

## **The complaint**

Mr R complains about a default notice that was issued to him, in relation to a hire purchase agreement with STARTLINE MOTOR FINANCE LIMITED (SMF).

## **What happened**

In February 2022, Mr R acquired a used car through a hire purchase agreement from SMF. The car was around six years old when it was supplied to Mr R. The cash price of the car was £21,464. Mr R paid a deposit of £650 so the total amount financed on the agreement was £20,814 payable over 60 monthly repayments of £550.97

Mr R explained that soon after entering into the finance agreement he lost his job, so was unable to make two of his monthly repayments. Mr R said SMF began informing him of his arrears and threatening him with collecting the car. Mr R said despite telling SMF that he'd found a new job and was able to make significant payments towards the arrears, they didn't allow him to set-up a repayment plan and gave him a deadline of 17 May 2022 to settle the arrears in full.

In May 2022 Mr R brought his complaint to our service for investigation. as SMF hadn't yet provided a final response, the complaint was raised with SMF through our service.

In July 2022 Mr R explained that he voluntarily surrendered the car as SMF didn't understand his situation and continued to threaten him.

In August 2022 SMF provided their final response to Mr R's complaint which they didn't uphold.

According to SMF system notes Mr R contacted them to set the first payment date of the agreement to 28 March 2022. SMF advised that they'd arrange for the date to be changed. However, on 26 March 2022 Mr R emailed SMF to ask for a five-day breathing space to make his first payment. SMF advised Mr R that missing the first payment was considered by them as 'high risk', however as long as the payment was made within five days of the due date, he wouldn't receive a default letter. SMF emailed Mr R on 31 March to let him know he was in arrears.

The system notes also confirms that on 14 April Mr R informed SMF that he had to end his employment due to a dispute with his employer, but he intended to make April's repayment on time. SMF responded the same day advising they couldn't arrange a repayment plan for the first payment and requested that he pay it in full to avoid a default letter being issued. SMF sent a further email on 18 April to advise of the same action. On 25 April SMF asked Mr R to confirm a payment date of the arrears and said if April's payment wasn't made a default letter would be issued. They also asked that Mr R contact them if he wasn't able to make the following payment on time.

On 29 April 2022 Mr R emailed SMF to say he couldn't make April's payment. SMF also issued a default letter on the same day. SMF provided Mr R with various options for to end

the agreement. SMF also advised the default notice issued gave him a deadline of 17 May 2022 before the agreement would be terminated.

In an email to our investigator dated 15 August 2022, Mr R explained that he refused to pay SMF anything, and that he suspended all communication with them until an outcome was reached through our service.

Having considered all the information, our investigator recommended that Mr R's complaint should not be upheld. Our investigator felt, in the circumstances, that SMF wasn't obliged to consider a repayment plan and correctly issued the default notice.

Mr R disagreed with our investigator's outcome and asked that his complaint be considered by an ombudsman.

### **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 considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated hire purchase agreement. As such, this service is able to consider complaints relating to it.

My starting point is that Mr R missed the first two payments of his hire purchase agreement, which brought him into arrears and resulted in SMF issuing a default letter to him. SMF didn't allow Mr R to enter into a payment arrangement to pay off his arrears. This is confirmed on their system notes and is agreed by both parties.

The Consumer Credit Act 1974 requires businesses to serve notice on a borrower before they can become entitled to take certain actions, including terminating an agreement or recovering possession of any goods. I can see that SMF advised Mr R on different occasions during March and April of 2022 that he was in arrears. They also wrote to him in April 2022 advising he may be issued with a default notice. And later that month when the following payment was also missed, they issued Mr R with a default notice advising his agreement would be terminated if he failed to repay his arrears by a 17 May 2022.

Under the terms of the hire purchase agreement, *Early termination by Us* section 9.4, it says a notice under the CCA can be served 'if you do not pay any repayment or other sum due under this agreement when it is due'. Mr R missed two consecutive payments on the agreement, so I'm satisfied that SMF were acting fairly when they issued the default notice.

The Consumer Credit Sourcebook (CONC), which can be found within the Financial Conduct Authority's (FCA) handbook, says that a business must treat customers in default or in arrears difficulties with forbearance and due consideration.

When Mr R informed SMF that he was unable to make the first payment he was given different opportunities to catch-up with it before a default letter was issued. And in consideration of April's payment, SMF advised Mr R to let them know in advance if he couldn't make it; they also explained what the consequences would be if the payment wasn't made on time. In consideration of the FCA rules, I'm satisfied that SMF showed forbearance in the circumstances.

CONC also says that where a customer fails to make an occasional payment, a business should allow unmade payments to be made within the original term of the agreement, unless they reasonably believe that terminating the agreement will lessen any adverse consequences for the customer.

In the circumstances of this complaint, I'm persuaded that Mr R's situation was more significant than missing an occasional payment. Missing the first two payments of an agreement are potentially indicative of underlying financial issues. And given Mr R chose to leave his employment, I think that had SMF entered into a repayment plan with him at the time, there'd be a considerable risk that this would have caused him further financial consequences, for example through incurred fees and charges, interest or increased arrears.

All things considered, I'm satisfied that SMF were acting fairly when they refused to enter into a payment arrangement with Mr R, and when they issued the default notice on his agreement.

From an email dated 11 July 2022, Mr R says that he voluntarily surrendered the agreement. Mr R also advised in a later email that he refused to have any further communication with SMF. As my decision focussed on whether SMF treated Mr R fairly when he told them he was in financial difficulties, I haven't considered Mr R's current situation. However, as I've found that SMF acted fairly I leave it to Mr R to liaise with SMF to arrange the repayment of any balances or amounts due.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr R's complaint against STARTLINE MOTOR FINANCE LIMITED.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 February 2023.

Benjamin John  
**Ombudsman**