

complaint

Mr T, who is represented by his wife, complains S + S Finance Limited took back his vehicle without warning and has been threatening and abusive.

background

Mr T and his wife have agreed to buy two cars on hire purchase from S + S Finance. They have also rented a property from a related company.

Mr T's wife says that representatives of S + S Finance came to her house claiming that her husband was in arrears on his hire purchase agreement payments. Mr T's wife says that she was also told that they owed rental arrears. Mr T's wife says that S + S Finance's representatives told her that the only option was for it to take her husband's car. Mr T's wife says she handed the keys over as she was intimidated and felt she had no other option. S + S Finance says that this solution was one that was agreed amicably.

Mr T subsequently complained to us that S + S Finance had taken back his vehicle without warning. S + S Finance was asked to investigate the complaint but did not uphold it. One of our adjudicator's, therefore, considered the complaint.

Our adjudicator recommended that S + S Finance should cancel the hire purchase agreement, refund Mr T's payments, remove any adverse credit information it has registered about Mr T and pay £350 in compensation for the distress it has caused. Our adjudicator recommended this as he considered Mr T's car had been repossessed without a court order. S + S Finance disagreed saying, amongst other things, that the car had not been repossessed. An ombudsman was, therefore, asked to review this complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having reviewed this file it is clear that Mr T and his wife have had a number of dealings with S + S Finance and related companies – they have bought two cars on hire purchase and rented a property. It is also clear that the parties now have an acrimonious relationship.

I can see that Mr T made regular payments under the hire purchase agreement until March 2014 – these payments came from his wife's account. Mr T's wife has told us that there was then a problem with the standing order as it was mistakenly cancelled by her bank. On the evidence I have seen, I cannot say that this was necessarily the case. Mr T, however, accepts that he went into arrears in April 2014. S + S Finance says that it sent Mr T a default notice, but on the evidence I consider it more likely than not that S + S Finance representatives gave Mr T's wife a default notice on the day they came to her house. I also consider it more likely than not that Mr T's wife felt she had no other option other than to hand over her husband's car. S + S Finance says that Mr T's wife had authority to do this, but I do not agree that S + S Finance went about dealing with the arrears in the right way and do not accept that Mrs T agreed to hand over the car on her husband's behalf.

I am satisfied that Mr T had already paid more than one third of the payments due and, in the circumstances, the only way S + S Finance could have legitimately repossessed the car was by obtaining a court order. In the circumstances, I agree with our adjudicator's

recommendations given, amongst other things, section 90 of the Consumer Credit Act. I am, therefore, going to require S + S Finance to cancel the hire purchase agreement it entered into with Mr T and to refund all payments made under this agreement. In addition, I am going to require S + S Finance to pay Mr T £350 in compensation for the distress caused.

my final decision

My final decision is that I require S + S Finance Limited:

- cancel the hire purchase agreement it entered into with Mr T;
- refund any deposit or part exchange payments made in relation to the hire purchase agreement and pay interest on these refunds calculated as explained below;
- refund all payments made in relation to the hire purchase agreement and pay interest on these refunds calculated as explained below;
- remove any adverse credit information it has registered against Mr T in relation to the hire purchase agreement;
- pay Mr T £350 in compensation for the distress caused.

I require S + S Finance Limited to pay interest at a rate of 8% simple per annum from the date each of the payments that it is refunding was paid until the date of settlement. If S + S Finance Limited believes that income tax should be deducted from the interest payments it makes, then it should also provide Mr T with a tax deduction certificate so that he can reclaim the income tax if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 23 April 2015.

Nicolas Atkinson
ombudsman