

The complaint

Mr H is unhappy that IN-SYNC Credit Services Ltd ("ISCS") repossessed his van, he's unhappy with the way in which his account was administered and how ISCS responded to him when he made it aware he was in financial difficulties.

What happened

Mr H acquired a used van under a conditional sale agreement with ISCS in August 2020. The van cost around £13,500. Under the agreement, Mr H was required to make one payment of £88.25, followed by 155 weekly payments of £87.09, followed by a final payment of £4,160. A total of £5,591.04 was due to be paid from Mr H's VAT account he held with a different business connected to ISCS – I'll refer to this business as "T" - and a further £2,699.80 was to be repaid by HMRC for the purchase of the van. This was a total amount payable of £26,038.04. The conditional sale agreement was due to be repaid through remittance deductions from an account Mr H held with a different business connected to ISCS, who I'll refer to as "P".

Mr H's account fell into arrears and in February 2021, Mr H asked ISCS for a payment break of 30 days due to his current circumstances and him arranging further work. ISCS asked Mr H to provide him with evidence of his circumstances. In March 2021, ISCS told Mr H it hadn't received payments towards his accounts for four weeks. Mr H told ISCS he had asked for a payment break of 30 days and asked ISCS to provide him with figures if he was to cancel the VAT. ISCS confirmed they put Mr H's account on hold and asked when he would restart making payments. It also said it was a condition of the finance contract that Mr H was VAT registered. It said weekly payments would be £130.09.

In April 2021, ISCS sent Mr H a notice of default. This was because it said the arrears on the account totalled £1,843.63. The same month, Mr H told ISCS he was having issues with the ad blue system on the van and it was constantly faulty. ISCS told Mr H it had lowered his weekly payments to £25 which was subject to review as it couldn't offer this long term. It asked Mr H to refer his concerns about the quality of the van to the manufacturer.

In May 2021, ISCS asked Mr H to call it so he could bring his account up to date to avoid repossession of the van. Mr H said he would start back up with his weekly repayments but ISCS told him it would need to increase these to £123.09, as the arrears were £1,392.62. Mr H said he was working towards paying his priority bills and asked ISCS to come to an arrangement with him in a few weeks. In June 2021, ISCS told Mr H it would need to repossess the van due to the arrears building up.

In July 2021, ISCS told Mr H the arrears were £1,938.93. It said it had stopped repossession at that point because Mr H had started to make repayments towards his account. It said Mr H would need to increase his weekly payments to clear the arrears.

Mr H contacted ISCS in early 2022 and said he acknowledged he was behind with his repayments. He said there had been issues which had led him losing work or struggling to gain work. And he said there had been issues after he switched accounts. Mr H requested a 30 day payment break and asked ISCS to defer his payments to the end of the agreement by way of a contract extension.

ISCS told Mr H it appreciated he was seeking employment but the arrears on the account were £3,468.58 and his repayment history was poor. It said this suggested Mr H couldn't

afford the repayments due under the agreement. ISCS said Mr H had told it he wasn't working the hours to pay for the van, as the amount he earned after deductions wasn't enough for living costs, let alone fuel costs. It said it had decided the best thing to do would be to terminate the agreement. So ISCS sent Mr H a notice of termination in January 2022 and said it had previously sent Mr H a notice of default. It said because Mr H didn't remedy the breach, there was a total outstanding amount payable of £18,618.35.

Mr H complained to ISCS in January 2022. He said ISCS made payments to an incorrect bank account which caused him to cancel jobs as he didn't have money for fuel. He said he lost four days' worth of work as a result of this. He acknowledges ISCS was entitled to deduct funds for repayments towards the finance agreement, but says on one occasion this only left him with £45 and so he couldn't make bookings or chase up work. He said he wasn't happy the van was repossessed.

He also said when he wrote to ISCS to negotiate the payments he was making towards his arrears, he was told a default notice could be issued. Although Mr H said he wasn't in a position to afford the van and his payment history was questionable, he said the default notice didn't explain how he could prevent the default. He said around a week later, the van was repossessed. Mr H also said there were inconsistencies on the sales invoices and payments weren't adding up correctly. He said these inaccuracies made it appear that he had paid less towards the finance.

ISCS issued its response to Mr H's complaint in March 2022. It said it reviewed his proposal but after reviewing Mr H's account history, it decided to terminate his agreement and repossess the van. It also said it had carried out the repossession fairly and it had sent Mr H a default notice in April 2021. It said it had noticed some discrepancies in the statements it issued between October and December 2021, so it had amended these and it had amended the closing balance following the termination of the agreement. It also wrote to Mr H and said he owed a termination balance of around £8,000.

ISCS issued a further response to Mr H's complaint in April 2022. It said it accepted it was unlikely that Mr H wasn't advised of a payment due date, but it had attempted to contact Mr H a number of times for payments before and after they were due. It also said Mr H's agreement was in arrears by around £1,800 of non-VAT payments and £1,200 of non-weekly finance payments by November 2021. It said whilst it agreed the van was damaged when it was supplied to Mr H, it had agreed to pay for the repairs but Mr H didn't incur any costs as he didn't have the van repaired and so, ISCS said it wouldn't compensate Mr H. ISCS said it had repossessed the van in line with its terms and conditions. It also said HMRC had confirmed Mr H's VAT de-registration was accepted and Mr H's account has been closed since then.

ISCS told this service it waived Mr H's outstanding balance of £648.96 and the agreement had been closed with a balance of £0.

Unhappy with this, Mr H referred his complaint to this service. He reiterated his complaint and said he had made around £600 in extra payments towards the agreement and ISCS didn't tell him his payments were being reported late because he made payments on a Monday rather than a Friday when they were due. He said that he didn't understand why ISCS were deducting VAT payments when he was no longer VAT registered. He said due to the van being repossessed, he was unable to continue his job and he lost a lot of clients. He said he was unable to travel to visit his kids or see his partner due to the stress of losing the van. He said his identity was taken from him as a result of him losing the van.

Our investigator looked into the complaint, but didn't think ISCS had acted unfairly. She said Mr H's account remained in arrears despite ISCS sending him a default notice and as a result of this, the agreement was terminated. She also said the overpayments Mr H had made in December 2021 were paid towards his arrears, which was in line with the terms and conditions of his agreement.

Mr H disagreed. He said ISCS had unfairly applied a default as it lacked accuracy and it wasn't dated. He also said the payments weren't correctly calculated in regard to VAT. He said ISCS should have provided him with more time to negotiate the repossession and he had to chase it to send the repossession notice.

Our investigator said the default notice was valid and it wasn't dated because Mr H had entered into a repayment plan with ISCS at the time. She also said Mr H hadn't raised the complaint about the VAT and the payments and said Mr H would need to raise this with ISCS before this service could consider a complaint about it.

Mr H said the default notice was invalid because it didn't have a date for repayment, it didn't include a copy of the current default information sheet and there was a lack of accuracy in it. He also said the repossession was unfair and incorrect and that it left him in a fragile position owing a large amount to ISCS. He also said he told ISCS he was no longer claiming for VAT in April 2021, but it continued to take VAT payments from his account.

Our investigator reviewed the complaint and told Mr H our service wouldn't be able to consider Mr H's complaint about the VAT payments or the actions of T and P in relation to the administration of his agreement. She also said she thought that whilst the default notice ISCS sent Mr H in April 2021 didn't have a date Mr H should remedy the breach by, she felt it was reasonable that ISCS defaulted the account due to guidance issued by the regulator. She said in addition to this, Mr H had confirmed that ISCS hadn't reported a default to his credit file. She also said that ISCS attempted to assist Mr H when he was in financial difficulties and it didn't act unfairly when it repossessed the van.

Mr H said he raised the issue of the VAT as T failed to cancel the VAT on the account. He said had it cancelled the VAT, it would have changed the whole agreement. He said the VAT was a vital part of his complaint, the default notice was void and he had made overpayments towards his agreement.

As Mr H remained unhappy, the complaint was passed to me to decide. I issued a decision on 27 April 2023 in which I said this service couldn't consider Mr H's complaint about the VAT and the administration of his account. So I won't comment on these complaint points as part of this 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.

Mr H complains about a conditional sale agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity. So I'm satisfied I can consider Mr H's complaint against ISCS.

Both parties have provided a good deal of evidence, so I've had to summarise things in this decision. The rules of our service allow me to do this, but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

Financial difficulties

I've considered Mr H's complaint about ISCS's response to his financial difficulties. We've set out our approach to financial difficulties complaints on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach while deciding Mr H's complaint.

When a lender is made aware or ought reasonably be aware that its customer may be in financial difficulties, the lender needs to treat its customer with forbearance and due consideration.

From the information provided to me, I can see that Mr H was able to maintain the payments owed under the agreement until November 2020. Following this, he made a number of payments late and some remained unpaid. Mr H told ISCS about his personal circumstances and his financial difficulties and requested a 30 day payment break. ISCS approved this and it also agreed that Mr H could reduce his weekly payments to £25 in April 2021.

Following this, Mr H made weekly payments towards his account. However, despite this, his account remained in arrears. In early 2022, Mr H acknowledged he was behind with his payments and asked for a 30 day payment break or a contract extension. But ISCS declined this as the arrears owed under the agreement were around £3,500. At this point, Mr H's agreement was terminated.

Having considered this carefully, I can see that ISCS kept in regular contact with Mr H after his account went into arrears. It reviewed Mr H's circumstances and offered appropriate forbearance in the form of a payment break or reduced payments. So I think ISCS acted with forbearance and due consideration when Mr H told it about his financial difficulties.

Unfortunately this action didn't prevent Mr H's account from remaining in arrears and Mr H told ISCS he wasn't working the hours to pay for the van, as it didn't pay for his living costs or fuel for him to be able to work. So ISCS made a decision to terminate Mr H's agreement and repossess the van.

Mr H unhappy ISCS repossessed the van supplied to him and says the default notice was incomplete.

In its "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*", the Information Commissioner's Office ("ICO") says a business can register a default after a customer is behind with their payments for three months. And that it expects businesses to register a default by the time a customer is six months behind with their payments. As a minimum, it says it would expect a lender to act in accordance with these principles when deciding whether to default a consumer's account. I consider this to be representative of good industry practice.

I've seen a copy of the default notice ISCS sent to Mr H. It is dated 16 April 2021. The default notice confirms the agreement number it is related to and lists the amount of arrears due. At this point, the agreement was more than three months in arrears. So I'm satisfied ISCS issued a default notice at the appropriate time and told Mr H the amount of arrears owed under the conditional sale agreement.

Mr H says the default notice didn't tell him how to prevent the default. However under amount listed for the total arrears, the notice says, "*This can be remedied if you submit a payment sufficient to clear the total arrears*". The notice goes on to say that the agreement may be terminated if Mr H doesn't take steps to remedy the breach. However, the notice has omitted the date by which this payment must reach ISCS. I think ISCS made an error here when it didn't include the date in the notice.

However, this in itself doesn't mean that ISCS acted unfairly when it made a decision to terminate Mr H's agreement and repossess the van. I'll explain why.

Mr H's conditional sale agreement says,

"Missing payments could have severe consequences, including us exercising our rights to repossess the goods and/or commencing legal proceedings against you and seeking an attachment of earnings order or a charging order (an inhibition in Scotland). Missing payments could also make obtaining credit more difficult and/or expensive if we report your default to one or more credit reference agencies and it is recorded on your credit record".

The terms and conditions say,

“2.1 You will be in breach of this Agreement in the following circumstances: (a) you fail to make one or more Repayments (including the Final Repayment) in full on time;”.

A further document supplied with the conditional sale agreement says

“Where you fall behind with payments we, or our third party agents, may also claim our reasonable costs and expenses incurred in tracing you or taking enforcement proceedings to recover what you owe us, or any other reasonable expenses and costs we, or our third party agents, may incur in taking other steps to enforce our rights, which could include repossessing the goods.”

Mr H missed a number of payments that were owed under his agreement and so he was in breach of his agreement. As a result of this, ISCS was entitled to repossess the van supplied to Mr H under the agreement. ISCS sent Mr H an email explaining it would be terminating the agreement. It also sent him a termination notice in January 2022.

By this point, Mr H was aware he had missed a number of payments. And he was in ongoing communication with ISCS about his financial circumstances. During a call between Mr H and ISCS in December 2021, ISCS told Mr H it was concerned about Mr H's account. Mr H accepted it should be better than it was. ISCS told Mr H he was clearly struggling to make payments and so it may have to take the van back from Mr H. I'm satisfied Mr H was reasonably aware that ISCS may repossess the van as a result of him missing payments.

Overall, having carefully considered this, given the level of arrears that had accrued and because Mr H was in ongoing financial difficulty, I don't think ISCS acted unfairly when it repossessed the van from Mr H. Had ISCS continued to allow Mr H to keep the van when it was aware of his ongoing financial circumstances, the arrears owed would have likely continued to accrue, which would have been unfair to Mr H.

My final decision

I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 June 2023.

Sonia Ahmed
Ombudsman