

The complaint

Miss W complains that Semita Group Limited (Semita) terminated her agreement without warning and collected her vehicle whilst her personal possessions were inside.

What happened

In September 2020 Miss W acquired a car through a hire agreement with Semita.

Miss W said the vehicle was collected by Semita on 22 March 2021 without her knowledge, and she received no warning this would happen, only receiving information about the termination of her agreement some hours later.

Miss W complained to Semita on 23 March 2021. She said made a payment to clear the arrears on her account on 1 March 2021, and a further monthly payment on 11 March 2021. She asked Semita to refund this payment as she had no access to the car after it was collected on 22 March 2021. Miss W also asked Semita to refund the value of the personal belongings that were in the car when it was taken.

Miss W didn't receive a response from Semita, and so she brought her complaint to this service for investigation.

Semita sent Miss W their final response to her complaint in February 2022. They said Miss W's account had been in arrears on a number of occasions, and they were able to collect the vehicle when this happened. They said they weren't required by law to provide advance notice of the repossession, and they did give five days' notice of their intent to recover the vehicle. They said the payments they'd accepted all related to the time Miss W had the vehicle, and no personal possessions were found when it was collected. They didn't uphold Miss W's complaint.

Our investigator asked Semita for documents showing they'd sent arrears and termination notices to Miss W. Semita said the agreement wasn't a regulated credit agreement, and so they hadn't retained any documents.

Our investigator gave her view that the agreement was regulated. She thought the termination clause was unfair, Semita had failed to send arrears or default notices, or notify Miss W that the agreement was going to be terminated and so the vehicle was unfairly repossessed. She recommended that Semita refund Miss W for her personal belongings, refund Miss W's initial payment on a pro rata basis and pay Miss W £150 for the distress and inconvenience caused.

Semita agreed to refund Miss W for her personal belongings, and pay £150 compensation, but they didn't agree to refund Miss W's initial payment on a pro rata basis.

As an agreement can't be reached, the case has been passed to me for a 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.

Section 60N of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) defines a consumer hire agreement as:

"...An agreement between a person ("the owner") and an individual or relevant recipient of credit ("the hirer") for the bailment or, in Scotland, the hiring, of goods to the hirer which—

(a) is not a hire-purchase agreement, and

(b) is capable of subsisting for more than three months;

"exempt agreement" means a consumer hire agreement which is an exempt agreement under articles 60O to 60Q;

"owner" means—

(a) the person who bails or, in Scotland, hires, goods under a consumer hire agreement, or

(b) a person who exercises or has the right to exercise the rights and duties of a person who bailed or, in Scotland, hired, goods under such an agreement;"

It goes on to set out that a regulated consumer hire agreement means:

"In the case of an agreement entered into on or after 1st April 2014, any consumer hire agreement which is not an exempt agreement..."

I've reviewed the vehicle lease agreement and the vehicle hire and lease order form which makes up the agreement between Semita and Miss W. It sets out that Semita remain the owner of the vehicle, and Miss W pays them a monthly amount for its use. The term of the agreement is set out as being for 12 months.

So, I'm satisfied that the agreement meets the definition of a consumer hire agreement. I've considered articles 60O to 60Q of the RAO, and I'm satisfied that the agreement isn't exempt, and so is a regulated consumer hire agreement.

All things considered, I'm satisfied that Miss W was supplied with a car under a hire agreement which is a regulated consumer credit agreement, and so we're able to consider complaints about it.

Semita have said that Miss W was in arrears on her agreement, and so they were able to collect the vehicle with no prior notice.

The Financial Conduct Authority ("FCA") handbook sets out in the consumer credit sourcebook (CONC), that Semita have a duty to treat customers in default or arrears with forbearance and due consideration.

I haven't seen any evidence that Semita discussed the arrears with Miss W or provided any forbearance prior to the termination of the agreement.

The Consumer Credit Act 1974 (CCA) sets out that Semita had a duty to give notices to Miss W about arrears and defaults, and before they took certain action. It sets out that Semita needed to take these steps before they were entitled to enforce any of the agreement terms, such as termination of the agreement.

I haven't seen any evidence that Semita sent arrears notices, default notices or communicated their intent to repossess the vehicle to Miss W. I also haven't seen any evidence that Semita registered a default in respect of Miss W's agreement.

As there's no evidence that Semita have complied with the requirements in CONC or the CCA, I'm satisfied that the agreement was unfairly terminated.

It's not now possible to put Miss W back in the position she would've been if the agreement hadn't been terminated, as the car cannot now be returned to her.

Miss W paid an initial rental at the beginning of the agreement, but she hasn't had full use of this sum as the agreement was ended early. So, I find Semita should refund this on a pro rata basis.

Miss W paid a total of £1,368 for the initial payment to cover a 12-month term, this is £3.75 per day. The agreement was terminated 199 days after it was entered So, Semita should refund Miss W for the remaining 166 days, which is a total of £622.50.

Miss W has asked for the last payment she made to be returned to her as the vehicle was collected in the month that she paid it.

The agreement between Semita and Miss W required Miss W to make an initial payment, and a monthly payment for the term of the agreement. Miss W missed some payments during the time that she had the car, making some increased payments to clear these arrears.

I've seen evidence of the payments that Miss W did make, and I'm satisfied that these relate only to the time that she had and was using the car. So, I'm not asking Semita to refund any of these.

Miss W has said there were items in the car when it was collected, and she'd like to be reimbursed for these. Semita said they have no log of any items being recovered.

Miss W has explained that there was a pushchair and two child car seats in the car, and I've seen evidence for the cost of these items at £373.90. Miss W said she had no warning of the car being collected, and so the items were in the vehicle as they usually would be.

I haven't seen any evidence that Semita gave Miss W notice about the repossession of the car, or any record of any inspection completed after the car was collected.

On the balance of probabilities, I'm persuaded that it was more likely than not that Miss W had the pushchair and car seats in the vehicle at the time it was taken. And so Semita should refund £373.90 for these items.

Our investigator recommended that Semita pay Miss W £150 compensation. Miss W has been put to distress and inconvenience in having her car collected with no warning and having to replace the items in the car at the time it was taken.

All things considered, I'm satisfied that £150 fairly reflects the distress and inconvenience caused to Miss W.

My final decision

Due to the reasons outlined above, my final decision is that I uphold this complaint and Semita Group Limited must:

- Pay Miss W £622.50 as a pro rata refund for her initial rental.
- Pay Miss W £373.90 for the items in the vehicle when it was collected.
- Pay Miss W £150 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 28 February 2023.

Zoe Merriman
Ombudsman