

## **complaint**

Mrs B complains about the termination of a hire purchase agreement between herself and Advantage Finance Ltd.

## **background**

Mrs B purchased a car in March 2017 and entered into a hire purchase agreement with Advantage. The purchase price of the car was £19,990. Mrs B paid a deposit of £7,990 and the balance of £12,000 was financed. The contractual monthly payment was £370.42.

Mrs B made contractual payments in April and May, but the June and July payments were missed. Advantage says it sent letters to Mrs B and tried to contact her by telephone. Mrs B says she didn't receive any calls or letters. A default notice was issued on 26 June 2017 and a Notice of Termination was issued on 24 July 2017.

Mrs B telephoned Advantage in July 2017 and asked to clear the arrears. She was initially told that she could pay the arrears but when she called again she was told that the agreement had been terminated and Advantage intended to repossess the car.

Mrs B says she offered to pay the settlement figure by instalments but Advantage refused and told her it wanted the full settlement figure in 14 days or the car would be repossessed.

Mrs B says that her financial situation has improved because she's got another job. She's willing to pay the settlement figure but she needs more time.

The investigator upheld the complaint. She said that Advantage should have obtained more information from Mrs B when she applied for the loan to check that the agreement was affordable. The investigator recommended that Advantage cancel the agreement, repossess the car and remove the default from Mrs B's credit file. She also recommended that Advantage write off any interest and charges which have been added to the arrears and deduct the arrears from Mrs B's deposit before returning the balance to her. The investigator also recommended that Advantage pay compensation of £200 to Mrs B.

Advantage disagreed. It said that Mrs B's complaint was about its intention to repossess the car, not about irresponsible lending. It said that it made several attempts to contact Mrs B before terminating the agreement but that she didn't contact them until after the agreement had been terminated and repossession agents had been instructed.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs B's complaint is that Advantage intends to repossess the car. She's also unhappy that she was given conflicting advice when she telephoned Advantage to try and pay the arrears.

I've looked at the terms and conditions of the agreement. These say that Advantage can terminate the agreement if payments are made late or are missed. There's no dispute that Mrs B was late with her May payment and that her June and July payments were missed. In the circumstances, I'm satisfied that Advantage acted in accordance with the terms and conditions when it terminated the agreement.

Advantage issued a default notice on 26 June 2017 and a termination notice on 24 July 2017. I can see from the information provided by Advantage that it tried to contact Mrs B on several occasions in June and July before it terminated the agreement. Mrs B says she didn't receive any letters. I can see that Advantage has sent correspondence to Mrs B at the correct address, so on balance I think it's more likely than not that Mrs B would have received this. I can also see that Mrs B was experiencing some very difficult personal circumstances at this time so I understand why she might not have made responding to the letters or contacting Advantage a priority.

If Mrs B had contacted Advantage before the agreement was terminated it might have been possible for her to pay the arrears. But the agreement had already been terminated by the time Mrs B called. Once an agreement has been terminated, it's no longer in existence. So despite the conflicting advice given to Mrs B (which I deal with later), I'm satisfied that the agreement had ended and the only two options at this point were full settlement or repossession.

I can see that Mrs B asked if she could pay the settlement figure by instalments. And I appreciate that she was experiencing financial difficulties. I would expect Advantage to behave positively and sympathetically towards Mrs B in these circumstances. This doesn't mean that Advantage is under an obligation to accept payment by instalments and I can't say that it acted unfairly or unreasonably in refusing to accept instalments and insisting on full settlement. But given that Mrs B offered to pay the full settlement figure within a reasonable time, I think that Advantage could have considered this as an option.

When Mrs B contacted Advantage she was initially told that she could pay the arrears and was given a figure of £827 which included interest. When Mrs B called back the same day to pay, she was told that she had been given incorrect information, that she couldn't pay the arrears and that the car would be repossessed if she didn't pay the settlement figure.

Advantage made an error when it told Mrs B that she could pay the arrears. She wouldn't have been able to do this because the agreement had already been terminated. I think that the contradictory information would've caused unnecessary inconvenience and upset to Mrs B in what was already a difficult situation.

Although Mrs B hasn't raised the issue of unaffordable lending, I think that this should be considered as it's so fundamental to the circumstances of this complaint, which are that Mrs B fell into arrears very early on in the agreement. I can see that Advantage has made representations about this service investigating unaffordable lending, but I'm satisfied that it should have anticipated that this issue would be considered.

At the time when Mrs B applied for the loan she says that she was in a difficult financial position. Her husband had been involved in a serious accident and was unable to work. She feels that it was unfair of Advantage to lend to her if her income wasn't enough to sustain the contractual payments.

I've looked at the information which Advantage considered before offering the loan. Mrs B's credit file shows 3 historic defaults. I accept that defaults on a credit file don't automatically mean that further credit can't be granted, but they do give an indication of how a customer is likely to manage an account, which should put a lender on notice of the need to carry out more detailed checks.

Advantage obtained Mrs B's wage slips for one month, which show that she was earning £361 per week. The car repayments are £370.42. Considering that the loan was a high value loan, I would have expected Advantage to obtain some further information to ensure that the loan was affordable.

It doesn't look as if Mrs B was asked to provide details of her expenditure. Advantage says it used Office of National Statistics data based on Mrs B's postcode which showed that she had monthly living expenses of approximately £971. This can give a general idea of living expenses but it doesn't take account of individual circumstances. And I can see that Mrs B's actual living expenses were substantially higher than £971.

Advantage says it wasn't aware that Mrs B had monthly outgoings in excess of £2500 (as evidenced by the income and expenditure information which Mrs B provided to this service). I've got no reason to doubt that the information provided by Mrs B is correct. This, in my view, adds weight to my concerns that Advantage didn't obtain enough information about Mrs B's financial position at the time the agreement was entered into.

Advantage says that Mrs B paid a large deposit and suggests that this isn't indicative of financial difficulties. But it's not clear where Mrs B obtained the deposit. I haven't been provided with this information. It's possible that she may have borrowed this from a third party.

Taking all of the circumstances of this complaint into consideration, I don't think that Advantage carried out sufficient checks into Mrs B's finances. If it had, I don't think it would have advanced the loan. I also think that Advantage gave conflicting and misleading advice when Mrs B telephoned to pay her arrears.

I understand that Mrs B wants to keep the car and pay the arrears. But this won't be possible. As I've explained above, the agreement has been terminated.

Taking all of the circumstances of this complaint into account, I think that Advantage should:

- Collect the car at no cost to Mrs B.
- Unwind the agreement and remove all references to it from Mrs B's credit file.
- Remove any interest and charges from the arrears and use some of Mrs B's deposit to recover any outstanding arrears.
- Refund the balance of the deposit to Mrs B.
- Pay compensation of £200 for the upset and inconvenience caused by the conflicting advice.

### **my final decision**

My final decision is that Advantage Finance Limited should:

- Collect the car at no cost to Mrs B.
- Unwind the agreement and remove all references to it from Mrs B's credit file.
- Remove any interest and charges from the arrears and use some of Mrs B's deposit to recover any outstanding arrears.
- Refund the balance of the deposit to Mrs B.
- Pay compensation of £200 for the upset and inconvenience caused by the conflicting advice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 December 2017.

Emma Davy  
**ombudsman**