

The complaint

Ms P is unhappy with how FCE Bank Plc trading as Ford Credit dealt with the voluntary termination of her hire purchase agreement with them.

Ms P is being represented in this complaint by Mr W. However, for ease of reference, my decision will only refer to Ms P.

What happened

In October 2017 Ms P was supplied with a used car through a hire purchase agreement with FCE. The agreement was for £8,250 over 37 months, with an initial payment of £193.93, 35 monthly payments of £186.93, and a final optional payment of £3,398.42 if she wanted to keep the car.

On 8 September 2018 Ms P wrote to FCE, asking to voluntarily terminate (VT) the agreement. In making this request, Ms P said that she couldn't afford any further payments or afford to enter into another agreement. At the time, Ms P hadn't paid the minimum 50% of all payments due under the agreement that would've allowed her to VT the agreement with nothing further to pay.

FCE told Ms P that she still owed £2,441.93 under the agreement, and they arranged to collect the car. After collecting the car, FCE told Ms P that she also owed them an additional £1,070.35 for exceeding the mileage allowable under the agreement. The car was sold at auction in November 2018, and this reduced Ms P's liability to £1,584.63.

Ms P complained to FCE that they'd accepted her terms for VT – that she couldn't afford to make any more payments or enter into a new agreement – so she didn't owe them any money. She felt that, by accepting her terms, FCE had allowed her to walk away with nothing more to pay. FCE didn't agree with this. And, while they subsequently waived the excess mileage charge, they said that Ms P still owed them the shortfall under the agreement.

Ms P wasn't happy with FCE's response and brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the agreement Ms P signed was clear that she would need to pay at least 50% owing under the agreement, before she could VT with nothing more to pay. And Ms P hadn't paid this. The investigator also said that the agreement didn't give either party the right to vary the terms, so he didn't think that Ms P saying she couldn't afford any further payments or to enter into another agreement, meant that she didn't have to pay anything more. So, he thought FCE had acted reasonably by asking Ms P to pay the shortfall.

Ms P didn't agree with the investigator. She said that she made her position clear when she asked to VT the agreement, and by not challenging this, FCE accepted it. She said that FCE should've refused to collect the car if they didn't agree with her terms. So *“under contractual law, FCE accepted [Ms P's] financial position, therefore, once the car was collected, the agreement came to an end.”*

Because Ms P didn't agree with the investigator, 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 have 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.

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 what I consider was good industry practice at the time. Ms P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've seen a copy of the agreement Ms P signed with FCE. Under the heading '**TERMINATION: YOUR RIGHTS**', the agreement says *"you have the right to end this agreement. To do so you should write to the person you make your payments to. They will be entitled to the return of the goods and to half the total amount payable under this agreement, that is £5,068.95 (five thousand sixty eight pounds and ninety five pence). 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."*

It's not disputed that Ms P hadn't paid at least £5,068.95 when she requested VT, and the car was collected by FCE.

I've also read the other terms of the agreement, and there's nothing that says either party had the right to vary the VT term (above), or that any request for variation by Ms P will be automatically accepted by FCE.

I've also seen a copy of the undated, hand-written letter Ms P sent to FCE. This says that *"I wish to voluntary terminate the hire purchase agreement [number provided] with {FCE} from the date of the original letter sent to you on th [sic] 8th September 2018."* This letter went on to say, *"the reason of coming to this conclusion is we are no longer in a position to afford the payments nor can we enter into another repayment plan."* Ms P concluded the letter by saying that *"if the vehicle is not collected by the 27th September 2018, it will be taken to the nearest [manufacturer] dealership with all car documents and keys."*

As I've said, the terms of the agreement didn't allow for either party to vary the terms of the agreement. But, even if they did, then I'm not satisfied that this letter was an attempt to vary the terms of the agreement. It didn't say that, because of Ms P's financial situation, by accepting VT FCE would also be accepting that there's nothing more to pay. Nor is this even clearly implied from the wording of the letter.

What's more, if this was meant as an attempt to vary the terms of the agreement, than FCE should've been given the option to accept any variation. But, by clearly saying that if FCE didn't collect the car by a specified date, then the car would be returned regardless; this letter wasn't intended to give FCE any choice in accepting a variation to the VT terms, instead imposing a change of terms that, as said before, wasn't an option under the agreement. As such, I'm satisfied that this letter is nothing more than a request for VT, with a supporting explanation as to why VT has been requested.

Given this, I'm also satisfied that, by collecting the car and ending the agreement, FCE haven't waived any rights to collect any shortfall owing under the VT terms. As such, I'm satisfied that FCE acted reasonably by pursuing Ms P for any shortfall. And I won't be asking them to reduce or waive any money still owed by Ms P.

My final decision

For the reasons explained, I don't uphold Ms P's complaint about FCE Bank Plc trading as Ford Credit.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 27 January 2022.

Andrew Burford
Ombudsman