

The complaint

Mrs S complains that Black Horse Limited ("Black Horse") unfairly terminated her hire purchase agreement.

What happened

Mrs S acquired a used car under a 60 month hire purchase agreement with Black Horse in September 2022. The car cost around £20,157.50. Under the agreement, Mrs S was required to make 59 payments of £416.65, followed by a final payment of £416.76, which included a £10 option to purchase fee, if she wanted to keep the car. The total amount payable under the agreement, which included a part exchange shortfall of £152.51 including interest, was £24,846.60. At the time the car was supplied to Mrs S, it was around seven years old and the mileage was recorded as 12,334.

Mrs S's agreement fell into arrears in January 2023 and it remained in arrears in July 2023. Black Horse issued a default notice in August 2023 and due to the arrears, Black Horse made a decision to terminate the agreement in October 2023 and arranged for the car to be collected.

Mrs S says the collection agent told her she could have the car back if she paid the arrears. Mrs S said she made a payment of £2,020 before the car was collected. However, she later received a termination notice. Unhappy, Mrs S complained to Black Horse.

Black Horse issued its response to Mrs S's complaint in November 2023. It said that its evidence showed that its agent didn't advise Mrs S that it would return the car if she paid the arrears. It said footage showed that its agent told Mrs S to contact Black Horse and it would confirm the next steps. It also said Mrs S's agreement fell into arrears and it contacted her a number of times to assist her. It also noted that Mrs S had provided it with income and expenditure details between May 2023 and August 2023, but no formal plan was put into place. It said it told Mrs S that there was a risk of the agreement being terminated, but Mrs S didn't call it to discuss making a payment, despite telling it she would. It said it would refund Mrs S's payment of £2,020 and add this to the outstanding amount remaining. It said the car would be sold at auction and Mrs S would be liable for the remaining outstanding balance of around £7,800.

Unhappy, Mrs S referred a complaint to this service and reiterated her complaint.

Our investigator looked into the complaint and said that Black Horse acted fairly during the process of terminating agreement. She said that by the time the agreement was terminated, Mrs S's account was five months in arrears and a default notice had been sent to Mrs S. Our investigator said that whilst Mrs S cleared the arrears, there was no supporting information to confirm that the collection agent told her she would be able to have the car back if this happened. She said Black Horse made reasonable attempts to engage with Mrs S and to manage the arrears on the account. So, she said she didn't think Black Horse acted unfairly.

Mrs S said she could afford the car and the difficulties making repayments were due to random situations beyond her control. She said she asked Black Horse to add the arrears to the end of the agreement but it refused. She said she paid an extra £200 per week but then her extra income stopped due to a job loss. She said she found another job and repaid the outstanding arrears in full. She said despite this, the car was collected and this impacted her personally as she lost her car, her extra job, her clients and it impacted her health. Mrs S

said Black Horse refunded the arrears payment of £2,020 that she paid. Mrs S said she received the termination letter 12 days after the car was collected.

As Mrs S remains in disagreement, the case has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs S has raised a number of different complaint points. I've concentrated 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 rules of this service allow me to do this.

Did Black Horse fairly terminate Mrs S's hire purchase agreement?

What I need to decide in this case is whether Black Horse acted fairly when it terminated Mrs S's agreement. If I think Black Horse acted unfairly, I'll need to think about what, if anything, is fair to put things right.

Mrs S says the agreement was terminated without prior notice.

The terms and conditions of Mrs S's agreement say:

“B12... We can end the Agreement by writing to you if:

- *you fail to make any Repayment on its due date; or*
- *you breach this Agreement in any other important way.”*

This means that Black Horse was entitled to terminate Mrs S's agreement if she breached it or if she missed any payments due under the agreement. Missing payments would be considered a breach of the agreement.

The Consumer Credit Act 1974 under section 98 says a creditor must give the debtor seven days' notice of a termination. However, it goes on to say this doesn't apply where the debtor has breached the terms of the agreement and neither does it apply if a debtor has defaulted on their agreement. In this case Mrs S defaulted on her agreement and she breached the terms of the agreement. So, Black Horse didn't need to send Mrs S notice of the termination.

Mrs S missed a payment in January 2023 and she made the payments due in February and March 2023. However, further payments were missed between April and July 2023 and a further payment was missed in September 2023. So in total, Mrs S missed six payments owed under the agreement. Mrs S made a payment of £2,020 in October 2023 towards the agreement. However, this didn't bring the account up to date. I'll explain why.

Black Horse issued two default notices to Mrs S in August 2023. One of the default notices was for £12.71 for the part exchange arrears. The other default notice was for £2,070.54 for the arrears owed under the agreement. It said if Mrs S didn't pay the arrears by August 2023, Black Horse may end its agreement with Mrs S and take action to recover the car. It also said it may ask Mrs S to pay the amount owed as a result of ending the agreement.

Black Horse also wrote to Mrs S in October 2023 and said an overdue amount of £2,249.90 remained. This meant Mrs S still had an outstanding amount of £239 to pay when the car was collected from her and after she made a payment of £2,020.

I understand that the termination notice was issued by the collection agent on behalf of Black Horse. The termination notice is dated 11 October 2023 and confirms that Black Horse is terminating the agreement. In handwriting it states that the notice was serviced personally by post on 22 October 2023, which was the date the car was collected. Mrs S says she didn't receive this notice until 2 November 2023. Black Horse in its final response letter say that the agent didn't leave the termination notice and it was posted from its head office in a handwritten envelope following collection. So, I accept that Black Horse didn't send the termination to Mrs S until after the car was collected, as Mrs S has provided an envelope which is dated 30 October 2023. I think it would have been good practice for Black Horse to provide a termination notice on the day the car was collected or prior to this.

However, having thought about all this carefully, I disagree that Black Horse didn't tell Mrs S that it would likely repossess the car. It's clear from Black Horse's correspondence that it said it may take action to repossess the car from Mrs S on a number of occasions. Mrs S was aware that she hadn't made the outstanding repayments towards the car and she was reasonably aware there was still an outstanding balance owing when she made a payment of £2,020. I think it was reasonable to expect that Mrs S had awareness that there was a real risk car could be repossessed at any point after she started missing payments. This is because she was in breach of her agreement and Black Horse could have decided to terminate the agreement after one missed payment.

Mrs S has explained that she was going through a difficult time financially as she had lost a job. She said this was outside her control. I'm sorry to hear about the circumstances Mrs S has described.

The Financial Conduct Authority ("FCA") sets out the rules and guidance a lender must follow where its customer is in financial difficulty. The rules and guidance are applicable to customers whose accounts fall into arrears and vulnerable customers. To summarise, the rules say that a lender must treat a customer with forbearance and due consideration if they are in financial difficulties.

In this case, Black Horse wrote to Mrs S in June 2023 and explained its specialist team was trying to get in touch with Mrs S. It included an income and expenditure form (for Mrs S to complete) and links to its website. It also said if it didn't hear from Mrs S, it may take steps to recover the car. Contact notes show Mrs S had saved an online budget planner in May 2023, July 2023 and August 2023. But no further payments were made towards the account.

I think Black Horse acted with forbearance and due consideration. It attempted to contact Mrs S, which she has acknowledged, and it provided her with resources to work with it to come to an agreement to pay off the arrears. Mrs S says she was unable to speak to Black Horse as she was working. However, Mrs S would need to contact Black Horse to arrange suitable repayment options. As she didn't do this until after the car was repossessed, I don't think Black Horse acted unfairly when it repossessed the car, as Mrs S was in breach of the agreement and it had attempted to work with her unsuccessfully to arrange a payment plan.

Overall, I don't think Black Horse unfairly terminated Mrs S's agreement. I'm satisfied that Black Horse was entitled to terminate Mrs S's agreement as she was in breach of it.

Did Black Horse act unfairly or unreasonably in any other way?

Mrs S says Black Horse's collection agent told her she could have the car back if she made a payment of £2,020. However, there are conflicting statements as Black Horse has said the agent didn't say this. The agent was employed to repossess the car. The agent didn't work for Black Horse in a capacity that he was authorised to make a decision on what Black Horse may decide to do once an agreement was terminated. So, on balance, I think it is unlikely that the agent told Mrs S the car would be returned to her, as the agent wouldn't have likely had the authority to do this.

Overall, I'm sorry to hear about the impact of this on Mrs S. I would like to take the opportunity to remind Black Horse that it needs to treat Mrs S with forbearance and due consideration if she is still in financial difficulties and that Mrs S will need to work with Black Horse, so it can provide her with suitable repayment options.

My final decision

My final decision is that I do not uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 December 2024.

Sonia Ahmed
Ombudsman