

## **The complaint**

Mr L is unhappy with how FCA Automotive Services UK Ltd treated him after he told them he was in financial difficulty.

His complaint was brought on his behalf by his wife, Mrs L. For ease of reference I'll refer only to Mr L.

## **What happened**

In December 2017, Mr L was supplied with a used car through a hire purchase agreement with FCA Automotive. The agreement was for £18,332 over 48 months, with 47 monthly payments of £281, and a final payment of £4,708 if he wished to purchase the car. At the time the car was less than 6 months old and had done 2,000 miles.

Mr L said that he missed a few payments not long after entering into the agreement as he struggled to find work. He said that he agreed a three-month payment plan with FCA Automotive in September 2019 to clear the arrears. He said he agreed to pay an extra £50 per month on top of his contractual monthly payment.

He said he contacted FCA Automotive in February 2020 to extend the payment plan. He said he was told this wasn't possible and they would be increasing his monthly payments. He said he was told his only other option was to cancel the agreement. He said he wrote to them on 18 February 2020 asking for the agreement to be terminated. He then cancelled the direct debit for the monthly payments.

He said he wrote to FCA Automotive in July 2020 seeking a response to his request to terminate.

He said he then received a Notice of Sums in Arrears letter on 1 August 2020, and in September 2020 they called him to ask if he now wanted to start paying his monthly payments. When he said he didn't want to pay, he said they told him they would collect the car, and they would calculate the arrears he owed after they'd sold the car.

He said he'd asked for the agreement to be extended whilst he was resolving his financial difficulties and was upset that they didn't treat him sympathetically.

FCA Automotive said that they'd issued Mr L with an arrears letter in February 2020, and the next steps would've been to terminate the agreement and recover the car. They said Mr L had called them on 12 February 2020 and agreed to an increase in payments to clear the outstanding arrears.

They said Mr L didn't make the payments and they would've taken steps to terminate the agreement. But they said this didn't happen because of the national lockdown introduced following the Covid 19 pandemic. They accepted this had caused a delay, but said they'd given Mr L the opportunity to voluntarily terminate the agreement in February 2020. They said he hadn't taken this option, and they hadn't received the letters he'd said he sent to them in February 2020 and July 2020.

On 7 October 2020 FCA Automotive issued a Default Notice informing Mr L he had to pay £2,895, or they would terminate the agreement. They said they'd agreed to collect the car from Mr L, and review the arrears after the car had been sold.

In June 2021, following the sale of the car FCA Automotive told Mr L that to complete the Voluntary Termination he needed to pay £3,545. This was made up of the amount outstanding on the agreement, and damage charges. They said they hadn't charged him for the eight months from October 2020 when he agreed to voluntary terminate to the date the car was sold.

Mr L brought his complaint to this service. He said he wanted FCA Automotive to clear the outstanding balance they say he owes them under the agreement.

Our investigator said that Mr L had failed to make any payments after February 2020 and could've made more attempts to contact FCA Automotive. He also felt it was reasonable for FCA Automotive to sell the car and charge Mr L for the outstanding arrears.

He said that FCA Automotive had agreed two payment plans with Mr L and this showed they treated him sympathetically when he was in financial difficulty.

He didn't think FCA Automotive had acted unfairly. He said that they'd said they didn't receive Mr L's letters, and he didn't contact them until August 2020. So he felt it was reasonable for them to collect the vehicle and once sold, review the arrears balance.

Mr L didn't agree with the investigator. He said that our investigator had explained FCA Automotive's delays were understandable given the pandemic, but he hadn't shown the same consideration to him. He said that he had called FCA Automotive in February 2020 to explain he was in financial difficulty, but he'd been forced to agree a higher payment plan that, when he thought about it after the call, he couldn't afford.

Mr L also commented that our investigator hadn't addressed his complaint that FCA Automotive had failed to consider his request for an affordable payment plan in February 2020 when he told them he was in financial difficulty.

I asked FCA Automotive to explain what steps they'd taken when Mr L told them he was in financial difficulty. They said that they were considering terminating the agreement in September 2019 due to the amount of arrears on the account. But they said that they allowed Mr L to repay an extra £50 per month towards the arrears, in addition to his normal monthly payment. This increased his monthly payment to £331.

They said they'd also told him of his option to voluntarily terminate the agreement, or part exchange or sell the car and settle the account.

They said they'd accepted his offer to pay an extra £50 and told him this was an exception and they'd review the agreement in four months' time.

After four months, in which they said he'd maintained the higher payments, they said they'd offer a six-month arrangement to repay the remaining £644 of arrears. This meant that from February 2020 Mr L would've had to pay an extra £107 on top of his original agreed monthly payment of £281.

They said Mr L had told them he wanted to proceed on this basis. They said they'd considered whether or not the new amount was affordable based on what he had told them over the phone in February 2020.

They said Mr L didn't make the first payment and cancelled the direct debit. But he kept the car for another ten months without making any payments towards the agreement.

Because Mr L didn't agree with the investigator, the matter was passed to me for a decision. I sent Mr L and FCA Automotive a provisional decision on 30 March 2022. In this decision I explained why I thought the complaint should be upheld. Here's what I said:

*Mr L 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.*

#### *Financial Difficulty*

*The Financial Conduct Authority (FCA), the industry regulator, has rules that set out what lenders like FCA Automotive should do when a customer tells them they are in financial difficulty. These rules are set out in Section 7 of the "Consumer Credit Sourcebook (CONC).*

*CONC 7.3.4R says that "a firm must treat customers in default or in arrears difficulties with forbearance and due consideration". CONC 7.3.5G gives examples of the types of things a firm like FCA Automotive might do. This includes allowing deferment of the payment of arrears where immediate payment may increase the customer's repayments to an unsustainable level.*

*And CONC 7.3.6G says that firms should allow customer's like Mr L a reasonable time and opportunity to repay the debt.*

*I have to consider whether or not FCA Automotive treated Mr L with the forbearance and due consideration expected in the handbook.*

*Mr L contacted FCA Automotive in August 2019 after he failed to make that month's payment. He explained he had lost his job in June 2019 but was expecting to start a new job in August 2019. FCA Automotive allowed him to pay an extra £50 towards the arrears for the next four months. This is in line with the rules I've set out above. They didn't require immediate payment, and they considered Mr L's circumstances at the time – although I've seen nothing to suggest they considered his income and expenditure. I'd have thought they'd want to do that when he told them he had a new job.*

*I also accept it was reasonable for them to review the arrangement after four months. Until this point Mr L had maintained the increased payments. FCA Automotive said they'd allowed Mr L a further six months to clear the arrears – they said this was the maximum arrangement they could offer, and was four months longer than their normal offer of a six-month arrangement.*

*They haven't said how they calculated or considered whether or not this arrangement was affordable to Mr L. They said he told them it was affordable, so they accepted that. But the rules put a responsibility on the lender to allow the customer a "deferment of payment of arrears". In particular I can't see that they've considered whether or not the proposal they put to Mr L would increase his monthly payments to unsustainable amounts.*

*They've said that they relied on what Mr L told them. Unfortunately, the recording of the call is no longer available. So I've considered what they've told me. They said their proposal was more generous than what they'd normally offer. So I've taken the view that they didn't consider Mr L's financial situation, only the impact on the account.*

*And I don't think this is in line with the expectations set out in CONC7. So I don't think they've treated him fairly. I would've expected FCA Automotive to be able to show how they'd considered his new income, his outgoings, and from this assess if Mr L could afford to repay an extra £100 every month.*

#### *Contact between the parties*

*FCA Automotive accepts that it made no contact with Mr L until they sent him an arrears notice in August 2020. They said this led to the first contact from Mr L since February 2020, as the notice prompted him to call them.*

*I also note that Mr L says he wrote to FCA Automotive after the February 2020 call to tell them he wanted to terminate the agreement with immediate effect.*

*It's not in dispute that there was no contact between the parties from February 2020 to August 2020. And Mr L made no payments towards the agreement, but retained possession of the car.*

*I accept that FCA Automotive, like many firms, would've had difficulty operating due to the challenges faced during the pandemic. It would've been preferable if they'd been able to send arrears notices and default letters to Mr L during this period. But they didn't do this.*

*I've no doubt Mr L was also having difficulties during the pandemic. But I have to consider what's reasonable here. Mr L says he wrote to FCA Automotive saying he wanted to terminate the agreement. They say they didn't receive his letters. If I accept that he did send the letters, I would not have expected him to stop making payments until the letters had been acknowledged.*

*His agreement was clear that missing payments would have serious consequences, and the default notices he'd received in 2019 and in January 2020 set out what those consequences may be. Not making the payments led to a substantial amount of arrears on the account. It's for this reason I think it was reasonable for FCA Automotive to take steps to end the agreement after Mr L contacted them in August 2020, regardless of whether or not they received his letters.*

#### *Termination of the agreement*

*The agreement allows Mr L a right to end the agreement early. This is a statutory right under the Consumer Credit Act 1974. It allows him to return the car and be liable for only half the amount owed. This amount is stated in the agreement as £9,166.*

*FCA Automotive explained this right to Mr L in the February 2020 phone call. And Mr L asked for this in the letter he sent in February 2020.*

*After they contacted Mr L in August 2020, they explained what he needed to do to settle the agreement. They said they'd sell the car, and then review the arrears balance. I can see that this is what they've done, and limited the amount owed under the agreement to the amount stated in the early termination clause in the agreement.*

*FCA Automotive have treated the Voluntary Termination as if it had been made in October 2020. Mr L says he asked to voluntarily terminate the agreement in February 2020. He made no payments to FCA Automotive from February 2020 until the car was repossessed. I acknowledge that he said he'd notified FCA Automotive of his request to voluntarily terminate the agreement – but as I said above, that request had not been acknowledged,*

*and he still owed them the amount stated in the voluntary termination clause of the agreement. So I think it was reasonable for FCA Automotive to expect him to continue making payments. The monthly payment amount they requested from February 2020 may have been unaffordable to him, but he could still have made the payments he'd previously been paying.*

*So, for the reasons stated, I don't think it was unreasonable for FCA Automotive to terminate the agreement, repossess the car, and seek the outstanding amount owed from Mr L.*

### **Putting things right**

*I've explained above why I don't think FCA Automotive treated Mr L with forbearance and due consideration when he told them he was in financial difficulty. I can see that has caused distress to Mr L, and for that I think an award of £250 is appropriate.*

*However, the amount of arrears on the agreement has increased considerable because no payments were made after January 2020. And for the reasons I've given, it was reasonable for them to sell the car and pursue him for the outstanding arrears. FCA Automotive should set out again for Mr L how the outstanding amount has been arrived at. They should also consider his current financial situation and treat him with appropriate forbearance when considering an affordable payment plan to repay the arrears in a reasonable time. I think this is fair and won't be asking them to do anymore.*

Both parties responded to my provisional decision. FCA Automotive said they had nothing further to add.

Mr L accepted my provisional decision. He repeated his disappointment that the telephone call from February 2020 wasn't available. He said the attitude of FCA Automotive in that call was to put him "into a corner", and he said this affected his decisions going forward.

### **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 thought about everything carefully again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and which I've set out above.

### **Putting things right**

FCA Automotive should pay £250 to Mr L for the distress they caused him.

They should also set out again for Mr L how the outstanding amount has been arrived at. They should also consider his current financial situation and treat him with appropriate forbearance when considering an affordable payment plan to repay the amount he owes in a reasonable time.

### **My final decision**

I uphold this complaint. FCA Automotive Services UK Ltd should put things right as I've set out above.

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

reject my decision before 17 May 2022.

Gordon Ramsay  
**Ombudsman**