

## **The complaint**

Mrs G complains that Startline Motor Finance Limited ("SMF") didn't properly explain her options to end her hire purchase agreement early.

## **What happened**

I sent Mrs G and SMF my provisional findings on this complaint on 4 September 2024. A copy of that decision is attached and forms part of this final decision.

I explained why I was planning to uphold Mrs G's complaint and asked both parties to let me know if they had anything to add.

Mrs G accepted and said she wanted to confirm that the default would be removed.

SMF responded and said there were damages totalling £466 to the car when it was returned by Mrs G and asked for this to be considered.

## **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.

Neither party has disputed the findings of the provisional decision. However, both parties have asked for some clarification.

Mrs G said she wanted to confirm that the default would be removed. One of the directions in the provisional decision was for SMF to report to credit reference agencies ("CRAs") that the agreement had been voluntary terminated. This means that the way the account is currently reported to CRAs by SMF will be updated to show the agreement was voluntary terminated.

SMF has provided a list of damages to the car that it says were present when Mrs G returned the car to it. SMF may choose to charge Mrs G for the damage and should it do so, it will need to send Mrs G a breakdown of the charges and a report showing the damage. Should Mrs G dispute any of the damage, she'll need to raise a complaint about this to SMF and if she remains unhappy about the outcome of that complaint, she'll be able to raise a separate complaint about this to this service.

In light of all this, I don't consider that there is any reason for me to reach any different conclusion than set out in my provisional decision. So it follows that my provisional decision remains unchanged.

## **My final decision**

I uphold Mrs G's complaint. Startline Motor Finance Limited should put things right by doing the following:

- rework the agreement as if Mrs G had opted to exercise her right to voluntary termination;
- end the agreement, if it hasn't already done so;
- reduce the outstanding balance Mrs G owes under the agreement to £0\*; and

- update the information reported to credit reference agencies about this hire purchase agreement to show that it was voluntary terminated.

\* Startline Motor Finance Limited has explained that it may charge Mrs G for the damage identified to the car when it was returned by her. I've explained in my decision what this means for Startline Motor Finance Limited and Mrs G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 4 November 2024.

### **Provisional decision**

I've considered the relevant information about this complaint.

Having done so, I initially intend to reach a different outcome to our investigator.

I'll look at any more comments and evidence that I get by 18 September 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

### **The complaint**

Mrs G complains that Startline Motor Finance Limited ("SMF") didn't properly explain her options to end her hire purchase agreement early.

### **What happened**

Mrs G acquired a car under a 60 month hire purchase agreement with SMF in October 2020. The car cost around £8,899. Mrs G made a deposit payment of £418. Under the agreement, Mrs G was required to make 59 payments of £204.86, followed by a final payment of £214.86 if she wanted to keep the car.

In February 2024, Mrs G emailed SMF and explained she wanted to end the agreement. SMF sent Mrs G two letters explaining the voluntary termination ("VT") process and the voluntary surrender ("VS") process. Although the letters were sent to Mrs G on the same day they were sent separately.

Mrs G then called SMF and explained she was in financial difficulty and wanted to end her agreement. SMF processed a VS and following the car being collected from Mrs G, it was sold at auction for £2,500, Mrs G was left with a shortfall of £1,471.29 to pay after a rebate had been applied by SMF.

Mrs G complained to SMF and said her understanding was she could return the car with no further payments at the halfway point. She said as she was well beyond that, the amount SMF said she owed was more than she anticipated. She said she should only have to pay £383.66 to SMF as her monthly payments should have comprised of a principal repayment of £144.18 and an interest payment of £60.68. Mrs G said she had been sent two options, one which she thought was a mistake on SMF's part. She questioned why she would opt for VS where it was clear she had an affordability issue where she was required to pay additional funds.

SMF issued its response to Mrs G's case in April 2024. It said it hadn't made an error in its communication and during the call, its advisor asked if Mrs G understood everything. SMF said it would be happy to discuss a suitable repayment plan with Mrs G.

Unhappy, Mrs G referred a complaint to this service. She reiterated her complaint and said she had fallen in arrears with other debts to pay to make the car driveable for return. She said she had also fallen behind on priority payments and detailed her health conditions.

Our investigator looked into the complaint and said the letters provided to Mrs G were clear in explaining what VT was and what VS was. She said during Mrs G's call with SMF, it had asked her the reasons why she wanted to VS the car and whether Mrs G was already aware of the VS option. Mrs G said she was. She said based on this, she was satisfied that SMF provided Mrs G with details on how she wanted to end the agreement. And that SMF provided an opportunity for Mrs G to ask questions and confirm her understanding when she called SMF before proceeding with VS.

Mrs G disagreed. She said:

- the distinction between the language of VS and VT was subtle and SMF refused to explain this by phone
- she had made a mistake but felt that SMF had manipulated the process, so that she was misled
- she had ended hire purchase agreements in the past and hadn't come across this previously
- the call handler should have explained the options available to her, she had clearly mistaken the wording and no one checked her understanding
- the letters explaining VT and VS were dated the same day but she received the VT letter the day after the VS letter and this was confusing. She said she thought the initial calculations on the VS letter were incorrect so assumed when she received the VT letter the following day, that was the corrected figure. The figure being that she would have nothing further to pay
- she didn't understand why the rebate of interest was only £300 given she had paid 40 out of the 60 required monthly payments
- VT was the best option and the advisor should have explained that she would be liable for any shortfall amount during the call.

Our investigator said the letters sent set out the key differences between VS and VT. She said it wasn't for SMF to tell Mrs G what to do, but she was satisfied that Mrs G was provided with enough information to make an informed decision. She said if SMF had only sent a letter about VT, then she may have said it acted unfairly and it should have sent a letter about VS too. She said during Mrs G's call with the advisor, the advisor had asked if Mrs G was clear on her understanding of VS and she said yes. She said she couldn't say SMF was wrong to challenge Mrs G's understanding. She said if Mrs G had any doubt, she could have questioned the advisor at the time.

Mrs G said whilst she understood what our investigator said, she felt SMF hadn't acted in her best interest. She said SMF had designed its communication to confuse her rather than clarify things. She also said during the call with the advisor at SMF, it was clear she was confused and VS was offered by the advisor. She said there was no mention of VT and if there had been, she would have asked more questions. She said she told SMF she was ending the agreement due to financial difficulty, yet no mention was given to the substantial figure she may be responsible for under VS.

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

### **What I've provisionally 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.

Mrs G was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I've read and considered the whole file and acknowledge that Mrs G 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.

What I need to decide in this case is whether SMF acted unfairly or unreasonably after Mrs G told it she wanted to end the agreement early. If I think it did, I'll need to think about what, if anything, is a fair way to put things right.

When Mrs G ended the agreement early, she emailed SMF and said:

*“Good evening, I wish to end my agreement. I plan to return the car to you as per the terms and conditions, could you please advise how I go about this.”*

It's worth noting that the only right to end the agreement early that existed in the terms and conditions of Mrs G's agreement was VT. So I can only assume that this is what Mrs G was seeking with her email.

In any event, following this, SMF sent Mrs G two letters. I don't think it was unreasonable for SMF to have provided Mrs G with information on VS and VT. Indeed, I think it is fair and reasonable to expect a lender - such as SMF here - to provide details on both options for ending an agreement early to a borrower, as well as clear, fair and not misleading information on them, as both options could result in different outcomes.

However, what is unclear to me is why SMF decided to set out these options in two similar looking separate letters, rather than a single document. This may not necessarily prove to be a problem in circumstances where a customer was expecting two separate letters. However, in this case, while I accept that the letters both had the same date, Mrs G says she received the VT letter after the VS letter. I also note that I've not seen anything to indicate that Mrs G was sent a response to her email telling her to expect two separate letters either.

Moving on to the content of letters, I can see that the VS letter confirms the process for VS. It mentions key points in bold at the start of the letter and explains clearly that once the car has been sold, SMF will apply the proceeds to Mrs G's balance to reduce the amount outstanding. It goes on to say under key points that if the car sells for more than the balance outstanding, it will refund any excess and the default reported will be cleared. The letter outlines four steps that will take place and the last step details the process after the sales proceeds have been applied to the agreement.

The VT letter confirms what the process is for VT and states under key points that Mrs G will incur no additional charges and that her credit file will be updated to show voluntary termination. It lists five steps that will take place and step one explains Mrs G doesn't need to pay anything to reach the voluntary termination amount. Although I note that this section of the letter isn't set out in bold text as some of the other sections and steps in this letter are.

I think that someone who understood the various processes in ending an agreement early, or someone who was clearly prompted to expect two letters setting out the two options may well have found things clear. Indeed, I'm satisfied that on a careful reading both letters explain different processes and only one of the steps in each of the letters are the same. All the other steps are different and VS had one more step than VT listed. But on a quick glance having received the second letter the day after the first one and not knowing whether to expect a second one, I can see why a recipient may not have paid too much attention to the second letter. I say this particularly given Mrs G's circumstances at the time, which I'll go into in further detail later on in this decision.

Following this, the only contact Mrs G had with SMF prior to ending the agreement was when she called SMF to end the agreement early. I've listened to this call and have a number of observations. It's worth noting that Mrs G said *"Hi there, I am wanting to proceed with a voluntary"* at this point there is a pause before the advisor interjects and says the word surrender. It is only once the advisor said this, that Mrs G went on to say surrender herself. From here the advisor asks Mrs G why she wishes to VS the vehicle and Mrs G confirms the agreement was no longer affordable and the car had mechanical issues which would cost her more money.

The advisor asked if Mrs G was aware of VS and Mrs G said yes she had read the stuff that had been sent to her and interestingly at this point she also says that SMF should have just emailed it to her. The advisor apologised for this and said that this was just the way such information was sent out. In any event, I understand that sending such communications by post is a requirement of the Consumer Credit Act (1974). But it's worth noting that Mrs G had already placed the advisor on notice that she would have preferred it if the communications had been emailed to her.

The advisor confirmed that he would put the VS into motion as long as Mrs G was crystal clear and understood it. Mrs G asked how long it would take and the advisor explained the process and that it would take a week or so. Mrs G did indicate that this was likely to present a problem as the insurance on the vehicle was running out and that this meant that she was going to have to pay more to get the vehicle insured. Nonetheless, when the advisor mentioned that it was close to the weekend and it would take time to get the vehicle recovered, Mrs G accepted the position.

Having listened to the whole call, it is clear that it is the adviser who first adds the word surrender to the word voluntary which Mrs G uses and that this is what leads the whole conversation proceeding down this track. Indeed, having listened to the call, I think that Mrs G may well have ended up confirming that she wished to go down the VT route had the advisor used the word termination rather than the word surrender when he did. There is nothing at all in the content of this call which persuades me that Mrs G had read all of the information in both of the letters that were sent to her in the post, or that she knew that two different options of ending the agreement had been presented to her.

Furthermore, the advisor takes no further steps to check this is genuinely the option, knowing that two options exist, by telling her that she had been sent details of more than one option and enquiring as to whether she had read both letters. This is despite the fact that it is the advisor who was the expert here and he ought to have picked up on the fact that Mrs G said that the car had mechanical issues and in turn that this was likely to have an effect on the price that the vehicle was sold for once it was recovered from her.

For the sake of completeness, I wish to make it clear that it is not my finding here that it was unreasonable for SMF to have sent Mrs G information on VS when she said she wished to exercise her rights to end her agreement in line with the terms and conditions and the only option Mrs G had, as of right contractually, was VT. As I've explained, I do think that it is important (as well as fair and reasonable) to ensure that a customer is aware of all their options. Furthermore, I also want to make it clear that I am not saying that there isn't a general expectation that customers won't read letters that are sent to them.

What I'm saying is that, in this case, the particular circumstances in play meant that Mrs G ended up in a worse place. And I think that this is because the advisor didn't take additional steps, which were necessary given the particular circumstances here, to ensure that Mrs G was making an informed decision. I think it's fair to say that he – albeit inadvertently – led Mrs G down the VS route. This without checking whether Mrs G understood that there was an alternative VT route (which was the route she requested to begin with in her email). And this was also even though 'as the expert' the advisor ought to have realised that the car having mechanical problems meant that this would affect what it was sold for and the whole

reason Mrs G was looking to exit the agreement in the first place was because she was having financial difficulty.

I'm not saying that the advisor needed to advise Mrs G to utilise the VT route rather than VS route. What I'm saying is that the circumstances here and in particular the advisor's actions as well as what he knew, meant that his failure to check that Mrs G understood that there were two options to exit the agreement resulted in SMF failing to provide Mrs G with clear, fair and not misleading information. As this is the case, I'm satisfied that Mrs G wasn't in a position where she was able to make an informed decision and I'm currently minded to conclude that this resulted in SMF failing to act fairly and reasonably towards her.

I've also thought about what more Mrs G is likely to have done had she been aware that she had two options of exiting the agreement. In reaching my conclusion on what Mrs G is likely to have done, I have sought to avoid the benefit of hindsight although I accept that after the event Mrs G now argues that she would obviously have gone for the option that left her with nothing to pay.

That said, I think that there are some factors that I need to take into account and which do provide some insight on what Mrs G is likely to have done had she been in a position to make a fully informed decision. I've thought about the fact that Mrs G approached SMF about ending her agreement because it had become unaffordable for her. I'm also aware that she had mortgage arrears, although I accept that SMF might not have known about this.

In any event, it seems to me that Mrs G wasn't in the best of financial positions and she was therefore less likely to have accepted the option where there was a risk of her still owing SMF a balance, even though this option also provided a possibility that she could instead end up making a profit.

I say this while particularly mindful of the fact that Mrs G knew the car had mechanical issues and that she is likely to have taken this into account too. In these circumstances, and bearing in mind VT will have left Mrs G with nothing further to pay SMF, I think that Mrs G is more likely to have gone with the certainty of VT had she been provided with clear, fair and not misleading information and SMF ensured that Mrs G was able to make an informed decision. As this is the case and the VS has left Mrs G with an outstanding balance, I think that Mrs G lost out because SMF failed to act fairly and reasonably towards her in February 2024.

I note that Mrs G has queried how SMF arrived at the figure that was left outstanding on her account once the value realised once the car was sold was applied to her account. However, as I'm intending to direct SMF to place Mrs G in the position she would have been in had she gone for the VT option rather than the VS one, and this results in Mrs G having nothing at all to pay SMF, I'm satisfied that I wouldn't direct anything different in relation to any early settlement calculation and the application of the credit for the sale of the car.

### **My provisional decision**

My provisional decision is that I am minded to decide that Startline Motor Finance Limited should put things right by doing the following:

- rework the agreement as if Mrs G had opted to exercise her right to voluntary termination;
- end the agreement, if it hasn't already done so;
- reduce the outstanding balance Mrs G owes under the agreement to £0; and
- update the information reported to credit reference agencies about this hire purchase

agreement to show that it was voluntary terminated.

Sonia Ahmed  
**Ombudsman**