

The complaint

Ms C complains PSA Finance UK Limited (PSA) unfairly terminated her car finance agreement during her time of financial difficulty.

What happened

In September 2019, Ms C entered into a 37 month personal contract purchase (PCP) agreement with PSA for a new car. The car's cash price was £12,751 and she was required to pay £241 with a final optional payment of £6,002. As part of the agreement, she also opted to take out insurance at a cost of £818 of which she needed to pay monthly instalments of £15.51 followed by a final payment of £385.

In late December 2019, Ms C started developing respiratory issues and progressively it got worse to the point she was unable to work in February 2020. She wasn't in receipt of any income meaning she didn't pay February and March's contractual payments. She called PSA and told them about her situation at the start of March 2020. As agreed, she called them later in March 2020 to provide an update. She said her health had remained the same, she was unable to return to work but she was hoping to do so soon and she still wasn't in receipt of any income.

PSA issued a default notice in April 2020 as Ms C was two months in arrears. She called PSA to question it and confirmed her situation hadn't changed. Ms C said around this time, PSA agreed to a three month payment deferral.

Ms C said she returned to work in July 2020 and during that same month, a recovery agent turned up at her address to retrieve the car. PSA said because no money was received following the default letter, they had terminated the agreement. The car was later sold and the sale proceeds of £8,500 were deducted from the balance owed. Thereafter, PSA said Ms C needed to pay the outstanding balance of £3,697. Ms C complained.

PSA said no payment was received following the default notice so as per the agreement terms they were entitled to terminate it. However they accepted that when Ms C told them in April 2020 that she was suffering financial difficulty due to the pandemic, they should've referred her to their specialist team for support but this didn't happen. In recognition of this error, they've agreed to reduce the outstanding balance by £100.

Unhappy with their response, Ms C referred the complaint to our service. Our investigator recommended the case was upheld. They believed PSA hadn't treated Ms C fairly and they hadn't followed the regulator's guidance relating to those financially impacted by Covid-19. They concluded PSA should waive the outstanding balance, pay an additional £150 compensation and remove the adverse information from Ms C's credit file. PSA disagreed. In summary they said:

- The regulator's Covid-19 guidance wasn't released until 24 April 2020 but Ms C's account had been in arrears since February 2020 and the default notice was issued on 4 April 2020 therefore their normal process applied;

- When Ms C contacted them in April 2020 her situation hadn't changed and there was nothing to indicate the account could be brought up to date in a reasonable timeframe;
- There is no indication that short term assistance such as a payment deferral would have benefitted Ms C in the long term;
- Given Ms C's financial difficulty, it wouldn't have been reasonable to delay recovering the car because it would depreciate further so they made the commercial decision to secure their asset.

The original investigator left our service and it was allocated to a new investigator. Broadly speaking, they reached the same findings as the previous investigator however they believed the outstanding balance shouldn't be waived but instead an affordable payment plan set up for Ms C to pay the outstanding balance. They believed the additional £150 compensation was reasonable. Ms C disagreed with this second opinion and commented she hadn't received any communication from PSA about the account arrears.

In March 2022, I issued my provisional decision partially upholding the complaint, I said:

"I've carefully considered the information and evidence provided by both parties. Having done so, I agree with both investigator's that PSA didn't treat Ms C fairly during her time of financial difficulty and ill health.

I've reviewed PSA's contact notes. Ms C said she told them in February 2020 about her ill health but their notes start from 29 February 2020 so I can't determine whether that call took place or what was discussed. However their notes do reflect the call on 2 March 2020, I can see she told them about her ill health, she hadn't been able to work for the last three weeks and she wasn't in receipt of any income. So I think it's fair to say it was clear Ms C was experiencing some financial difficulty.

Where this happens the CONC guidance which can be found in the Financial Conduct Authority's (FCA) handbook says the financial business should treat the consumer with forbearance and due consideration. There's not a defined list as to what steps should be taken but it may include measures such as payment holidays, temporarily freezing the interest, agreeing to accept reduced payments, etc. However there is no evidence PSA took any action upon hearing this information, instead they told Ms C to call them later in the month to update them. Given Ms C had already been off work for three weeks and there was no indication she would be returning to work in the immediate future, I believe PSA could've done more and offered support to her at that point.

As agreed, Ms C called PSA on 27 March 2020 she explained her situation remained the same. I can see she commented that she wasn't able to pay her rent. Given it was clear she wasn't able to cover her essential bills, I think it's fair to say her financial hardship was impacting her significantly. I consider this to be another opportunity where I would've expected PSA to have offered financial support but again there was no evidence of this. Instead she was told to update them on 27 April 2020.

However I note during this time, on 4 April 2020, PSA issued a default letter as the account was two months in arrears. I've reviewed this letter and it says Ms C must bring the account up to date by 22 April 2020. It also outlines what would happen should this amount not be paid. I note Ms C's comments that she didn't receive this letter or any other communication from PSA. However I can see it's correctly addressed and when she called PSA on 14 April 2020 she said she was calling in response to the default letter. For these reasons I'm satisfied the default notice was received by Ms C.

According to PSA's contact notes, during this call in April 2020 the advisor told Ms C that there was nothing they could do but I disagree, I would've expected them to have assisted her given her financial difficulty. The contact note also suggested the matter would be referred to another team to look into. PSA has accepted following this call Ms C's account should've been referred to their specialist team who would've been able to provide support but this didn't happen.

However Ms C said around this time she was told by PSA that she could have a three month payment deferral but I haven't been provided with any evidence from either party to support the same. This doesn't mean it didn't happen but instead I don't have enough evidence to reasonably conclude it did. That said, I note at the time PSA were likely to have been approving payment deferrals due to the pandemic based on the guidance from the FCA so Ms C's version of events is plausible. Having looked at the contact notes, following the call in April 2020 the next record of communication between PSA and Ms C is after the agreement is terminated and an agent is sent to recover the car. As already mentioned, following the call in April 2020 I would've expected PSA to have found out more about Ms C's financial difficulties, her personal circumstances and offered support as appropriate so it's disappointing this didn't happen.

As my part of my review, I wanted to get an understanding of what PSA would've known had they spoken to Ms C in April 2020 about her financial circumstances. Ms C said she had been unwell with respiratory issues and chest infections from December 2019 and over time this had got worse. Her role was physically demanding and she got to the point where she couldn't work in February 2020. She said she was unable to return to work for around six months due to her physical illness and she also mentioned she was suffering from mental health related issues. She returned to work around July 2020 and reasonable adjustments were made by her employer to accommodate her needs. In August 2020, she started a new role with a new employer and at that point she was in the position to resume her contractual payments but the agreement had already been terminated. She said she's a single mother of two children with special needs and the car was vital for her family and for work.

Ms C hasn't said her illness was Covid-19 related and I note her comments she started to get ill in December 2019 which is a few months before the nationwide lockdown. As I've got insufficient to reasonably say Ms C's illness was Covid related, I don't believe the FCA's guidance on those financially impacted by pandemic applies in this case. However as mentioned above, I would've expected PSA to have followed the CONC guidance in relation to her financial difficulty. But there is no evidence they did so nor did they attempt to get an understanding of her financial circumstances to assess whether this was a short term issue and she needed temporary support or a long term issue and she needed ongoing support which may include ending the agreement early.

It's difficult to say what exactly PSA would've done had they offered financial support from March 2020 which is when Ms C initially made them aware of her financial difficulty. On balance, I believe it's likely they would've put a temporary hold or breathing space on the account for 30 days meaning no payment would be collected. I say this because based on their conversations, they often advised her to call back in a few weeks later to provide an update. Bearing in mind Ms C had missed February and March's payments, her situation hadn't changed and there was no indication as to when she would be returning to work, I believe by her call in April 2020, it would've been fair to say this was a long term issue. So rather than letting the debt accumulate, I believe it would've been fair for PSA to have discussed options with Ms C about ending the agreement early.

Ending the agreement early would usually be by either voluntary termination (VT) or voluntary surrender (VS). To VT the agreement, Ms C would have to return the car and pay

half of the total amount payable plus any damage charges. In this case, the total amount payable for the car alone was £14,705 therefore half would be £7,352. According to the account statement up to April 2020, Ms C had paid £1,091 towards the agreement, meaning she would be liable to pay £6,261 if she was to VT the agreement. On the other hand, to VS the agreement, she would need to return the car and the sale proceeds would be deducted from the total amount payable and she would be liable for the outstanding balance. In this case, the car sold for £8,500. Although Ms C wouldn't have known in advance how much the car would've sold for but given it was relatively new (less than a year old), it's value would've been higher than a car that was older or had travelled more miles.

Overall, I believe PSA didn't treat Ms C fairly in her time of financial difficulty and rather than terminating the agreement, they should've been clear about Ms C's options to end the agreement early. Had they done so, I believe Ms C would've chosen to VS the agreement as it was likely to have been the most cost effective option.

To put things right, I believe PSA should treat the agreement as being voluntary surrendered rather than terminated and they should update their internal and external records including Ms C's credit file to reflect the same. They should remove all adverse information from April 2020 onwards from Ms C's credit file. There's an indication a recovery agent fee of £390 was applied to the account when the car was repossessed, if this is the case, this should be removed from the outstanding balance. Thereafter PSA should set up a suitable repayment plan for Ms C to pay the outstanding balance based on what she can afford. I would like to remind PSA in the event Ms C is still suffering financial difficulty, they should treat her with forbearance and due consideration.

I've thought carefully about the impact this situation has had on Ms C. She turned to PSA for assistance during her time of financial difficulty and rather than supporting her, they've added to her upset and worry. For this reason, I believe PSA should pay a further £200 in addition to the £100 already offered (£300 in total)".

Response to the provisional decision

Both parties were invited to respond to the provisional decision. PSA didn't provide any comments. Ms C disagreed with the findings. In summary she said:

- She wouldn't have voluntarily surrendered the car as it was essential for her employment and her children;
- She would've resumed the contractual payments in July 2020 when she returned to work. However if PSA had made it clear she had to pay from April or they would take back the car, she would've made arrangements for this to be paid. She could've sought financial help from her ex-partner;
- PSA's contact notes are wrong, she owns her property, she doesn't pay rent and her mortgage was being paid. She temporarily didn't receive child maintenance;
- This situation has negatively impacted her credit file, mortgage and ability to get credit;
- The car wasn't repossessed until July 2020, without prior warning and this caused distress.

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.

I thank Ms C for her comments which I've carefully considered. As explained, I don't believe PSA has treated Ms C fairly. However I have to bear in mind due to Ms C's financial difficulties, a number of instalments weren't paid as required by the terms of the agreement. So while I note she said she would've returned to meeting the contractual payments in July, I can't see that was discussed and made known to PSA.

By the time the car was repossessed in July, the last payment received was in January meaning there were at least five missed payments. I consider this to be a significant number of months so I can understand why PSA sought to take further action. However in my opinion, as it was clear Ms C was suffering financially, no payments had been received for a number of months and to avoid the debt accumulating, I find it would've been fairer for PSA to have clearly presented options to Ms C to end the agreement early rather than repossessing the car. Had they done so, I believe it would've been reasonable to offer VT or VS and for the reasons already explained, faced with these two options, I believe Ms C would've chosen to VS as it was the most cost effective option.

I understand Ms C said her ex partner could've supported her with this agreement and he could've paid from April until she returned back to work. While this may have been the case, given this didn't happen in the months prior to the car being taken back, I can't say with any certainty this would've happened or enough to avoid PSA taking further action. I'm also satisfied the default letter made it clear payment needed to be received and a deadline was set but there is no evidence any payment was made.

I know Ms C said it was agreed she could have a three month deferral however as previously mentioned there is insufficient evidence this was discussed or agreed. PSA's contact notes show following the call on 14 April where the default letter was discussed, the next contact was in July when the car was repossessed.

While a voluntary surrender may have some impact on an individual's credit file, it will be less than a repossession and/or a default. If this decision is accepted by Ms C, amongst a number of things I've said once a suitable repayment plan has been set up to pay the outstanding balance, PSA should remove adverse information from the credit file from April onwards and this will include the default.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Ms C's complaint.

To put things right, PSA Finance UK Limited must:

- Treat the agreement as being voluntarily surrendered in April 2020;
- To update internal and external records including Ms C's credit file to reflect the agreement was voluntarily surrendered in April 2020;
- Remove the recovery agent fee from the outstanding balance (if applied)
- To set up a suitable payment plan for Ms C to pay the outstanding balance;
- Once a suitable payment plan has been agreed, remove adverse information from Ms C's credit file from April 2020 onwards;
- Pay an additional £200 compensation to Ms C for the trouble and upset caused (meaning £300 compensation in total).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 31 May 2022.

Simona Charles
Ombudsman