

The complaint

Mr E complains that MotoNovo Finance Limited didn't make him aware he'd be charged for arrears accrued when he voluntarily terminated his agreement with them.

What happened

In January 2017 Mr E was supplied with a used car through a hire purchase agreement with MotoNovo. The agreement was for £18,839, with 48 monthly payments of £276, and a final payment of £5,581. At the time the car was three years old and had done 50,995 miles.

Mr E said that he contacted MotoNovo in March 2020 as his household income had been affected by the Covid 19 pandemic. He said he called to ask about voluntary termination of the agreement.

He said that in that call MotoNovo offered him a three-month payment deferral. He said he accepted this option, but only after MotoNovo confirmed that it wouldn't affect his right to return the car and voluntarily terminate the agreement.

He said he contacted MotoNovo after the three-month deferral to arrange the return of the car. He said it was at this point that he was told that he would have to pay the three months arrears, in full.

He said this hadn't been explained to him when he'd been offered the payment deferral. He said if it had he wouldn't have taken the payment deferral and would've returned the car and terminated the agreement in March 2020.

He was also unhappy that MotoNovo told him he had to pay the £1,500 damages charges and the £1,000 arrears in full or they would hand this over to a debt collection agency. He said they told him a payment plan wasn't possible.

MotoNovo said Mr E had contacted them about the change in his financial circumstances due to the Covid 19 pandemic in March 2020 and May 2020. They said they'd moved his payment date back to the end of April 2020 to give him time to think about his options. They said they also told him about his right to voluntarily terminate the agreement.

They said they agreed a three-month payment deferral in May 2020. They did this after the industry regulator, the Financial Conduct Authority (FCA), issued guidance for the industry on financial difficulties arising from the Covid 19 pandemic.

MotoNovo said they'd charged him in line with his agreement. This was for the arrears on his account of £1,386, £390 for damage and a missing service book, and an excess mileage charge of £757. But they upheld his complaint and paid him £75 compensation because one of their agents hadn't recorded the notes of a telephone call on their system.

Mr E was unhappy with MotoNovo's response, and he brought his complaint to us for investigation.

Our investigator felt that MotoNovo had explained to Mr E that a payment deferral wouldn't affect his ability to voluntarily terminate the agreement. And she said that the correspondence MotoNovo sent about the payment deferral confirmed that payments weren't cancelled. So she thought it was reasonable for MotoNovo to charge him for the arrears.

Because Mr E didn't agree with the investigator, the 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. Mr E 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.

Mr E said that he wouldn't have taken the payment deferral option if he'd known he would be liable for the arrears.

I've listened to the calls in March 2020. Mr E explained the impact on his outcome arising from the Covid-19 pandemic, and asked MotoNovo what help they could provide. They offered to move the payment back from 1 April 2020 to 30 April 2020 in order to give him breathing space to consider his options. In this call they made clear that payments were still due. Mr E accepted this offer.

In this call MotoNovo also explained the right to terminate to Mr E. He understood, but was happy to accept the breathing space that had been created by moving the payment date. He said this would give him time to consider his options.

It's disappointing that MotoNovo are not able to provide me with a recording of the telephone call on 7 May 2020 when the payment deferral was offered and accepted.

I've seen a copy of the correspondence sent to Mr E that followed from this call. This makes clear that payments were still due. It includes the following statement:

"It's important to make it clear that this deferral (also known as a 'concession') is a temporary pause in your repayments and does not change or vary your Agreement in any way, so your next three monthly repayments have been put on hold, not cancelled."

They also say that arrangements will be made to help Mr E repay the deferred payments, including increasing the monthly payments or by immediate payment. It makes clear that he must "*catch up your deferred payments over the rest of your agreement*".

I can see from MotoNovo's records that a text message was sent to Mr E on 18 July 2020 advising him that his deferral was coming to an end, and that he'd need to think about how he'd make up the deferred payments.

And this matches what the agreement says. Like all agreements of this type, this agreement has a termination clause that sets out his right to terminate. This is a right granted under the Consumer Credit Act 1974, and allows him to return the car with his liability capped at 50% of the total amount payable. As he had paid this amount, he could return the car, but he was still liable for “*any overdue instalments*”.

Term 7.1.3 of the agreement reaffirms this – it deals with his right to end the agreement and says he must pay “*all arrears and other sums payable under the agreement*”.

The deferral was granted following the issue of the guidance by FCA. The purpose of the guidance was to allow customers temporary relief where there was a reduction in household income that would’ve been used to make the payments due under the agreement. Firms like MotoNovo were expected to inform customers like Mr E of the consequences of a payment deferral, including the effect on the balance due under the agreement and future payments.

MotoNovo did this, in the correspondence I’ve referred to above.

I’m satisfied that MotoNovo gave Mr E sufficient information that the arrears were due. I note that Mr E says he’s not challenging the amounts due, only that he wasn’t made fully aware that the payments were still due. And if he had been, he wouldn’t have taken the payment holiday and would have returned the car and voluntarily terminated the agreement straight away.

I’m satisfied that MotoNovo accurately answered his questions in his calls – that the deferral wouldn’t prevent him from voluntarily terminating the agreement. And even though I don’t know what was said in the call on 7 May 2020, they provided him with sufficient information immediately afterwards that should have made him aware that the payments were due at the end of the deferral period.

It was never the intention that Mr E would have three months free use of the car – whether or not he actually used it.

I’m satisfied that it’s fair and reasonable for MotoNovo to invoice Mr E for the arrears on the account. I also think it’s reasonable to charge him for the damages they’ve shown to be in breach of the allowed damages. I’d expect MotoNovo to consider his current financial situation and treat him with appropriate forbearance when considering an affordable payment plan to clear the arrears. I think this is fair and won’t be asking them to do anymore.

My final decision

For the reasons explained, I don’t uphold Mr E’s complaint about MotoNovo Finance Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 9 June 2022.

Gordon Ramsay
Ombudsman