

complaint

Ms D is unhappy Commercial Associates Limited (CAL) pursued her for a debt in respect of a vehicle she hired from it. She also says she was pressurised to hire the vehicle.

background

Ms D needs a specialised vehicle for her business which she hired from CAL, agreeing to a minimum hire period of 18 months. Her business was not as successful as she'd hoped, and from the outset she struggled to meet the monthly hire payments.

Eventually seeing no prospect of managing the payments, she decided to terminate the hire agreement. But this meant she was obliged to pay a significant sum as a termination fee, and return the vehicle. By this time she'd moved house but arranged to use her mother's address as her postal address, and collected her post from there. Ms D was unable to return the car so asked CAL to collect it from her address. But instead they attended her mother's address, which was upsetting as she was ill.

Ms D says she wasn't aware that CAL would take legal action to recover the debt, and wasn't notified about the court judgment against her. She feels CAL has behaved in an unprofessional way and compensation is justified, so she complained to us.

Our investigator felt the business hadn't done anything wrong by enforcing the agreement. Ms D objected as she said they hadn't even acknowledged the debt was paid in their last letter to her. So she asked an ombudsman to make a decision.

my findings

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 don't uphold Ms D's complaint. I'll explain why.

I'm sorry to hear that she has faced difficult personal circumstances, and her business was unsuccessful. But the agreement she entered into clearly shows the payments she was required to make, and the consequences of falling into arrears. It also says the company can take legal action to enforce the agreement.

CAL first told our investigator that we couldn't look into Ms D's complaint as it was a "business to business" agreement and so unregulated. But it later accepted that this wasn't right. Although Ms D was running a business, she was a sole trader and the agreement was regulated under the Consumer Credit Act 1974, so was within our remit.

Ms D took out the finance in December 2015 but failed to make the January 2016 payment on time. The February direct debit was unpaid, so CAL agreed to change the date of the direct debit to help her manage her finances better. It also changed her correspondence address to her mother's address as requested. Between February and June payments continued to be irregular and arrears of £1,014.25 built up. She had contacted CAL to talk through her options and it advised her of her right to terminate the agreement. But if she did so, half the remaining monthly rental payments would be due, as an early termination fee. Ms D didn't want to terminate at that point so she agreed to make a lump sum reduction of £600 and set up a standing order to pay £200 a week towards her arrears. But she didn't pay the £600 or make the weekly payments so finally in July she decided to terminate the agreement.

This required her to return the vehicle to CAL in good condition. Ms D was unable to return the vehicle so she asked CAL to collect it from her address, and this incurred a further charge. An invoice for this charge plus the early termination fee and arrears (totalling £3,946.71) was sent to Ms D, by post and email. Unfortunately due to a misunderstanding CAL attempted to collect the car from Ms D's mother's address which disturbed her when she was ill. CAL apologised on the day and by email after the vehicle was collected.

Ms D says she didn't receive the termination invoice even though she had been told to expect it, so she didn't pay it. This meant the debt passed to CAL's debt recovery department. In October CAL took formal recovery steps and applied for judgement at court. The court sent a copy of the application to Ms D at her mother's address giving her to the end of the month to reply. When no payment was received in November a county court judgement (CCJ) was entered at court for £4,131.71 including costs. In early December Ms D disputed the judgment, and formally appealed it in January 2017, on the basis that there was a "squabble" between her and CAL. She finally paid the debt in February 2017. As the complaint was ongoing CAL didn't acknowledge the debt had been settled in its letter to her in May which Ms D found upsetting.

I have seen no evidence which supports Ms D's view that she was pressurised to hire the vehicle. She needed a suitable vehicle to use in her business and CAL specialises in such vehicles. She may have received a recommendation from the company that trained her, but that's not the same as pressure.

It's clear she struggled to meet the monthly payments right from the start. Newly established businesses can suffer with cash flow problems when money from their customers doesn't come in quickly enough to meet payments. To help her CAL allowed Ms D to change the date of the direct debit and set up a payment plan to address her arrears. But Ms D was unable to keep to this and so decided to terminate the agreement.

I think Ms D knew she owed CAL money even if she didn't receive the termination invoice. She knew she was in arrears and that she was liable for the termination fee which is clearly set out in the finance agreement. She was also told about the termination fee when the payment plan for the arrears was set up. When she finally terminated the agreement CAL sent an email to the email address it had always used for correspondence. This email makes it clear that if the debt is not paid CAL can pursue her through the courts and she would be responsible for the additional costs. When she eventually paid the debt it was to a third party debt recovery company rather than CAL directly. So there was a delay in CAL receiving the money and updating its records.

Ms D's mind may not have been on her business when her mother was ill, which may be why she didn't pay the debt until she was notified of the CCJ. But that doesn't mean she wasn't liable to pay it, or that the business did anything wrong.

my final decision

My final decision is I don't uphold this complaint and won't be asking Commercial Associates Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 22 January 2018.

Sarah Milne
ombudsman