufficient deterrent to Moneybarn and others, and so has not increased the penalty at Step 4.

Step 5: settlement discount

6.27. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on which a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.28. The Authority and Moneybarn reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.29. Step 5 is therefore £2,774,487.

Penalty

- 6.30. The Authority hereby imposes a total financial penalty of £2,774,400 on Moneybarn for breaching Principle 6 (Customers' interests) and Principle 7 (Communications with clients).

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Moneybarn under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

- 7.3. The financial penalty must be paid in full by Moneybarn to the Authority no later than 2 March 2020.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 2 March 2020, the Authority may recover the outstanding amount as a debt owed by Moneybarn and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

- 7.6. For more information concerning this matter generally, contact John Tutt at the Authority (direct line: 020 7066 1240/email: john.tutt@fca.org.uk).

Bill Sillett

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX

1. STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives are set out in section 1C of the Act and include consumer protection.
- 1.2. The Authority has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the Authority considers an authorised person has contravened a requirement imposed on him by or under the Act.

2. REGULATORY PROVISIONS

- 2.1 In exercising its power to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions, guidance and policy published in the Authority Handbook.

Principles for Businesses ("Principles")

- 2.2 Under the Authority's rule-making powers, the Authority has published in the Authority Handbook the Principles which apply either in whole, or in part, to all authorised persons.
- 2.3 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the Authority's operational objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.
- 2.4 Principle 6 (customers' interests') states that:

"A firm must pay due regard to the interests of its customers and treat them fairly".

- 2.5 Principle 7 (communications with clients) states that:

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading".

Consumer Credit Sourcebook ("CONC")

- 2.6 CONC 7.2.1R states that:

"A firm must establish and implement clear, effective and appropriate policies and procedures for:

- (1) dealing with customers whose accounts fall into arrears;*
- (2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable."*

2.7 CONC 7.3.3G states that:

"Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6, allow for such unmade payments to be made within the original term of the agreement unless:

(1) the firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties; or

(2) the firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer."

2.8 CONC 7.3.4R states that:

"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration"

2.9 CONC 7.3.10R states that:

"A firm must not pressurise a customer:

(1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;

(2) to pay a debt within an unreasonably short period of time; or

(3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing."

2.10 CONC 2.2.2G states that:

"Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. Examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include:

(1) targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;

(2) subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;

(3) not allowing customers who are unable to make payments a reasonable time and opportunity to meet repayments;

(4) taking steps to repossess a customer's home, other than as a last resort."