

The complaint

Mr M has complained about the way Startline Motor Finance Limited (SMF) administered a hire purchase agreement he'd taken out to acquire a car.

What happened

To summarise, Mr M entered into a hire purchase agreement with SMF in August 2022 to acquire a used car. The car cost around £10,100. He paid a £3,000 deposit and was due to pay back around £11,400 over 40 months with monthly repayments of around £210.

SMF's notes say it was contacted by the police on 16 June 2023 because the car had been impounded. Mr M says although the car was fully insured at the time, the person driving wasn't insured which is why the car was impounded. I understand Mr M went to collect the car, but he didn't have a valid driving licence, so it wasn't released.

SMF spoke to Mr M. He explained he'd bought the car for someone else to use and that it was insured monthly. He said he'd lost his licence and so other people would drive him around in the car when required. SMF said the car should be insured on a fully comprehensive basis with an annual policy. It said that it would release the car back to Mr M if he could supply the relevant insurance policy and pay any associated recovery costs. But as Mr M didn't have a licence, he said he was unable to do that. SMF explained he could voluntarily surrender the car and it would be sold at auction and it would contact him if there was an outstanding balance. Mr M said SMF would have to take custody because he couldn't supply what it asked for. But he also said he shouldn't have been able to acquire the car in the first place because the supplying dealer knew he didn't have a licence.

I understand Mr M contacted SMF a few days afterwards to say he wanted to have the car returned but it declined. Mr M complained and SMF sent a final response. It said Mr M had accepted voluntary surrender of the car and it was unable to stop the process. It didn't think it had made a mistake. I understand the car was sold and Mr M was left owing around £2,500. Mr M referred his complaint to the Financial Ombudsman and said he'd paid over a third of the agreement. He said SMF shouldn't have approved the application because he was a banned driver. He said he should be due a full refund.

Our investigator initially said she didn't think Mr M had paid a third towards the agreement, so she didn't think SMF was unfair in recovering the car. And she said the terms of the agreement required Mr M to make sure it was insured on a fully comprehensive basis. She didn't think SMF acted unfairly by selling the car at auction.

Our investigator then noted Mr M had actually paid more than a third but still didn't think it was unfair of SMF to recover the car from the police in the circumstances.

Mr M didn't agree. He said his daughter had a full licence and the car was bought for her passing her test. And that it was incorrect he'd voluntarily surrendered the car because he would have done so in writing. He said SMF needs to return to him around £5,000.

As things weren't resolved, the complaint was passed to me to decide.

I contacted SMF to ask if the dealer had any evidence Mr M notified if he was a banned driver, but it couldn't confirm that.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr M and SMF that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr M acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The agreement terms

I agree the agreement sets out that Mr M was required to keep the car insured under a fully comprehensive policy. And that he needed to pay for the insurance himself.

It sets out that Mr M was required to use the car properly and in accordance with all applicable laws and ensure it's safe and without risk.

It also sets out Mr M should not let anyone drive the car who doesn't hold a valid, current licence and who is not covered by the insurance referred to above.

It doesn't seem to be in dispute that terms of the agreement were broken when the car was recovered by the police because it was being driven by someone either without a full licence or without the correct insurance.

Mr M said he let the dealer know he was banned when he acquired the car. I've not been able to obtain evidence of that. But if Mr M has any supporting evidence, he can supply it in response to this provisional decision. SMF is responsible for the antecedent negotiations carried out by the supplying dealer. But I can't see SMF was made aware Mr M was banned from driving until the car was recovered by the police. However, I take Mr M's point it's not clear from the agreement that a banned driver can't technically acquire the car.

Recovery of the car

Mr M wasn't able to collect the car from the police because he was banned from driving. I agree Mr M had paid over a third of the agreement, and so if SMF was intending to repossess the car from him it ought to have obtained a court order. But I don't think that's what's happened here. The relevant legislation (section 90 of the Consumer Credit Act 1974) says in this scenario SMF would not have been entitled to recover possession of the car from the debtor except on order of the court. But SMF wasn't seeking to recover possession of the car from Mr M. It was recovering the car from the police. I don't think any consequences of a breach of section 90 came into effect.

Voluntary surrender and voluntary termination

SMF spoke to Mr M about what happened and indicated he should have been insured himself on an annual basis fully comprehensive. I can't see where in the agreement it says Mr M needed to have it insured on an annual basis. But I agree the agreement sets out Mr M was required to have the car insured. From Mr M's point of view, the car was insured at the time the car was recovered by the police. But it seems that there was another reason for the

recovery, as I've set out above. Whoever was driving it at the time either didn't have a licence or was uninsured. When SMF spoke to Mr M it let him know that he could only take it back if he were to obtain fully comprehensive insurance in his name. At the time, he didn't think he could do that, so he seemed to give up and said SMF may as well keep it. But he also highlighted the dealer was aware he was a banned driver when he acquired the car. SMF said he'd need to take that up with the dealer, but in line with what I've said above, I'd remind SMF it's responsible for antecedent negotiations carried out by the dealer. It may have been prudent of it to have at least investigated this point for Mr M.

On the one hand, I can understand SMF's argument that it owned the car. It's reasonable it wanted to make sure the car was being driven safely, and in accordance with the law. It was fair for it to recover the car from the police. And Mr M, to some extent, indicated he was willing for it to do that. But on the other hand, Mr M was unhappy and felt like he had no options. The agreement could have been clearer in setting out that the insurance needed to be in Mr M's name. I've not seen SMF sent Mr M a termination notice setting out his options, which might be as a result of it thinking Mr M exercised his right to voluntary terminate. It's not clear why SMF didn't give him the option to pay off the agreement in order to buy the car. From what I've seen so far, I think it should have been made much clearer to him. What would have happened if he had a small sum to pay off the agreement? Mr M had paid about half of the agreement, and he indicated at one point he would have paid the outstanding balance. I'll never know for sure if he would have done that. But given he'd put a few thousand pounds towards the car, there's a good chance he may have done. So, on balance, I think there's been a mistake, and it's meant Mr M effectively lost his opportunity to do that.

It's also not clear why Mr M wasn't given the option to voluntarily terminate the agreement. This would have broadly set his liability at 50% of the total amount payable. I can't see the agreement had been terminated by the point Mr M spoke to SMF, so I think it should have at least been on the table as an option for him to consider. Had he taken that option he'd have owed less than he ended up owing after the sale at auction – and it might have left him owing nothing if he'd reached the 50% figure. Based on what I've seen, I think SMF missed several opportunities to adequately inform Mr M of his options.

I am mindful SMF may not have supplied all the relevant calls or letters. If SMF has evidence to show further options were put to Mr M, it can submit them in response to this provisional decision, and I'll consider it.

How to put things right

I don't think Mr M was adequately informed of his options – including that I think he could have bought the car from SMF. I think he's lost out. He's now in a position where he owes around £2,500 and he has no car. I do take the point that the agreement was breached. But in that scenario, I think he should still have been given fair options. As I said, if SMF has evidence he was given further options other than effectively being forced to voluntary surrender, it can show me in response to this provisional decision. Otherwise, I'm going to intend to say SMF should stop pursuing Mr M for the debt, and his credit file should be amended. I also think SMF should return Mr M's deposit, so that he's put back in a fair position. He's now going to have to source a replacement if he wants to be back in the position he'd have been in.

I'm not going to propose any of the monthly payments (up to the point the car was recovered by the police) are refunded, as I think SMF can keep those in relation to the use of the car. However, I think SMF can deduct the costs incurred as a result of the car being recovered by the police. I can see SMF needed to pay a recovery fee of £390 and a pound release of £322. Those costs wouldn't have been incurred had it not been for the breach of contract. So

SMF can deduct £712 from the deposit refund of £3,000. Any payments made after the car was recovered by the police in June 2023 should also be refunded.

I should point out this is a provisional decision, so my findings aren't final. I need to give the parties the opportunity to respond before deciding whether to issue a final decision.

SMF responded to say it didn't think the resolution was fair. In summary it said Mr M's last payment date was the date he informed it the car had been impounded. It said the car was impounded prior to it becoming aware Mr M was banned from driving. And it said Mr M had supplied a full licence when he applied for the agreement which could be considered application fraud. It said there was no evidence the dealer was aware Mr M was banned from driving.

SMF said by allowing the car to be driven by someone without a valid driving licence or active, comprehensive insurance Mr M breached several terms of the agreement. Specifically, sections 6.1.2 and 8.1:

"6.1.2 [You will] use the Vehicle properly and in accordance with all applicable laws and any instructions which may be issued relating to its use and ensure that the Vehicle will be safe and without risks to health when properly used."

"8.1 You will keep the Vehicle insured under a fully comprehensive policy of insurance with reputable insurers from the date the Vehicle is delivered to you or, if earlier, from the date the Supplier stops having risk in the Vehicle. You will pay for this insurance yourself. The insurance cover taken out must also include cover for all risks, including public and third party liabilities."

SMF said given Mr M breached his contract it would have been within its rights to terminate the agreement without any interest rebate with the full amount owing, but it engaged with him to find a more positive solution. It said by not terminating the agreement Mr M was able to surrender the car and receive an interest rebate. However, it agreed Mr M's options could have been presented more clearly to him, particularly the offer of voluntary termination. It said it had no way of knowing if this would have been a better option for him because it would depend on the sale price of the car.

SMF said the car sold for £3,900 at auction leaving a balance of around £2,500, around £700 of which was the fees for recovering it. SMF asked that I take into consideration that ultimately Mr M was in breach of the contract for the duration of the agreement. It allowed voluntary surrender rather than termination. SMF said had Mr M decided to voluntarily terminate the agreement the required payment would have been £1,320.70 and the recovery fee of around £700 wouldn't have been incurred. It said it would be willing to reduce Mr M's outstanding balance to reflect the difference between his current arrears and what he would have paid to voluntarily terminate leaving an outstanding balance of £538.10 to be paid.

Mr M responded to say he was in agreement apart from the deduction of around £700 because he went to recover the car with insurance the day after it was impounded.

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.

I'd like to thank the parties for their responses. There are quite a few moving parts to the complaint, and I agree it's difficult to know what would have happened had things gone as they should have done.

As I said in my provisional decision, from what I've seen, the agreement isn't clear that a banned driver can't enter into the agreement. I made attempts to find out a bit more about what happened at the point of supply, but the dealer wasn't able to give any more information.

SMF has indicated it thinks Mr M may have done something wrong by supplying a copy of his driving licence at the point of supply. And it's said he might've been in breach of contract for the duration of the agreement. Having reviewed the terms it highlighted it's not in dispute there was a breach of contract when the car wasn't used safely and it was impounded. Mr M has shown us it was insured at the time but, as I said before, I assume that was for another party to the person that was driving. I'm not sure if Mr M had paid for the insurance himself, so I don't know if he breached that particular term for the duration of the agreement. But in any event, it doesn't seem unfair SMF thought about ending the agreement off the back of the breach of contract. I'm not saying it was wrong of it to do that. And I've already set out that it's not unreasonable for SMF to have been concerned the car wasn't being driven safely. I think the main thing that has led to the current issues is the way the ending of the relationship was handled.

SMF has acknowledged it could have presented the options to Mr M more fairly, in particular his right to voluntary terminate the agreement. I agree with what it's said. But even if it couldn't predict what the car would sell for at auction, I still think the options should have been clearly presented to Mr M so he could have made an informed choice. Afterall, SMF was the expert.

I don't think SMF has considered that Mr M may have decided to buy the car outright from it. Based on what SMF has said, the agreement was active around the time Mr M agreed to voluntary surrender. It wasn't made clear to him that he could have bought the car. He's previously indicated he may have done so. He also indicated he may have been able to obtain insurance in his name a couple of days after speaking to SMF about voluntary surrender. I've set out the agreement didn't clearly say that wasn't allowed, but it wasn't given as an option on the phone call.

Moreover, given he'd repaid nearly half of the value of the car, there's a chance Mr M may have decided to buy it rather than lose everything he'd paid towards it. As I said in my provisional decision, what would have happened if there was only a small sum left to pay? It seems a bit unfair that he was put in a position where his only viable option was to start again at a significant loss. By giving him his deposit back I think it puts him broadly into a fair position. I'm still of the view that SMF can deduct the recovery costs because those costs came about as a result of the car being impounded. I'm not going to depart from the conclusions I reached in my provisional decision.

Putting things right

I direct Startline Motor Finance Limited to:

- Refund Mr M's £3,000 deposit.
- Refund any payments Mr M made towards the agreement after June 2023.
- Interest should be added to the above amounts at a rate of 8% a year simple, from the date each payment was made to the date of settlement.
- SMF can deduct £712 from the refund.

If SMF considers it is required to deduct tax from my interest award it should provide Mr M a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Startline Motor Finance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 June 2024.

Simon Wingfield
Ombudsman