

The complaint

Ms H complains that MotoNovo Finance Limited is asking her to pay more than she owes after she terminated a hire purchase agreement. She also says they didn't communicate with her fairly.

What happened

In February 2018, Ms H acquired a used car using a hire purchase agreement from MotoNovo. Ms H paid a deposit of £3,700 and the remainder of the purchase price was to be repaid over 60 months. There were 59 monthly repayments of around £300, followed by a final optional payment of around £700 if Ms H wanted to own the car at the end of the agreement.

Ms H began missing payments and/or paying late on the agreement by the end of 2018. Various payment plans were agreed between Ms H and MotoNovo over the course of the next year. Ms H continued making most of the required payments until September 2019 at which point, she stopped paying.

Ms H enquired about her options to exit the agreement at this stage through voluntary termination but chose not to proceed with it at that time. She also had a number of discussions with MotoNovo by email to discuss the arrears on the agreement and a potential repayment plan.

In May 2020, Ms H applied for a three month payment holiday due to her income being affected by the global coronavirus pandemic. MotoNovo accepted her request for the payment holiday.

In August 2020, Ms H agreed to a six month repayment plan whereby she would pay her normal contractual payment plus around £100 more in order to begin paying back some of the arrears. Ms H made the agreed payment in September 2020 but failed to make the remaining five agreed repayments.

Ms H contacted MotoNovo in January 2021 to say she wanted to voluntarily terminate the agreement. She then changed her mind and said she would like to keep the car, so MotoNovo asked her to complete some income and expenditure information in order to assess whether the agreement remained affordable to her.

By the end of February 2021, MotoNovo still hadn't received responses to all the questions it had asked of Ms H regarding her circumstances. It said it would prefer to discuss her personal details over the phone. However, it said that as Ms H was hearing impaired, would she consider a family member or friend to call them on her behalf. Ms H initially said she didn't want anyone to assist her and wanted to continue discussing matters over email.

On 1 March 2021, Ms H emailed to say she wanted to voluntarily terminate the agreement. MotoNovo responded by email the same day to say that in order to reach the halfway point in the agreement she would still need to pay an amount of £1,824.25 plus the current arrears balance of £5,013.39.

Ms H then asked for her now ex-partner to be added as an authorised third party to the account so that MotoNovo could speak to him on the phone. On 3 March 2021, MotoNovo spoke to Ms H's ex-partner about the voluntary termination process and it was agreed this would go ahead. MotoNovo emailed Ms H shortly after the call to confirm the voluntary termination would be going ahead and explained what this involved, including telling her that she would be required to pay arrears that had built up on her agreement to date.

MotoNovo followed this up in a letter the next day. The letter set out in detail the amount of the liability Ms H still had on voluntary termination, which included the arrears amount of £5,013.39.

Ms H raised a complaint with MotoNovo. She said that she wasn't required to pay the arrears on voluntary termination. She said the hire purchase agreement set out she only needed to pay half of the total agreement in order to voluntarily terminate. She said she therefore only needed to pay £1,824. She said there had been six months of agreed payment holidays and these should therefore not be considered arrears. Further, she said that MotoNovo failed to respond to her request to return the car for three months, meaning it wasn't fair for her to be charged during that time.

MotoNovo didn't uphold her complaint. It said that under the Consumer Credit Act 1974, it was entitled to repayment of the arrears on voluntary termination. Ms H referred her complaint to our service. She said that MotoNovo ignored her requests to return the car earlier and it repeatedly asked her to call them to discuss the account despite them knowing she was hearing impaired. She said it ignored her requests to communicate by email or to provide an interpreter. Ms H said that when she eventually agreed for her ex-partner to speak to MotoNovo on her behalf, he agreed to things she wasn't told about, and key bits of information weren't communicated back to her by MotoNovo.

Our investigator didn't recommend the complaint be upheld. He was satisfied that MotoNovo had offered alternative contact methods for Ms H to use and had continued to correspond with her by email as she had requested. He said MotoNovo's suggestion to speak to a third party on the phone on her behalf was an isolated incident and seemed to be a genuine attempt to try to reach a quicker resolution to the concerns regarding the arrears. He said that MotoNovo had been clear throughout that the arrears would need to be paid on voluntary termination and that it hadn't acted unfairly in seeking repayment of these amounts.

Ms H didn't accept that outcome. In summary, she said that she received three default letters at the same time after the lockdown had ended and these were dated from several months earlier. She says she was told any missed payments would be spread out amongst the rest of the agreement and not classed as arrears and therefore not warrant a default letter. Had MotoNovo sent the three default letters at the correct time she would have been alerted sooner to a problem. Her ex-partner who spoke with MotoNovo on her behalf told her that when MotoNovo sold the car the sales proceeds would be used to reduce the amount owed but this didn't happen. MotoNovo should have had to confirm everything it had discussed with the third party in writing to her. She said its failure to do this is a breach of the Equality Act 2010.

The complaint has been passed to me for 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.

In deciding what's fair and reasonable, I'm required to take into account the law, regulator's rules and guidance and what I consider to have been good industry practice at the time. In the circumstances of this complaint, the relevant law would include the Consumer Credit Act 1974 ("CCA") and the Equality Act 2010.

Ms H's complaint is essentially that MotoNovo is asking her to repay too much towards an agreement she voluntarily terminated and that it treated her unfairly and discriminated against her in its communications with her. I'll deal with the latter issues first.

Ms H says MotoNovo failed to make reasonable adjustments for her communication needs, which she says is a breach of the Equality Act 2010. My role isn't to decide whether MotoNovo is in breach of that act, that would be a matter for a Court to decide. Instead, my role is to decide whether MotoNovo acted in a fair and reasonable way towards Ms H, taking into account what the Equality Act 2010 says.

I've reviewed MotoNovo's contact notes as well as copies of emails and messages Ms H has supplied. There was a significant amount of contact between the two parties over a prolonged period of time. Having reviewed it all, I'm not persuaded that MotoNovo acted unfairly or unreasonably towards Ms H in the way that it communicated with her. I'll explain why.

MotoNovo was aware that Ms H was hearing impaired and because of that it communicated with her primarily in writing throughout. It also repeatedly offered her the option of communication through text-relay services, which she declined to take up. I note that Ms H did enquire about MotoNovo arranging an interpreter. However, MotoNovo said this wasn't a service they provided. I don't think this was unreasonable, as MotoNovo had offered other suitable alternatives to communicating with Ms H, such as in writing and using a text-relay service.

Ms H says that MotoNovo repeatedly asked her to call despite them being aware of her hearing impairment. While I accept there have been limited instances of MotoNovo suggesting Ms H calls them or nominates someone to call on her behalf, I can see that in each instance MotoNovo wasn't insisting on this and they also offered her the option to continue communicating by email. So, I don't think they've prevented her from communicating effectively in relation to the account.

I note Ms H did authorise her ex-partner to speak on her behalf on the account. She says MotoNovo withheld information from her following this call. However, I've not seen anything to persuade me that's the case. As I've set out in the background to this decision, MotoNovo did follow up in writing with Ms H both by email and letter to explain what had been agreed on the phone and on what terms.

Ms H is also unhappy about receiving three notifications of arrears at the same time. However, even if I accept this did happen, I'm not persuaded this has made any material difference to the position she's in now. This is because Ms H was in arrears on her agreement for a significant period of time and it's clear from the email communications she had with MotoNovo since the end of 2019 that she was aware of this. The letters wouldn't have alerted her to anything new she wasn't already aware of.

For all these reasons, I don't think MotoNovo acted unfairly in its communications with Ms H. I'll now address the outstanding balance on the agreement.

Ms H also says the amount MotoNovo are seeking to recover when she voluntarily

terminated the agreement is wrong. She says the arrears shouldn't be included in the amount owed. I'm sorry to disappoint Ms H, but I'm satisfied that MotoNovo is entitled to ask her to pay that amount.

S.99 and S.100 CCA sets out the right for consumers to terminate a hire purchase agreement and what liabilities a consumer has on termination. In summary, it says on termination a consumer is liable to pay at least half the 'total price' of the agreement. In this case that was £11,123.50. S.99 also says that any liabilities which had accrued prior to the termination are not affected by the termination. What this means is that Ms H is liable to pay any arrears that had built up before the termination.

I note Ms H's hire purchase agreement also makes this clear in the section titled "Termination: Your Rights", which says that on termination Ms H would need to pay any '*overdue instalments*' in addition to paying half due under the agreement.

Ms H says that these amounts shouldn't be treated as arrears as they were part of agreed payment plans or due to periods of time where MotoNovo didn't respond to her about her request to terminate the agreement. However, I don't agree. The approval of a payment holiday didn't mean that Ms H didn't owe those amounts, instead, it meant MotoNovo weren't going to seek repayment of those payments until the end of the agreement. As Ms H chose to terminate the agreement, it brought the agreement to an end and the deferred payments were therefore due. Further, I've not seen anything to demonstrate that MotoNovo failed to respond to her requests to terminate the agreement within a reasonable period of time.

I've seen that Ms H enquired about termination on a number of occasions, prior to March 2021. However, she never actually went through with that request when MotoNovo asked her to confirm this is what she wanted to do. Overall, I've seen no reason to say that it would be unfair or unreasonable for MotoNovo to seek recovery of the amount it is pursuing Ms H for.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 25 August 2022.

Tero Hiltunen
Ombudsman