

The complaint

Miss S has complained that RCI Financial Services Limited (“RCI”) wants to repossess the car that she acquired in December 2020 using a hire purchase agreement, even though she says there is an arrangement in place to repay arrears on the agreement.

What happened

Miss S acquired a new Renault in December 2020, using a hire purchase agreement with RCI. The cost of the car was £17,755, of which Miss S borrowed £16,948.86 over a term of 49 months, with a monthly repayment of £269.32. A final payment of £6,329.43 became due if Miss S wanted to keep the car at the end of the term.

The agreement fell into arrears in September 2021 – until the end of August, payments had been made regularly. Miss S spoke to RCI on a number of occasions over the next few months, initially promising payment and then explaining that she was having difficulty in meeting the payments. RCI explained the options available to Miss S, and said it would consider an arrangement to pay the arrears, but that it would need to complete an affordability assessment, either by going through Miss S’s income and outgoings over the phone or by allowing it to view her bank account via open banking.

In November 2021, RCI attempted to complete the affordability assessment via open banking, but couldn’t do so as the details provided were not for Miss S’s main bank account. When Miss S *did* provide the information about her main bank account, RCI said it wasn’t able to agree a repayment arrangement because her income didn’t cover her overdraft facility in full. RCI contacted Miss S to state her options for exiting the agreement. The arrears at this point amounted to £807.96 – three monthly payments. A few days later, Miss S contacted RCI and a repayment arrangement was agreed. This wasn’t met so RCI considered the arrangement broken.

In early December, Miss S contacted RCI and agreed to make one monthly payment, with the rest of the arrears to be cleared shortly afterwards. The payments weren’t made, and the arrears increased to four monthly payments - £1,077.28 - as the direct debit due in December was also not paid by Miss S’s bank.

The following week, Miss S contacted RCI and asked for information about selling the car, as this was what she was proposing to do. RCI told Miss S that any amount outstanding on the agreement after taking account of the sale proceeds would need to be paid straight away, so that RCI could remove their registration of a financial interest on the car’s records.

It seems that at this point, Miss S sought help from a debt advice agency, and on 29 December 2021 a 60-day ‘breathing space’ period was applied by RCI – this was to allow Miss S time to get debt advice and formulate a plan. So RCI did not initiate contact with Miss S, or pursue enforcement action, during this period, in line with the requirements of the ‘breathing space’ arrangements. RCI could not add interest or charges to the agreement during this period, but the contractual monthly payments continued to fall due.

However, Miss S contacted RCI during this period – on 3 February 2022 - to check the level of arrears. She said she wanted to make weekly payments to clear the amount. RCI replied on the same day, having tried to call her, to request a call back from her and to say that it had issued a statement of account to show the outstanding payments. The arrears at this point came to £1,346.60 – five monthly payments. RCI's notes don't show that Miss S called back.

The 'breathing space' period ended on 27 February 2022, and shortly afterwards, on 10 March, RCI issued a default notice for £1,346.60. That amount did not include the most recent monthly payment (and Miss S's bank did not honour the direct debit request that had been made, increasing the actual arrears to £1,615.92).

A few days later, on 15 March 2022, Miss S contacted RCI and asked about the options available to her. She was told she could sell the car privately or through a buy-back by the dealership, or voluntarily terminate the agreement - otherwise the agreement would be terminated by RCI, and the car collected. On 19 March Miss S sent in an email to say that she was entering a debt management plan ("DMP") and the debt advisor had suggested that she ask whether a repayment arrangement would be possible so as to pay the arrears in two or three instalments.

RCI asked Miss S to call to discuss the options, which she did on 21 March 2022. Miss S reiterated that she was entering a DMP and wanted to pay half of the default amount to start with, and that she would ask the debt management company to send in her income and expenditure details with an offer of an arrangement based on this. RCI said it would look to set up an arrangement on receipt of this information. It also said that as long as the arrangement was maintained and the normal monthly instalment paid, it would not terminate the contract. However, if the arrangement wasn't maintained a further default notice could be issued and the agreement reviewed for termination.

On 29 March, Miss S paid £807.96, half of the arrears amount, although the direct debit for the contractual monthly payment due in March was returned by Miss S's bank, increasing the remaining arrears to £1,077.28 – four monthly payments. Miss S also said she was waiting to hear back from her debt management company.

By 26 April 2022, RCI hadn't been contacted either by Miss S or her debt management company. So it issued a further default notice for the arrears of £1,077.28 (I note this amount did not include the contractual monthly payment due in April).

The default notice stated that this amount had to be paid by 17 May 2022, or further action could be taken. It set out the further action, which included termination of the agreement. Miss S called RCI on 17 May 2022, but the call was disconnected. RCI left a voicemail, but Miss S didn't call again.

RCI issued another default notice on 20 May 2022, which was valid until 10 June 2022. The arrears at this point were £1,346.60, representing five monthly payments. On 9 June 2022, Miss S called RCI, and said that she had emailed in her financial statement from the debt management company, although RCI told her that it hadn't arrived. It also told her that she would need to make a substantial payment to reduce the arrears before it would be able to consider a repayment arrangement. RCI granted a three-day extension to allow Miss S to consider her options.

The following day, Miss S called RCI to ask whether it could provide any help in relation to the default. RCI told her that, at this stage, she would need to clear the arrears (or the majority of the arrears) to avoid termination of the agreement.

Later that day, RCI's notes show that it received an email saying Miss S was in an Individual Voluntary Arrangement (IVA) with regard to her debts. I should say here that copies of emails provided by Miss S show that she had entered a DMP, rather than an IVA, and public records do not show an IVA in Miss S's name. RCI's notes show that it told Miss S that it needed the documents relating to the arrangement and that Miss S would need to pay the arrears in full – or at least the majority – and it would need confirmation of the payment arrangements under the debt plan.

A document was emailed to RCI, and its notes show that it told Miss S that the car finance wasn't shown anywhere – and RCI would've expected it to be classed as a 'priority debt'. RCI said they'd need the majority of the arrears cleared, then it could consider a repayment plan based on her income and expenditure. It asked Miss S to call by 17 June 2022, to discuss this further.

On 11 June 2022, Miss S emailed RCI asking for an update. RCI responded, saying that Miss S would need to pay 50% of the arrears and it would need to complete an online affordability assessment to come to an arrangement about the remaining arrears. This needed to be done by 17 June 2022, or the agreement would be terminated.

On 15 June 2022, Miss S emailed RCI asking if the payment of £807.96 could be made on 24 June 2022 with a further payment on 28 June 2022. RCI replied to say the deadline had already been extended and couldn't be extended further, and that it needed the open banking authority to be provided so that the affordability assessment could be completed by 17 June 2022. RCI also asked Miss S to try and satisfy the default by this date as well.

RCI's notes show that Miss S made a payment of £807.96 on 17 June, with this being applied to the account on 20 June. This was equal to half of the arrears. She also provided her bank information so that RCI could carry out the affordability assessment.

Miss S called RCI on 22 June 2022 promising to pay a further £800 within a week. On 27 June 2022, RCI completed an income and expenditure review through open banking. Its notes show that Miss S's income was more than her expenditure. It also showed the payment into the DMP was £129, but there were also high levels of gambling transactions and unclear affordability indicators as some income was via transfers from other accounts. RCI also noted that the most recent direct debit for the car finance had been returned unpaid.

RCI waited to see if the promised payment to clear the arrears was made. It looks as though there was a payment of £269.32 made on 28 June, but as the direct debit for the June contractual payment was returned unpaid, this did not reduce the arrears – they remained at £807.96 – equal to three monthly payments.

Because of this, RCI decided to progress to termination of the agreement, and after a review on 14 July 2022, RCI issued a letter of termination to Miss S, and referred the account to a recovery agent to deal with collection of the car.

On 15 July 2022, Miss S made a complaint to RCI, and offered to pay an additional £150 per month towards the arrears. She also asked for the collection of the car to be held while the complaint was being considered. RCI responded to explain why the agreement was terminated, and to say that it would need permission from her insolvency practitioner before agreeing any further arrangements to pay.

RCI issued its final response letter on 5 September 2022, in which it said it was not upholding her complaint. In summary, it said that:

- failing to maintain payments was a breach of contract;
- it had given Miss S ample opportunity to clear the arrears over the previous year, and multiple arrangements had been broken or only partially paid;
- it hadn't been able to verify affordability when it had checked her account via open banking;
- it had notified her of the exit options available to her

Miss S was unhappy with this, so brought her complaint to this service. Our investigator looked into Miss S's complaint, but didn't think it should be upheld. Miss S didn't agree, and asked for the complaint to be reviewed by an ombudsman.

I issued my provisional decision in February 2024, in which I explained that I agreed with our investigator's conclusions, but that as further evidence had been provided after our investigator had issued her view, I was giving both parties an opportunity to respond. RCI said it had nothing further to add. Miss S did not provide any further evidence or information.

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've decided not to uphold Miss S's complaint. I'll explain why.

I set out my reasoning in my provisional decision as follows:

“RCI sent in its notes of contact with Miss S, along with copies of documents from the point of supply, and various letters relating to the default and termination. Miss S has sent in copies of various emails between her and RCI, and between her and the DMP provider. I've set out the sequence of events in some detail above, based on the content of RCI's notes of its contact with Miss S, and the emails Miss S provided. I don't have any call recordings, but I don't have any reason to think that important information is missing.

I've taken account of the relevant rules and guidance set out in the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC), in particular rule 7.3.4, which states:

“A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.”

The guidance at CONC 7.3.6 says “Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.”

I've also looked at the hire-purchase contract. Section 3 states:

"3.1 Punctual payment by you of all Payments and other sums due under this Agreement is of the essence and is an essential condition of this Agreement. If you are late making any payment due under this Agreement, we shall treat this as a serious breach of this Agreement and we will be entitled to send you a default notice asking you to pay the arrears. If you do not comply with the terms of the default notice, we will regard such failure as an indication by you that you have repudiated this Agreement. This means that you will have indicated that you no longer consider yourself bound by the terms of this Agreement. If this happens, we will write to you to confirm that this Agreement is at an end and you will be required to pay us the sums described in paragraph 9 below and return the Goods to us or make them available for collection."

There is also a section headed 'warning' which states:

"Missing payments could have severe consequences, including our taking legal action against you, which may include a claim to repossess the Goods and/or the obtaining of a charging order against your home. It may make it more difficult for you to obtain credit in the future due to entries on your record held at the credit reference agencies."

I'm satisfied from the terms of the agreement that RCI was entitled to terminate the contract. The main issue I need to consider is whether RCI has treated Miss S with forbearance and due consideration as it is required to do under the FCA's rules.

Miss S first missed a payment in September 2021, and no further payments were made until March 2022, after the issue of a default notice. I can see that Miss S was in contact with RCI on a number of occasions. Over that period, RCI accepted proposed repayment arrangements, but these were not met.

RCI also reviewed Miss S's income and expenditure in November 2021, but couldn't agree to a repayment arrangement as her income wasn't covering her overdraft limit. I've looked at this, and I don't think RCI was being unreasonable here, as it would need to be sure that an arrangement was sustainable and not increasing Miss S's financial difficulties.

RCI issued three default notices before reaching the point of terminating the contract. On two occasions RCI accepted a part payment of the arrears, which it was not obliged to do. It asked for repayment arrangements to be made, but promises to pay were not kept.

I've kept in mind that Miss S was in a DMP, and emails that she provided show that this started from June 2022. I noted above that there are references in RCI's notes to Miss S saying she was in an IVA. But this was around the same time, so I think it's possible that the arrangement was wrongly described as an IVA in RCI's notes.

I don't have any information about the DMP, other than copies of emails saying it was set up from 1 June 2022, a reference to a payment of £129 when RCI did an affordability check in June 2022, and a note from earlier in June saying that RCI was not mentioned at all in the document it had received in relation to what it referred to as the IVA.

In summary, a DMP is normally used when a consumer is able to pay their priority bills, and has some money left over in their budget to allow payments (even if only nominal amounts) to be made towards non-priority debts. The consumer makes one payment each month, in relation to the non-priority debts, to the DMP provider, which then distributes the funds to the creditors. In some cases the DMP provider may agree to include priority debts in the DMP, so the DMP provider distributes the payments due to those creditors also.

Priority debts are generally those such as mortgage or rental payments, council tax and utility bills, and, depending on the circumstances, hire purchase agreements. In Miss S's case, I would've expected the payments on the car to be treated as a priority debt, and therefore for the payments to be made in the usual way by Miss S. Had the DMP provider included payments towards the car in the DMP, I would've expected RCI to have been notified by the DMP provider that it would be distributing the payments, along with the amount to be paid.

The DMP payment of £129 clearly does not include payments towards the car, as nothing was paid to RCI. I also find it surprising that the document received by RCI does not include reference to the car payments at all. However, I have not seen this document as neither party has provided a copy.

From all of this, I cannot be certain what the DMP covered, or how it was set up. I can see that Miss S asked the provider to contact RCI, but there's no record on RCI's notes that that DMP provider did this.

If either party provides new information, I will look at this point again. But, but as it stands, I think it's likely that the DMP payment of £129 related to non-priority debts, and that that amount was calculated after taking account of payments on Miss S's priority debts, which ought reasonably to have included the car payments. So the existence of the DMP does not, in itself, explain why Miss S was unable to maintain the contractual monthly payments at least. However, I note that in the more recent affordability assessment that RCI did, there were a number of gambling transactions. Such transactions weren't noted on the earlier assessment, and I have no information to say that these have continued. But clearly they would have affected Miss S's ability to make the car payments at that point.

I've thought carefully about all of this, but overall I don't think RCI has acted unfairly or unreasonably. It has looked at Miss S's circumstances on a regular basis and attempted to make arrangements with her to repay the arrears. Although Miss S made two lump sum payments to reduce the arrears, a number of promises to make payments to clear the remaining arrears were not kept, and direct debit payments were returned by her bank. So the account remained three months in arrears.

I appreciate that Miss S said she has had some mental health problems, and made RCI aware of these. I also note that Miss S has said she needs the car to get to work. But neither of these issues means that arrears can be allowed to continue for an unlimited period. Nor do they mean that it is unreasonable for RCI to terminate the contract where the arrears are not being resolved – and as I noted above, they were not.

Overall, I think RCI has treated Miss S with forbearance and due consideration, and allowed her reasonable time and opportunity to clear the arrears. My current conclusion is that I cannot fairly require RCI to reverse the termination of the contract, and that it is reasonable for the car to be returned to RCI. I would expect RCI to continue to treat Miss S with forbearance and due consideration in dealing with the settlement of any remaining amount due.”

I said in my provisional decision that, taking all of the evidence into account, I did not propose to uphold Miss S's complaint. As I stated above, RCI said it had nothing further to add in response to my provisional decision, and Miss S did not send in any further evidence or information. As no new evidence or information has been provided, I have no reason to change my conclusions. Therefore I do not uphold this complaint.

My final decision

For the reasons given above, I have decided not to uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 April 2024.

Jan Ferrari
Ombudsman