

The complaint

Mr D complains about the way Startline Motor Finance Limited handled his hire purchase agreement when he was unable to meet the payments due.

What happened

In August 2017 Mr D took a used car on a five-year hire purchase agreement from Startline. By around April 2019, however, Mr D was having difficulty making the monthly payments required, having lost his job. He contacted Startline, which suggested that he voluntarily surrender the car. Startline explained that it would then be sold and the proceeds deducted from the amount outstanding under the hire purchase agreement. Startline also said that voluntary termination of the agreement wasn't open to Mr D, as he hadn't at that point paid half the amount due under it. It also explained that it would register a default against Mr D's name and that any outstanding liability would be passed to another business to collect.

Mr D handed the car back as arranged, and Startline sold it at auction, deducting the sale proceeds from the amount it was seeking from Mr D. That still left some £5,600 outstanding.

Mr D complained about how he had been treated. In particular, he was unhappy about the default marker which would, he said, affect his ability to obtain credit. Startline didn't consider it had done anything wrong, and so Mr D referred the matter to this service, where one of our investigators considered it.

The investigator concluded that Startline was within its rights to register a default against Mr D's name. She also said, however, that it should have given Mr D the option of voluntary termination of the agreement. Had it done so, Mr D's outstanding liability would probably have been around £3,000 less than was in fact the case. The investigator recommended that Startline re-calculate the amount due on that basis and pay Mr D £200 in recognition of the distress he'd been caused and inconvenience to which he'd been put.

Startline didn't accept the investigator's recommendations and asked that an ombudsman review the case. In summary, Startline said:

- Voluntary termination wasn't available to Mr D because he hadn't paid half the amount due under the hire purchase agreement.
- Mr D would have been liable to pay the balance due within 30 days, but his financial situation meant that wasn't possible for him.
- Mr D hadn't in any event complained about not having the voluntary termination option; his complaint had been about the default.

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.

I'll begin with Mr D's complaint about the registration of a default. When Mr D surrendered the car, he had already missed some payments. He was unable to repay the amount due after the car was sold, and has now agreed a repayment plan.

Lenders and other financial businesses share information about customers, amongst other things so they can make informed lending decisions. They do so on a mutual basis and agree with credit reference agencies that they will provide accurate information. I don't believe the information provided by Startline was inaccurate – it properly reflected that Mr D had surrendered the car because he couldn't any longer afford the repayments.

The investigator went on to recommend, however, that Startline re-calculate the amount due on the basis of voluntary termination rather than voluntary surrender. Startline said that she shouldn't have done that, because Mr D hadn't complained about how the agreement was ended or the advice he'd received in connection with that. His complaint was limited to the default.

I agree that Mr D didn't expressly say that the agreement should have been ended in a different way. I think though it was clear that he was generally unhappy about the response he received when he told Startline that he was having difficulty making payments and wanted to end the agreement. Startline's approach to that should have taken Mr D's needs into account and considered the best option for him – still having regard of course to Startline's own rights under the hire purchase agreement. In recommending that Startline re-calculate the amount due under the agreement, the investigator was, in my view, suggesting a remedy to the complaint Mr D had made, not introducing a new complaint.

There are two main ways a customer can end a hire purchase agreement before the end of the hire period – voluntary surrender and voluntary termination. Under voluntary surrender, the goods are returned and sold. The customer is then liable to pay any balance remaining after deduction of the net sale proceeds. It's often used where the customer is having difficulty making payments, but it avoids the costs of repossession.

Voluntary termination is a right under section 99 of the Consumer Credit Act 1974, which says that a customer can end a hire purchase agreement at any time before the final repayment date. A customer who gives notice under section 99 is liable to pay no more than half of the total amount due under the agreement. If they've already paid that much, they can't be asked to pay any more (unless, for example, charges for damage are due). It's commonly used where a customer no longer needs or wants the goods. These provisions of the Consumer Credit Act were reflected in the hire purchase agreement.

Startline says that voluntary termination wasn't available because Mr D hadn't already paid half the total amount payable under the agreement. But neither the Act nor the agreement itself say that's a requirement. The agreement says: "*If you have already paid at least this amount ... you will not have to pay any more...*" That is, it contemplates a situation where the customer has paid less than half the amount payable.

Section 99 of the Act says an agreement can be ended at any time before the final payment is due; that right isn't conditional on a certain amount already having been paid. And section 100 of the Act (which sets out what happens when notice is given under section 99) includes "*... the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination.*" It clearly contemplates ("*... shall be liable...*") a situation where money will still be owed after termination.

The second argument that Startline makes is that Mr D wasn't able within 30 days to make

the payment due as a result of voluntary termination. I accept that Mr D wasn't able to make such a payment. Again, however, that isn't a condition of voluntary termination, either in the Act or the hire purchase agreement. In my view, the wording of section 100 makes it clear that the liability to pay up to half of the total due under the agreement is triggered by a notice under section 99; payment isn't a condition of being entitled to give notice.

In some cases, voluntary surrender may be better for the customer than voluntary termination – for example, where the goods are likely to be worth more than the amount outstanding under the hire purchase agreement. It was however clear in my view that that was unlikely to have been the case here. I also note from Mr D's contact with Startline that it dismissed the option of voluntary termination on the grounds that he hadn't already paid half the amount due. I've explained that that wasn't a barrier to that process, and why.

Putting things right

For these reasons, I agree with the investigator that Startline should have considered voluntary termination in Mr D's case. Had it done so, it's likely that his liability would have been less than Startline claimed. It should therefore re-calculate Mr D's liability as if the hire purchase agreement had been validly terminated under section 99 of the Consumer Credit Act 1974.

My final decision

My final decision is that Startline Motor Finance Limited should re-calculate Mr D's liability to it as if he had given valid notice to terminate the hire purchase agreement under section 99 of the Consumer Credit Act 1974.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 December 2020.

Mike Ingram
Ombudsman