

The complaint

Mr G complains that Go Car Credit Limited ("Go Car") didn't treat him fairly when he couldn't meet his hire purchase payments and when it terminated his agreement.

What happened

In January 2020 Mr G entered into a hire purchase agreement with Go Car, via an intermediary, in order to acquire a used car. The cash price of the car was £8,000 and Mr G borrowed the full amount. The agreement was for a total of £16,010 including interest and charges, which was to be repaid over 48 monthly instalments of £334 (figures rounded). The car was almost six years old when Mr G acquired it and it had travelled over 46,000 miles.

The credit to acquire the car was granted by Go Car under a hire purchase agreement meaning Mr G would own the car when the credit had been repaid. Go Car was the owner until that point and Mr G was, in essence, paying for the use of it.

Mr G made his payments in February and March 2020 before letting Go Car know at the end of March that he'd been impacted by the pandemic. He explained that he was considered to be at high risk and so was self-isolating and receiving statutory sick pay.

Mr G asked for a payment holiday. I understand that Go Car put Mr G's account on hold. On 22 April Mr G told Go Car that he'd been let go from work due to the pandemic. He said that he would know by mid-May whether he could claim universal credit. Go Car put his account on hold again until then.

Go Car told Mr G in June 2020 that it was going to call him about voluntary termination as he was in arrears and it seemed his circumstances hadn't improved. Mr G reminded Go Car that he had been let go from his job in April and had not been offered a payment holiday. Mr G was now four payments in arrears. Go Car agreed a three month payment holiday for Mr G.

Go Car sent Mr G a letter in late October 2020 explaining that the payment holiday was nearing its end and his usual repayments would begin again from 1 November. It also said that he owed £1,334 in arrears and that it needed to speak with him in order to discuss how these would be repaid. The arrears were for the months of April to July when Mr G hadn't made any payments.

Go Car sent Mr G a default notice on 7 November 2020 which directed him to take action before the 24 November and either pay an amount of over £10,000 to clear the total agreement balance or get in touch to discuss a resolution. Mr G asked for a further deferral of payments. Go Car didn't offer this. Mr G offered to pay an additional amount above his usual payment to clear the arrears but Go Car didn't accept this emailed offer and told Mr G it would need to speak with him and assess his financial situation before agreeing to a repayment plan. Go Car sent Mr G an income and expenditure assessment form. I haven't seen a copy of this and Go Car has recently confirmed that Mr G didn't complete it.

On 15 December Mr G told Go Car that he was no longer working and was in receipt of universal credit and couldn't make his payments. In January 2021 Go Car spoke with Mr G and offered him the option of voluntarily terminating his agreement or having the car repossessed. Mr G told Go Car that it was all the same to him. Go Car terminated Mr G's agreement on 29 January 2021. I understand that the car was collected in February.

Go Car told Mr G he owed £11,543. This was the agreement total of £16,010 plus a £250 repossession charge, minus the two payments Mr G had made and the market value of the car at £4,050. Go Car told us that this valuation was obtained from a well-known valuations company and was for a similar model in clean condition. It also told us in May of this year that it sold the car for £7,000 having spent £1,078.56 repairing damage and preparing it for sale upon its return.

Mr G wasn't happy with his experience. He said that Go Car didn't act professionally or in his best interests during the pandemic, and this left him with a large debt and damage to his credit rating. Go Car didn't uphold Mr G's complaint. It said that it had followed the correct processes in dealing with him: it tried to work with him several times, had put his account on hold, granted a payment deferral and tried to assist him by offering voluntary termination.

Mr G referred his complaint to us and one of our investigators looked into it. They found that Go Car didn't treat Mr G fairly and with regard to his interests by terminating the agreement and repossessing the car rather than allowing him to voluntarily terminate his agreement. They proposed that Mr G's liability be reduced from £11,543 to what it would have been had he voluntarily terminated the agreement. According to the hire purchase agreement this would be £8,005.

Go Car didn't agree with this recommendation. It said Mr G was given the option and chose to have the car repossessed. It didn't think it was right to go against his decision as this would constitute giving financial advice.

Mr G didn't agree with this recommendation either. He said that he had refused to voluntarily end his agreement and didn't agree to have the car repossessed but Go Car made it impossible for him to keep it. Mr G said that he couldn't tax or MOT it as it had been immobilised and it was illegal to keep it parked on a driveway in that condition. Mr G said it wasn't right for Go Car to have left him with over £8,000 of debt and said that it would have resold the car which hadn't been taken into account.

Both parties asked for the complaint to come to an ombudsman to review and it came to me. I issued a provisional decision on 23 May 2023 explaining why I thought Mr G's complaint should be upheld and setting out my proposals for putting things right for him. Go Car disagreed with my provisional decision and sent a detailed response to us on 6 July 2023.

This is my final decision on the matter and will be legally binding on both parties if Mr G accepts it.

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.

Having considered everything again, including what Go Car said in response to my provisional decision, I remain of the view that Mr G's complaint should be upheld and that my proposals for putting things right are fair in the context of this complaint. I appreciate that

this will be very disappointing for Go Car and I'll set out again my reasons for upholding and respond to its comments where appropriate.

My provisional decision

I'll begin by setting out this excerpt from my provisional decision:

I have taken into account the law and relevant regulatory rules. These include, for example, the Financial Conduct Authority's (FCA) Consumer Credit sourcebook (CONC) which sets out its regulations and guidance for lenders such as Go Car about what should happen before and during credit agreements. This states that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration (7.3.4). Go Car's overarching obligation (as per the high level principles businesses must adhere to) was to pay due regard to customers' interests and treat them fairly.

I've also borne in mind more recent guidance issued by the FCA from April 2020 onwards which set out how it expected businesses to provide "exceptional and immediate support" to customers in motor finance agreements facing temporary payment difficulties because of coronavirus. All guidance is available on the FCA's website so I won't set it out in detail here. In summary, from 24 April 2020¹ to 31 July 2021, if customers were having difficulty meeting repayments due to the impact of the pandemic, Go Car should have:

- offered customers a payment deferral for three months (to a maximum of six in total) unless it was obviously not in their customer's interests and it didn't need to make enquiries with customers in order to do so;*
- made all reasonable attempts to contact customers to find out whether they could resume full payments at the end of any deferral period – it could proceed on the basis that they could do so if they didn't respond;*
- had regard to the unfair relationship provisions in the Consumer Credit Act (CCA) as an unfair relationship can be established from the way in which a firm exercises or enforces their rights under the agreement (see CCA sections 140A(1)(b) and 140A(2)).*

Go Car should not have:

- reported a worsening arrears status on the customer's credit file during the payment deferral period;*
- terminated a regulated agreement (before 31 January 2021) regardless of whether or not a customer was receiving support under the guidance, except in exceptional circumstances.*

Bearing all this in mind, I think the main questions I need to consider are did Go Car treat Mr G fairly in its dealings with him, for example when he asked for a payment deferral or when it terminated his agreement? Ultimately, did Go Car pay due regard to Mr G's interests and treat him fairly?

The facts of the case are known to both parties and set out in the background section of this decision. I want to reassure both parties that I've considered all the information available to me when coming to a decision on this complaint. I won't go into any more detail about what happened but will explain why I plan to uphold Mr G's complaint and my proposals to put things right for him.

¹ Published 17/04/2020 <https://www.fca.org.uk/publications/guidance-consultations/motor-finance-coronavirus>

I don't think Go Car provided "exceptional and immediate support" to Mr G when he told it that his income had been impacted by the pandemic. It could have offered Mr G a payment holiday earlier than August 2020 and treated his payments for April to July 2020 as deferred rather than missed payments. When the payment holiday covering August to October ended, Go Car issued a default notice on 7 November for the earlier four months of arrears. I don't think Go Car treated Mr G fairly when it did so.

Had Go Car granted Mr G six deferrals (for April to September 2020) he would have had to resume repayments in October or come to an arrangement with Go Car. The maximum number of payment deferrals allowed under the guidance was six, although if Mr G was having problems resuming payments Go Car could have granted further deferrals under CONC 7. The three month payment deferral Go Car agreed for Mr G ended on 31 October 2020.

As mentioned, Mr G completed an income and expenditure assessment in November 2020 and in December told Go Car that he wasn't working and back in receipt of universal credit and so couldn't afford to make payments. I think it's likely that Mr G would have ended up in a position where he needed to consider his options about the agreement before the end of 2020. However, it seems to me that he might have reached that point without adverse information being recorded on his credit file.

This brings me to the question of how the agreement ended. As mentioned Go Car terminated the agreement on 29 January 2021. Go Car said it offered Mr G the option of voluntarily terminating the agreement which would have limited his liability. I've listened to the call Go Car had with Mr G and it seems to me that he saw no difference in having the car repossessed and voluntarily terminating the agreement. I don't think Go Car was in any danger of providing financial advice simply by making it clear to Mr G the implications of the options offered².

Leaving this aside, the guidance was clear that terminating a hire purchase agreement at that time should only happen by exception and I don't think the circumstances of this case were exceptional. CONC 7.3.5 sets out examples of how Go Car could have exercised forbearance, which includes suspending, reducing, waiving or cancelling any further interest or charges. Given how recently the car had been supplied it may be the selling dealership would have been willing to buy the car back, for example, or Mr G could have found a private buyer. I've provisionally concluded that Go Car treated Mr G unfairly and without due regard to his interests when it terminated his agreement in the manner in which it did.

Go Car then sold the car at auction for close to the purchase price. It had purchased the car for an amount of £8,000 and sold it for £7,000, with net sale proceeds of £5,921.44. So Go Car lost £2,078.56 in capital, reduced to £1,410.56 taking into account Mr G's payments of £668.

Mr G had the car for about two months when he let Go Car know he was financially impacted by the pandemic. He told Go Car later in the year that he wasn't able to afford the repayments as he wasn't working and in receipt of universal credit. I can see from public information that the car had travelled 4,141 miles between its MOTs in December 2019 and February 2021. It doesn't seem to me Mr G made extensive or excessive use of the car.

As mentioned, the outstanding balance on the account is over £11,500. Altogether, I don't think the amount of interest Go Car is now holding Mr G liable for fairly reflects

² As per the FCA's Perimeter Guidance, PERG 17.7G

either the net capital outlay it incurred, the length of time Mr G had the car in his possession or his use of it.

In summary, I've provisionally concluded that Go Car treated Mr G unfairly and without due regard to his interests by:

- not offering him a payment deferral earlier in 2020 and instead treating his missed payments as arrears;*
- defaulting his account in November 2020;*
- terminating his agreement on 29 January 2021; and*
- holding him liable for an outstanding debt of £11,543.*

I currently think a fair and reasonable way to put things right for Mr G is for Go Car to:

- reduce the outstanding debt to £1,410.56;*
- treat Mr G with forbearance and with due consideration regarding this amended balance, which may mean agreeing an affordable repayment plan with him;*
- consider the account settled once this amended balance is repaid; and*
- remove any adverse information on Mr G's credit file resulting from payments missed under the agreement up to the 31 October 2020.*

If Go Car has since sold the debt it will need to either buy the debt back or work with the current debt owner to bring about the steps I've set out above.

Go Car's response to my provisional decision

Go Car said that it didn't offer Mr G a payment deferral earlier in 2020 because he'd said he might have a tax rebate at the end of April and so expected he'd be able to make his payments over the next few months. Go Car didn't feel it was right at this point to offer him a payment holiday.

Go Car also said that I had incorrectly assumed that it reported Mr G's account as defaulted in November when it didn't report it as defaulted until February 2021. Go Car said that it didn't send a communication to Mr G requesting that he make a payment of around £10,000 and at no point did it state to Mr G that he must make the full arrears payment, it simply needed him to make contact to discuss the account. Go Car said it sent Mr G a Notice of Default letter to state the current balance of his arrears and asked him to contact it to discuss this further. It also said that its agreement does not allow/authorise it to vary the agreement, so it would not be able to move these payments, or extend the agreement length to account for these payments at a later date. This was the only option it could offer Mr G at this time, based on its conversations with him.

Go Car disagreed that it was not allowed to terminate a customer's agreement before 31 January 2021. It said that the guidance stated that it could terminate the agreement if it was in the customer's interests to do so. Go Car said it believed it acted in Mr G's best interests by not putting him further into arrears that he would be unable to pay at a later date as his circumstances were not due to change. Also, Mr G had repeatedly said that he did not want the vehicle anymore and wanted it taken away from his driveway. On this point Go Car said that it had never immobilised the car.

Go Car said that it did not see it as fair for Mr G's liability to be reduced to £1,410.56. It said it would be happy to reduce the liability to £8,005, which it would further reduce by £350 for any distress caused to Mr G.

My considerations

Mr G did mention a tax rebate to Go Car on 8 April 2020 as noted in the call notes. This is the only mention of this rebate. On 22 April Mr G told Go Car that he'd been let go from work, that he'd applied for universal credit (UC) but wouldn't know the outcome of his application until mid-May. On 18 May Mr G confirmed he was in receipt of UC and was looking for work though self-isolating. On 20 July Mr G asked again about a payment holiday and confirmed his situation hadn't changed. I'm still of the view that Go Car could have put in place a payment holiday for Mr G earlier than it did.

Go Car sent Mr G a letter on 26 October 2020 to say that his deferral period was coming to an end on the 1 November and asked him to get in touch to discuss his situation if he couldn't resume his repayments. It followed this up with two emails. Go Car then sent Mr G a Notice of Default letter on 7 November after he failed to make a payment on the 1st. This accompanied a default notice. The letter said that the default notice required Mr G to take the stated action by paying the outstanding arrears within two weeks or make contact to discuss his circumstances and consider whether it is possible to reach an agreeable resolution for the breach.

The default notice states that the action required is to "pay to us the total arrears of £1,667.70 before 24/11/2020" and "If you do not take the action required above on or before the date shown, we will terminate your agreement and we will enforce our rights to (i) permanently immobilise your vehicle and/or (ii) recover possession of the vehicle and/or (iii) require full payment of the outstanding balance, less rebate allowable as set out below." The Notice set out the total amount to be repaid as £10,046.33.

I appreciate that Go Car was required to keep Mr G informed about the state of his account and that it was, in its words, looking to promote contact with him, however, it seems it didn't offer him any other options. The contact notes record that Mr G asked for another payment holiday and later in November offered to pay £40 in addition to his usual monthly repayment. Go Car didn't offer Mr G another payment holiday and said it couldn't agree a repayment plan without an income and expenditure assessment.

I appreciate that Go Car's usual practice might not include moving or deferring payments or extending agreement lengths. Nevertheless, the guidance called for exceptional and immediate support to customers in the context of the pandemic. I remain of the view that Go Car didn't treat Mr G fairly at this point, though I have noted that it didn't report his account as in default to the credit reference agencies at that time as I'd assumed.

I'd said in my provisional decision that Go Car should not have terminated a regulated agreement (before 31 January 2021) regardless of whether or not a customer was receiving support under the guidance, except in exceptional circumstances such as, for example, a customer requesting termination. Go Car said that it believed it was acting in Mr G's best interests by ending the agreement, repossessing the car and holding him liable for a payment of £11,542.92.

Mr G told us that he did not agree to have the car repossessed but that Go Car had made it impossible for him to keep it. I've listened again to the call Mr G had with Go Car in January 2021. He said that he'd worked three months out of the last ten and he didn't know when he'd be working again, given the pandemic. He said on the call that he'd spoken with a debt advice charity who told him most car finance companies were working with people but his one, meaning Go Car, was exercising its rights. He said 'if you want to repossess it then repossess it', he was in a "no win no win" situation and "it doesn't matter which way I go..".

I've also listened again to a recording of call Mr G made some time later enquiring about the collection of the car. He was asked if he'd gone through a voluntary termination and he said "I can't afford the payments and I spoke to collections and they said they were going to repossess the car. The car's immobilised, there's no tax and no MOT on it. I can't do anything with it, I'm out of work". He was then asked "So you've spoken to collections and you want us to collect the car?" Mr G replied that he'd spoken to someone a couple of weeks ago who said that Go Car were going to repossess the car and said "do what you want, do what you have to do." Altogether, I can't agree that Mr G freely chose to have the agreement terminated or the car repossessed and that exceptional circumstances for terminating an agreement referred to in the guidance applied in this case.

I appreciate that Go Car's perspective is that it was acting in Mr G's best interests by limiting the build-up of arrears that he might not be able to repay given his circumstances. This isn't an unreasonable perspective and might well be a fair way to proceed in some cases. However, I can't agree that it was in Mr G's best interests to have the agreement terminated in the way Go Car did which resulted in him being held liable for a debt of over £11,500. This meant Mr G was essentially being charged a large amount of interest having borrowed to hire a car for a short period of time.

On the immobilisation point – Mr G said that the car had been immobilised and Go Car disputed this. The contact notes record that Mr G spoke with Go Car in early December to say that he couldn't unlock the car and needed access to retrieve medication and possessions. Go Car said it hadn't immobilised the car but it was at a warning stage which would emit a beep. Mr G replied that it was likely that even in a warning stage the immobiliser had flattened the battery. Go Car advised Mr G to jumpstart the car or contact a mechanic to change the battery. I haven't investigated this point further. It seems to me that the car had been put out of use by the battery being depleted and Mr G would need to take some action himself to get it going again.

In conclusion, while Go Car may have been exercising its rights to recover sums owed under the agreement, I remain of the view that it didn't treat Mr G fairly and with due regard to his interests when it terminated his agreement and repossessed the car in the manner in which it did.

As I've explained above, my provisional conclusions remain largely unchanged. In summary, I've concluded that Go Car treated Mr G unfairly and without due regard to his interests by:

- not offering him a payment deferral earlier in 2020 and instead treating his missed payments as arrears;
- terminating his agreement on 29 January 2021; and
- holding him liable for an outstanding debt of £11,543.

Putting things right

When Mr G brought his complaint to us, he was being pursued for a debt of over £11,500. Mr G had the car for about a year and it travelled 4,141 miles in this time. I'd said in my provisional decision that I didn't think that the amount of interest Go Car was holding Mr G liable for fairly reflected either the net capital outlay it incurred, the length of time Mr G had the car in his possession or his use of it.

In response to my provisional decision, Go Car offered to reduce the balance Mr G owes from £11,543 to £8,005. It also offered to further reduce this amount by £350 to reflect any distress caused to Mr G in this matter. However, I don't think even this level of liability fairly reflects Go Car's outlay or Mr G's use of the car.

I appreciate that Mr G was in a contractual relationship and bound to pay the amounts owing. However, these events took place during a pandemic where lenders were obliged to provide exceptional and immediate support to customers. Given the circumstances of this case I don't feel it would be fair and reasonable of Go Car to pursue Mr G for an amount of £7,655.

I do think it's fair for Mr G to pay something for his use of the car and I've estimated Go Car's capital outlay as £1,410.65, which it hasn't disputed. I've concluded that Mr G's debt should be reduced to this amount.

In summary, Go Car needs to:

- reduce Mr G's outstanding debt to £1,410.56;
- treat Mr G with forbearance and with due consideration regarding this amended balance, which may mean agreeing an affordable repayment plan with him;
- consider the account settled once this amended balance is repaid; and
- remove any adverse information on Mr G's credit file resulting from payments missed under the agreement up to the 31 October 2020.

If Go Car has since sold the debt it will need to either buy the debt back or work with the current debt owner to bring about the steps I've set out above.

My final decision

For the reasons I've explained above, I am upholding Mr G's complaint against Go Car Credit Limited and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 September 2023.

Michelle Boundy
Ombudsman