

The complaint

Mrs T complains about a default registered (against her) by MotoNovo Finance Limited (“MotoNovo”) with one or more third party credit reference agencies.

What happened

In November 2014 Mrs T entered into a hire purchase agreement (“agreement”) with MotoNovo for a used car costing £10,213.20. Under the terms of the agreement, everything else being equal, Mrs T undertook to make 59 monthly payments of £242.39 followed by one monthly payment of £441.39, making a total repayable of £14,742.40 at an APR of 16.4%.

Between December 2014 and February 2017 Mrs T made 27 monthly payments of £242.39 (as required under the agreement) totalling £6,544.53.

On 14 February 2017 Mrs T requested the early termination of the agreement. In February 2017 Mrs T was entitled, under the terms of the agreement, to early terminate on payment to MotoNovo of £7,371.20 less £6,544.53 plus any damage charges.

On 1 March 2017 MotoNovo sent Mrs T a letter to say she was required to pay it £826.67 (£7,371.20 less £6,544.53) plus a further sum for damages yet to be determined.

On 23 March 2017 MotoNovo sent Mrs T a letter to say she was required to pay it £1,016.67 (£826.67 plus £190 for damages).

This letter also said:

“...failure to make the payment within 30 days of the date of this letter will result in your Agreement being noted as terminated, and could affect your ability to obtain finance in the future...”

In April 2017 MotoNovo registered the agreement as voluntary terminated with one or more third party credit reference agencies.

Between June 2017 and July 2020 Mrs T made 37 payments (of various amounts) to clear (in full) the sum of £1,016.67 she owed MotoNovo following her decision, in February 2017, to early terminate the agreement.

In late-2021/early-2022 MotoNovo registered the agreement as being in default, backdated to 23 March 2017, with one or more third party credit reference agencies.

In January 2022 and having realised the agreement had been registered as being in default with one or more third party credit reference agencies Mrs T complained to MotoNovo.

In February 2022 MotoNovo sent Mrs T a letter to say that it was sorry for the delay in registering the agreement as being in default with one or more third party credit reference agencies, but it had done nothing wrong in doing so.

In March 2022 and unhappy with MotoNovo's response to her complaint, Mrs T referred matters to our service.

Mrs T's complaint was considered by one of our investigators. He came to the view that MotoNovo should remove the default registered with one or more third party credit reference agencies (against Mrs T) and pay her £200 in compensation.

Mrs T accepted the investigator's view but MotoNovo didn't. MotoNovo said it had done nothing wrong (and in fact Mrs T had benefited by its delay in registering the agreement as being in default with one or more third party credit reference agencies), but it was prepared to pay her £100 in compensation.

The investigator considered MotoNovo's response to his view but wasn't persuaded to change his mind. Therefore, Mrs T's complaint has been passed to me for review and 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.

The investigator concluded that MotoNovo had no right to register the agreement as being in default with one or more third party credit reference agencies because it hadn't met one or more of its obligations under the Consumer Credit Act 1974 in respect of "*Default notices*".

MotoNovo disagreed. It said that its letter of 23 March 2017 was sufficient for it to be able to register the agreement as being in default with one or more third party credit reference agencies.

MotoNovo might be right in what it said in its response to the investigator's view, but I need to make no finding on this particular point.

As MotoNovo will be well aware, when considering what's fair and reasonable, I'm required to take into account relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. This means, amongst other things, that I can come to a different outcome to the one a court might reach when presented with the same facts.

In my view, given...

- how long it took MotoNovo to decide to register the agreement in default with one or more third party credit reference agencies
- the Information Commissioners Office guidance on how quickly defaults should be registered
- Mrs T met all her payment obligations under the agreement prior to early terminating it

- Mrs T ultimately repaid the sum recorded by MotoNovo as being due and owing to it before (at least as I understand it) it registered the agreement as being in default with one or more third party credit reference agencies
- her consistent, and in my view plausible and persuasive, submission that had MotoNovo made it clearer to her in March 2017 that non-payment, within 30 days, of the sum of £1,016.67 would, or could, result in a default being registered against her with one or more third party credit reference agencies, she would have borrowed the money from family

...I'm satisfied, like the investigator, that in the particular circumstances of this case it's both fair and reasonable for MotoNovo to have to remove the default (registered with one or more third party credit reference agencies against Mrs T in respect of the agreement). And for the distress and inconvenience its late registration has clearly caused Mrs T it pay her £200.

My final decision

My final decision is that MotoNovo Finance Limited must:

- remove the default (registered with one or more third party credit reference agencies against Mrs T in respect of the agreement)
- Pay Mrs T £200 for the distress and inconvenience its late registration has caused her

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 23 September 2022.

Peter Cook
Ombudsman