

complaint

Miss H complains that an immobiliser on a car she had on hire purchase with The Car Finance Company (2007) Ltd ("TCFC") prevented her car from starting. She also complains that TCFC wrongly debited money from her account.

background

In November 2016 Miss H bought a car on hire purchase, the finance being provided by TCFC. The car was fitted with a "payment reminder and geolocation system," also known as a "starter interrupt device," which I will refer to simply as "the device." The term of the hire purchase agreement was four years.

Miss H made monthly payments online. But in October 2017 an extra payment was debited from her account without her permission, only a week after her she had made her last payment. Miss H says she was in financial difficulty, as she was on a debt management plan and operating on a very tight household budget, with no disposable income after she had paid her bills. As the rogue payment was for nearly £188, this caused her great concern. She phoned TCFC numerous times until she realised that it was closed, it being Sunday, although she says that TCFC's website said that they were open on Sundays. She called the next day, and after 80 minutes on hold she was told that the payment would be refunded. It was refunded later that day.

The same thing happened again in early January. Miss H's rent was due the next day, and she was afraid that the rent payment would bounce. To make things worse, when she tried to drive to work that day the car would not start. There is a dispute about why this was. Miss H says it was because the device was faulty, and TCFC says there is no evidence of that. (There are three independent reports dealing with this subject, which I will summarise in my findings below.) Miss H says that as a result of not being able to start the car, she missed two days off work, for which she was not paid (worth about £205).

The second unauthorised payment was refunded to Miss H the next day. TCFC did not know why this had happened at first, but eventually identified a glitch in its system and took steps to make sure it would not happen again. However, a few days later a test signal was sent to the device, which caused Miss H to think that a third unauthorised payment had been taken from her account (as on all three occasions a text message was sent to her mobile phone). This caused her further distress, and it was nearly four hours before TCFC confirmed that no money had been taken.

However, the difficulty in starting the car has not been resolved. Miss H was able to start the car again at noon on her second day off work, but two weeks later it again failed to start. There have been problems with the car ever since, and in March she gave up and stopped making payments. She asked TCFC to take the car back.

Meanwhile, in late January TCFC sent an engineer to inspect the device. There is a dispute about whether this inspection was adequate, and about how much weight should be given to the engineer's findings. He found no fault with the device, but Miss H says he only examined it for three or four minutes and all he did was start the car four times without driving it. After that inspection, TCFC wrote to her to say it was not upholding her complaint about the device. It apologised for the two unauthorised debits from her bank account.

On receiving that letter, Miss H brought her complaint to our Service. She complained about the unauthorised debits and the great stress they had caused her. She complained about the car not starting, which she blamed on the device not working properly, and said that this had cost her two days' lost earnings. She explained that she needs a car for her job, and although she had made use of public transport and lifts from family and friends, she could not do without a car. She has since bought a new car, and as she can't afford both she had stopped making payments on TCFC's car and wants it to be repossessed. But instead, TCFC keeps sending debt collectors to her home. She also complained that TCFC's handling of her complaint was poor, as she was kept on hold for long periods and promises to call her back were not kept.

After Miss H had complained to our Service, TCFC offered to pay Miss H £100 compensation for the unauthorised payments, and another £50 for poor complaint handling. But it denied that its device was responsible for the car not starting. It argued that this could instead be the result of a fault with the car, which had not been present in 2016 but had developed since (as Miss H had driven the car without any problems for 14 months).

Our adjudicator upheld this complaint. She said that the three independent reports all said that the fault was with the device, not the car. She thought that on receipt of the first report, TCFC should have carried out a much more thorough inspection of the device than the one it actually did. That would have resolved this complaint much sooner. So she recommended that TCFC cancel the hire purchase agreement and collect the car at no cost to Miss H, refund the £1,000 deposit she had paid (with simple interest at eight per cent a year), cancel any arrears, remove any adverse data from her credit file, and pay her £400 for her distress and inconvenience.

TCFC did not accept that opinion. It suggested that a new independent inspection of the device should be carried out. The cause of the car not starting might be the result of a fault with the car, or of a modification that appeared to have been made to the car (which both parties deny making). It questioned whether Miss H had done enough to mitigate her loss, as she could have used public transport to get to work on the two days she had taken off. If the complaint was still upheld, then it would not be fair to make TCFC refund the deposit, as TCFC had paid this to the dealer, and Miss H had had normal use of the car for over a year. The information on her credit file was accurate and should not be changed.

The adjudicator told TCFC that she was referring this complaint to an ombudsman. The next day, TCFC wrote to Miss H to say that it was going to repossess the car. That has since been done.

my findings

I have considered all of the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. (I have seen a letter from the Information Commissioner's Office which says it is unlikely that TCFC complied with the Data Protection Act 1998 when it processed Miss H's personal information to take the unauthorised debits from her account, but I have formed my own opinion about the debits.)

the unauthorised debits

It is not in dispute that two payments were taken in error. I accept that Miss H was distressed by them, because I have seen her bank statements and I accept that she was of limited means and in some financial difficulty. I also accept that she was in a debt management

plan. So although the payments were not large, they would have been significant amounts to her, and she could not afford them. She had a well-founded fear that her rent payment would be returned, and a legitimate concern about her ability to make ends meet. Quite clearly, this must have been stressful for her, and I accept her account of how anxious she was. I also take into account – although of course this was not TCFC's fault – that in January her grandfather was dying, and I think this would have made her more emotional and vulnerable than would have been the case if the second payment had been taken at some other time.

I take into account the fact that both payments were refunded quickly, and the underlying fault has been fixed. Those points go in TCFC's favour. Balanced against that is the fact that the fault occurred twice, and the fact that Miss H was unfortunately given the impression that it had happened a third time (which happily was not the case). On the first occasion, her anxiety was made worse by the fact that she was kept on hold for 80 minutes while waiting to speak to TCFC, which is an unacceptable length of time. (However I have seen no evidence that TCFC's website said that it was open on Sundays, and its website currently says it is closed on Sundays.) I will deal with the compensation for this later.

the car failing to start

In October 2017 the car passed its MOT with no faults. Since then, the car and device have been examined five times. Twice by the RAC in January and February, by Miss H's partner's brother's garage in January, by TCFC's engineer in January, and by an independent garage instructed by TCFC in May.

I regard the RAC and the independent garage as independent experts, and so I attach more weight to their reports than to the others. I will summarise the five reports in chronological order.

The two reports by the RAC are, necessarily, brief. The report on 1 January states that the car would not start. There was no fault with the vehicle, and the battery was fully charged and in good condition. The device was sending an alert. They advised Miss H to contact TCFC.

That is clear evidence that there was probably an issue with the device which was preventing the car from starting. But it took TCFC 26 days to arrange its own inspection. On any view, and whatever the cause of the problem, that was poor service.

At noon the next day, TFCF sent a code to the device, and after that Miss H was able to start the car again.

On 17 January Miss H drove the car to the shops. But when she tried to leave, the car would not start again. Miss H took it to a garage (after jump-starting it) for diagnostic tests. The garage found no fault with the car or the battery, but the car would not start and the device was sending an alert. I attach rather less weight to this evidence because the garage belongs to an acquaintance of Miss H. However it is consistent with what the RAC had already said. Although no fault was reported with the battery, Miss H bought a new one.

She was able to drive the car home, but on testing the ignition she found that it would not start again.

TCFC's engineer visited on 27 January. It is not in dispute that his inspection was brief. He turned on the ignition four times, and found that the car started each time. He did not attempt

to drive it, or carry out any further examination of the car or of the device. TCFC maintains that this inspection was enough to ascertain that the device was working properly and was not responsible for the car not starting earlier. Miss H insists that this inspection was not enough to address her complaint. I will come back to this.

On 7 February the RAC found that the car would not start. The report says:

“Symptoms of starter motor issue but vehicle starts with jump pack connected...
Possible wiring issue or battery internal fault.”

However, the battery test results were normal and the report says “State of health: 100%.” The device was beeping. Miss H was advised to take the car to a garage for further investigation. (She has not driven it since then.)

That report does not quite say what Miss H says it does. She says that both of the reports by the roadside recovery agency prove that there was no fault with the car, and that the device was to blame. But this report does not rule out a fault with the car, nor does it say anything about the device one way or the other (except to say that it was beeping). I think this report is inconclusive. (However, I note that the new battery was only 37 percent charged. That might support Miss H’s claim that the device was draining the battery, assuming that is possible, or it may just be because the car had not been driven for a while.)

On 18 May the car was inspected by the independent expert at Miss H’s home. Various tests established that all electrical systems were operating correctly. However, the engine would not start. This was after Miss H had stopped making payments, so the engineer contacted TCFC and asked for the device to be instructed to allow the car to start, which was done. The device appeared to be working, but the engineer was not able to inspect it internally as the device cannot be opened. The car still failed to start.

A “non-original equipment switch” had been fitted to the under-steering cowl. This has not been explained, as both parties deny putting it there. The switch was tried in both on and off positions, but the car still would not start. TCFC has suggested that this modification might be the cause of the fault.

The engineer recommended further examination of the interior of the device, as the device may have failed internally. As a preliminary step, the device could be removed from the car to see if the car will start without it. TCFC has not agreed to do this.

The independent engineer did not rule out the possibility of a fault with the car itself, as he concluded by saying that if the car still won’t start when the device has been removed then the car’s entire electrical system should be investigated further. (He also said that if there is a fault with the car then it would have developed since Miss H bought the car.) But he did say that the next step should be a further investigation of the device, which suggests to me that he thought that the device was more likely to be the cause of the problem than the car – especially as he was unable to find anything wrong with the car.

Of the five reports, the May report is by far the most detailed, and followed an investigation which appears to have been more thorough than the others. It is persuasive and clear. So I attach the greatest weight to that report. On balance, I think the fault is more likely to have been caused by the device not operating properly than by some fault with the car itself. The January report by the RAC supports that conclusion and strengthens my view.

The inspection by TCFC's own engineer was simply too brief and perfunctory for me to be able to accept that there is nothing wrong with the device. At best, it established that the fault is intermittent, but that does not assist TCFC's case.

I therefore uphold Miss H's complaint about the car not starting. I also agree with our adjudicator's opinion that if TCFC's engineer had taken the RAC's report more seriously (it had been passed to him by TCFC before he carried out his inspection) and examined the device, or done a more thorough inspection, then this complaint could very likely have been resolved much sooner. That would have saved Miss H a great deal of time and stress, as well as saving her the money she has spent on public transport since the end of January.

Miss H has explained why she missed two days off work when the car first failed to start. On the first day, she had to wait for the RAC to attend. I think that is reasonable. On the second day, she says she took the car to a garage to be repaired. I don't think that was reasonable, because at 7:30 that morning TCFC told her that it was going to send an engineer to her house to look at the car the next day. And as it turned out, at noon the same day a code was sent to the device and the car started. So I think Miss H could have gone to work (on public transport in the morning) and waited for TCFC's engineer to attend the next day, rather than missing a second day off work to take the car to a garage. I will therefore order TCFC to pay her lost earnings for the first day, or £102.60.

Miss H has complained that TCFC asked her to obtain evidence of her loss from her employer, and this made her feel uncomfortable. I completely understand why she felt that way, but I think it was a reasonable request by TCFC. I do however note that the request would not have been necessary in the first place if nothing had gone wrong with the device. Nevertheless, it's likely that her employer was more concerned by the days she missed off work than by being asked to provide a letter to prove she had not been paid for those days.

complaint handling and communication

It's not in dispute that TCFC could have handled this complaint better. It did not always call Miss H back when it said it would, there were some delays, and she spent a lot of time on hold. I accept that what she has told us about being on hold is true, because our own adjudicator also spent a lot of time on hold while trying to speak to TCFC. Miss H was already stressed as a result of her car not starting, and so I think these issues coming on top of that would have made her feel worse than they would have done on their own.

debt collectors

I do not uphold the complaint about the debt collectors. While I appreciate that the visits did upset Miss H, and I do recognise why she feels that they were unnecessary because she had stopped making payments and asked TCFC to repossess the car, I think that TCFC was entitled to try to encourage her to make payments before it resorted to repossession. There is no allegation of misconduct or harassment.

compensation

Rather than considering Miss H's distress and inconvenience caused by the car not starting, the unauthorised debits, and the poor communication as three separate issues and deciding an amount of compensation for each of them, I will consider them all together. (This is to avoid the risk of double-counting – that is, awarding compensation for the stress caused by the car not starting and then taking that stress into account again when deciding what impact

the poor communication had on Miss H, for example.) Taking into account everything I've been told, I think that £500 is fair compensation for Miss H's overall experience.

As I've said above, I will award £102.60 for one day's lost earnings. And since Miss H had been unable to use the car since January, I will order TCFC to cancel any arrears and remove any adverse information from her credit file.

TCFC is correct to point out that the credit file is accurate, because it says that Miss H defaulted on her agreement and that is indeed what happened. However, the usual resolution to a complaint is to put the complainant back in the position they would have been in had nothing gone wrong (or as close to that position as possible). In this case, Miss H would have continued to make her monthly payments if the device had not prevented the car from starting. There would never have been arrears or a default on her credit file. So I think that her credit file should reflect this. That is why it is fair and reasonable to remove the default and any other adverse information about her agreement with TCFC from her credit file.

I would normally require TCFC to refund the entire deposit to Miss H as well, but I agree that she has had about 14 months of normal use of the car. So I think it would be fair to allow TCFC to keep a proportion of the deposit equal to $(£1,000 \div 48) \times 14$. This means TCFC should refund £708.33 of the deposit. I will order simple interest to be paid on this sum at eight percent a year from 1 January 2018 to the date it is paid to Miss H. I will also order interest to be paid on the £102.60 on the same terms.

If TCFC considers that it is required by HM Revenue & Customs (HMRC) to withhold income tax from that interest, then it should tell Miss H how much it has taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate. Miss H should ask TCFC if she is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

my final decision

My decision is that I uphold this complaint. I order The Car Finance Company (2007) Ltd to:

- Pay Miss H £810.93, plus simple interest on that sum at eight percent a year from 1 January 2018 to the date of settlement,
- Pay Miss H another £500,
- Cancel all arrears arising under Miss H's hire purchase agreement and remove all adverse information relating to the agreement from her credit file.

The Car Finance Company (2007) Ltd must pay the compensation within 28 days of the date on which we tell it Miss H has accepted my final decision. If it pays later than this, then it must also pay simple interest on the *total* compensation (that is, on £1,310.93) from the date of my final decision to the date of payment at the rate of eight percent a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 16 August 2018.

Richard Wood
ombudsman