

The complaint

Mrs I is unhappy that RCI Financial Services Limited trading as Nissan Finance ('RCI') terminated the hire purchase agreement she had with them.

Mrs I is being represented in this complaint. However, for ease of reference, I'll only refer to Mrs I within my decision.

What happened

On 1 June 2019 Mrs I was supplied with a new car through a hire purchase agreement with RCI. She paid a deposit of £900.08, and the agreement was for £26,319.92 over 49 months; with 48 monthly rental payments of £426.04, and a final payment of £9,485.81 if Mrs I wanted to keep the car at the end of the agreement.

Mrs I's income was affected by the coronavirus (Covid-19) pandemic and RCI agreed a payment deferral, also known as a payment holiday, for the payments due from December 2020 to April 2021. Once this had ended, RCI were unsuccessful in trying to contact Mrs I to discuss the deferred payments, and how she wanted to pay them.

RCI's emails, telephone calls, and letters went unanswered. So, in August 2021, they issued a default notice to Mrs I. This wasn't responded to, so RCI terminated the agreement. And passed the debt for the termination balance to a third-party debt collection agency I'll call D.

Mrs I had moved property, but didn't tell RCI her new address. D traced Mrs I to her new address and started proceedings to repossess the car. Mrs I was unhappy with this situation and complained to RCI. But they didn't think they'd done anything wrong. So, Mrs I brought her complaint to us for investigation.

Our investigator said she thought the correspondence RCI had sent Mrs I about the payment deferral made it quite clear that she needed to contact them when the payment deferral period ended, to discuss her financial circumstances. But Mrs I didn't do this. So, the investigator thought RCI had acted reasonably by terminating the account when they were unable to contact Mrs I about this. And she didn't think RCI needed to do anything more.

Mrs I didn't agree with the investigator. She said that she'd told the supplying dealership about her change of address and that RCI should've tried to contact her through the dealership "*which is the front company*" if they were unable to contact her by other means. And she thinks that RCI should've tried the same methods as D to trace her new address, rather than defaulting the account and terminating the agreement.

Mrs I has also said that her offer to repay the deferred payments was turned down, and she was concerned about the effect this would have on her credit file.

Because Mrs I 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. Mrs I was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Mrs I contacted RCI in November 2020 to discuss her financial circumstances. And, as a result of this conversation, a three-month payment deferral (to cover the payments for December 2020 to February 2021) was agreed. Mrs I contacted RCI again on 1 March 2021, as still was unable to start making payments again. So, a further payment deferral was agreed to cover the payments for March and April 2021. But Mrs I didn't contact RCI after the second deferral period ended, and she didn't make the payment due in May 2021.

Payments were made from June 2021 onwards, but RCI were unable to contact Mrs I about the deferred and missed payments by telephone, email, or letter. I've seen that, between 21 April 2021 and 28 July 2021, RCI sent Mrs I ten letters and eight emails asking her to contact them. And they attempted to contact her by phone 15 times. RCI's case notes show Mrs I answered a call on 18 May 2021 but terminated this once RCI introduced themselves.

What's more, an email dated 21 July 2021 explained that if Mrs I didn't contact them to discuss her account, RCI may have to issue a default notice and terminate the agreement. Mrs I didn't contact them and, on 4 August 2021, they issued a default notice to Mrs I. This gave her until 25 August 2021 to contact them about the situation on her account, otherwise the agreement would be terminated.

Mrs I didn't respond to the default notice and the agreement was terminated on 27 August 2021. While Mrs I has questioned the speed in which RCI terminated the agreement, I don't think they did anything wrong. They'd been unsuccessfully trying to contact Mrs I for four months before the termination happened. And, given these circumstances, I don't think RCI acted with undue haste.

I've seen a copy of the agreement Mrs I signed on 1 June 2019. Under the heading *"consequences of missing payments"* the agreement says *"Missing payments could have severe consequences. Including our taking legal action against you which may include a claim to repossess the goods."* And, under the heading *"repossession"* the agreement says RCI *"of you do not keep your side of the Agreement but you have paid at least one third of the total amount payable under this Agreement, that is £10,278.56 we may not take back the goods against your wishes unless we get a court order."*

Based on this, I'm satisfied that Mrs I was reasonably aware that the car could be repossessed by RCI and, if she hadn't paid at least one-third owing under agreement (which she hadn't) then RCI wouldn't need a court order. So, I'm also satisfied that, under the circumstances, RCI acted reasonably by taking action, through D, to repossess the car.

Mrs I has said that she didn't receive the default notice, or any of the letters, because she'd moved address. She had an obligation to keep RCI updated with any material changes in her circumstances, which included her contact details. And I've seen that, on 24 November 2020, she told RCI about a change to her email address. So, it would be fair to say from this that Mrs I was reasonably aware of this obligation.

But, while Mrs I told dealership that she'd moved address, didn't tell RCI. The dealership is a separate company to RCI, and not a 'front company' as Mrs I has said. So, she had a responsibility to advise RCI of new address, and not rely on a third-party to do this. What's more, I haven't seen anything to show me that Mrs I asked the dealership to update RCI with her new address.

While the letters and default notice may not have been sent to Mrs I's new address, she would've known from the emails and phone calls that RCI wanted to speak to her. And she knew she hadn't arranged to repay the deferred payments or the payment that was missed in May 2021. So, I'm satisfied that Mrs I would've reasonably known about the situation on her account.

What's more, while I don't have the exact date Mrs I moved address, RCI's case notes show that they asked for her postcode as part of their security measures on 1 March 2021. So, unless Mrs I deliberately told RCI her previous postcode and chose not to tell them of her new address, it's highly likely that she moved address after this date. And it would be reasonable to expect someone moving home to set up mail forwarding or arrange some other method for any post to be passed on. So, I also think that it's more likely than not that Mrs I received at least some of the ten letters RCI sent her. And maybe the default notice as well, albeit possibly too late to take any action.

Mrs I has said that, when she finally spoke to RCI about her account, they explained that an immediate payment of £1,000 (along with a payment arrangement being put in place) would be sufficient to stop any repossession proceeding. But Mrs I couldn't make this payment and offered to pay £500 immediately, and £500 at a later date.

Mrs I also said that RCI said they'd consider this offer but didn't come back to her to say if it would be acceptable. While I don't doubt this may've been the case, as RCI didn't come back to her, and as she didn't pay the £500, she would've reasonably known that her offer hadn't been accepted. And, while this doesn't mean that RCI shouldn't have got back to her about the offer for formally decline it, it also doesn't mean that RCI should now accept this offer and stop any repossession proceedings.

Finally, Mrs I has said this is the third car that she's had from the same manufacturer, and she's been a customer of theirs for almost seven years. While this may be the case, it doesn't alter the fact that she didn't respond to RCI's requests for her to contact them, and she didn't make any arrangements to repay the deferred payments, even though she knew these needed to be repaid. And her relationship with the manufacturer doesn't mean that RCI didn't act reasonably by terminating the agreement when they did.

Given all of the above, I don't think that RCI did anything wrong, and I won't be asking them to do anything more.

My final decision

For the reasons explained, I don't uphold Mrs I's complaint about RCI Financial Services Limited trading as Nissan Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or

reject my decision before 8 July 2022.

Andrew Burford
Ombudsman