DRN-4313048

The complaint

Mr S is unhappy with how Marsh Finance Ltd ('MFL) dealt with the termination of a hire purchase agreement he had with them.

Mr S is being represented in this complaint by Miss S under a Lasting Power of Attorney ('LPA').

What happened

In February 2019, Mr S was supplied with a used car through a hire purchase agreement with MFL. The agreement was for £12,223 over 60 months; with 59 monthly payments of £331.04 and a final payment of £341.04. In September 2019, Mr S made MFL aware of the LPA, and authorised them to deal with Miss S going forward.

Miss S advised MFL that Mr S needed additional support and provided medical evidence. She also provided MFL with her contact details for any correspondence going forward.

In July 2021, Miss S advised MFL that the agreement had become unaffordable for Mr S and asked to exercise his right to voluntarily terminate (VT) the agreement. She said Mr S had already paid £8,290 towards the agreement, and VT required him to pay £9,936. So, she asked, as part of the VT process, they come to an agreement for Mr S to be able to pay this shortfall. Ms S chased MFL for a response to the request during July and August 2021.

On 9 August 2021, despite the LPA being in place, MFL attempted to contact Mr S about the VT. Miss S responded, explaining MFL's actions were causing Mr S some distress and a deterioration in his medical condition. She made a token payment of £25 and proposed a payment plan of £50 a month going forward. She also said, as Mr S was a vulnerable adult, they'd been in contact with a debt charity whom I'll refer to as 'S', and that S would be able to put a more permanent arrangement in place, once any VT shortfall was known.

MFL asked that Mr S complete an income and expenditure form and chased for this to be completed. But Miss S again explained that S needed the final VT shortfall figure before any arrangements could be put in place. However, MFL refused to allow Mr S to VT the agreement until a payment plan was in place. And, In January 2022, they contacted Mr S directly to ask him to pay the whole VT shortfall amount within seven days.

MFL finally terminated the agreement in March 2022 and collected the car. After collection, the car was inspected and MFL invoiced Mr S for damage to the car that had fallen outside of normal fair wear and tear. They also said that the VT shortfall was £3,622.44, which included the damage charges and the arrears that had built up since the VT request was originally made on 21 July 2021.

Miss S was unhappy with how Mr S had been treated by MFL, and she brought his complaint to us for investigation. Miss S complained:

- that the value of the car had been inflated at the outset to cover the finance shortfall on Mr S's previous agreement;

- that MFL had handled the request to VT poorly, and the delays resulted in further arrears and charges;
- about the inspection of the car, and the damage charges applied;
- that MFL continued to chase Mr S for the outstanding debt, despite the guidelines for dealing with vulnerable customers; and
- that Mr S had been pressured into taking an unsuitable agreement.

Our investigator said that the complaint about the unsuitable agreement had already been dealt with by ourselves, so we wouldn't be looking into this complaint again. They also explained that, although there was no evidence of the car's price being inflated to cover existing finance, this was a complaint against the dealership, and not something MFL would be responsible for.

The investigator also thought that the damage charges were fair, as the damage to the car fell outside wear and tear guidelines. So, MFL acted reasonably in applying these.

However, the investigator said MFL should've dealt with the VT request when they received it, and a nine-month delay in processing it was unreasonable. Especially given the serious impact the delay had on Mr S's medical condition. And they thought that MFL should've dealt with the shortfall by way of a suitable repayment plan, which was what Miss S requested.

Finally, the investigator said that MFL hadn't treated Mr S fairly by contacting him about matters when he had a representative in place to assist him. And Miss S has provided medical evidence of how MFL's actions had impacted Mr S. So, they said that MFL should treat the agreement as being terminated in July 2021, removing any arrears, interest, and charges applied after this date; amend Mr S's credit file to reflect the correct termination date, and to remove any entries after this date; and pay Mr S an additional £750 to recognise the serious impact their actions had on his health.

Miss S agreed with the investigator, but MFL didn't. They said that Mr S didn't have the right to VT the agreement until he'd repaid at least 50% of the agreement (which he hadn't done, and refused to do), and their attempts to contact him to discuss this were unsuccessful. So, they thought they'd acted reasonably by delaying the termination date, and that Mr S was responsible for all payments to the point the agreement was terminated. Because of this, MFL have asked for an ombudsman to make a final 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Based on the investigator's view, and the comments of both parties, I'm satisfied that most of the complaints raised on behalf of Mr S have been resolved. And the only outstanding issues are the VT, and how MFL dealt with Mr S about this. As such, my decision will focus on these points only.

I've seen a copy of the agreement Mr S signed on 21 February 2019. Under the heading *"TERMINATION: YOUR RIGHTS"* it says:

> *"You have a right to end this agreement. To do so you should write to the person you make your payments. They will be entitled to the return of the goods and to half the total amount payable under this agreement, that is £9936.20. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay anything more."*

I've noted that this is standard wording that complies with the requirements of the Consumer Credit Act 1974 and isn't a clause that is specific to either this agreement or to just MFL.

MFL have stated that Mr S wasn't able to VT the agreement, as he hadn't paid them at least £9,936.20 at the time he asked about this. However, this isn't the case. The wording above is clear that MFL are entitled to receive £9,936.20, but nowhere in this clause, or in the agreement as a whole, does it say that termination cannot take place unless and until this amount has been paid. And the use of *"**if** you have already paid at least this amount"* itself implies that the amount MFL are entitled to doesn't have to be paid before termination.

Given this, I'm satisfied that MFL's interpretation of their own contract is incorrect, and that a customer is entitled to VT an agreement at any time, regardless of how much has been paid. So, in a circumstance like this, where the amount MFL are entitled to hasn't been paid, I'd expect them to process the VT without any undue delay, and invoice the customer for any VT shortfall, as well as any other charges they're entitled to apply, for example, end of contract damage charges and any overdue instalments (arrears) at the point of VT.

If the customer is financially unable to pay these charges as a single payment, I'd then expect MFL to follow the Financial Conduct Authority's guidance on forbearance and due consideration and agree a suitable and sustainably affordable payment plan.

As such, I'm satisfied that MFL acted unreasonably by delaying the VT process, while continuing to expect Mr S to make the monthly payments. So, I'd expect them to do something to put things right.

Putting things right

Miss S made a formal request to VT the agreement on 21 July 2021. And, at this point, she also asked about putting a suitable repayment arrangement in place to pay any shortfall. For the reasons given above, I'm satisfied that MFL acted unreasonably by delaying actioning the VT request. However, I also wouldn't have expected MFL to have actioned the request, and terminated the agreement, on the day the request was received – they have a process to follow, and they would need to arrange to collect the car.

Given this, I think that eight working days is a reasonable amount of time to allow for MFL to deal with the request, and for the car to be collected. As such, I'm satisfied that a reasonable termination date for this agreement is 30 July 2021.

I also think that MFL acted unfairly by continuing to try and contact Mr S about this matter, when they were in possession of an LPA, and given that Mr S had asked them to deal with Miss S. Miss S has provided medical evidence of Mr S's condition, and the serious impact an extended delay in terminating the agreement had on his health.

The investigator has recommended that MFL pay Mr S £750 to recognise the impact of their actions. And, given the length of the delay, and how seriously this affected Mr S, I'm satisfied this recommendation is in the region of what I would've directed, had no recommendation been made. In their comments on the investigator's view, MFL failed to address their actions, or to explain why they chose to ignore that an LPA was in place, and that they should've been solely dealing with Miss S as the registered attorney for Mr S.

As such, I see no compelling reason why I shouldn't adopt the investigator's recommendation as part of my final decision. So, MFL should:

- treat the agreement as being terminated on 30 July 2021;
- remove all arrears, interest, and charges that have accrued or been applied since this date;
- amend Mr S's credit file to show the agreement as being terminated on 30 July 2021, removing all entries that have been applied since this date;
- provide Mr S with an amended invoice showing the amended VT shortfall and end of contract damage charges; and
- pay Mr S an additional £750 to recognise the serious impact their actions have had on him.

I would remind MFL of the requirement to treat Mr S with forbearance and due consideration when arranging a suitable repayment plan, that they should only be corresponding with Miss S going forward, and that the £750 compensation cannot be applied against the outstanding balance unless Mr S (Miss S) specifically agrees to this in writing.

My final decision

For the reasons explained, I uphold Mr S's complaint about Marsh Finance Ltd. And they should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 October 2023.

Andrew Burford
Ombudsman