

The complaint

Mrs E is unhappy that Startline Motor Finance Limited failed to advise her of a £330 fee for starting repossession proceedings on a car that had been supplied to her under a hire purchase agreement.

Mrs E is being represented in this complaint by Mr E. However, for ease of reference, I'll refer to any comments or actions by either Mr E or Mrs E as being made or done by Mrs E.

What happened

In December 2021, Mrs E was supplied with a used car through a hire purchase agreement with Startline. The agreement was for £4,495 over 42 months; with 41 monthly payments of £144.33 and a final payment of £154.33.

Mrs E fell behind with payments in April 2022. Although she made additional payments to try and clear these arrears, Startline started repossession proceedings in early 2023.

Mrs E contacted Startline on 27 January 2023 to bring her account up to date. Startline advised her how much she needed to pay but gave her the wrong amount, and they didn't include the £330 fee for starting the repossession proceedings. As such, Startline attempted to collect a larger amount than Mrs E was expecting. And she didn't have sufficient money in her account for this payment.

Mrs E wasn't happy with what had happened, and she complained to Startline. They acknowledged they'd given her incorrect information and offered her £75 compensation for any distress and inconvenience caused by this error. However, they said that the £300 fee was still payable.

Mrs E wasn't happy with Startline's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Startline were able to charge the £330 fee. So, while they failed to include this in the amount they asked Mrs E for during the call on 27 January 2023, the investigator said the fee was still payable. However, the investigator said the £75 Startline had offered for misadvising Mrs E was reasonable in the circumstances. And they didn't think Startline should pay anything more.

Mrs E didn't agree with the investigator. She said that it was a shock when Startline attempted to collect the fee and, had they done so, it would've put pressure on her finances. She also said that it would cause her hardship to pay this fee, and this situation has only arisen because of Startline's *"irresponsible behaviour."* Because of this, she thought that Startline should *"suffer the consequences of their own negligence."*

Because Mrs E didn't agree, this matter has been passed to me to make a final decision.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs E was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen a copy of the hire purchase agreement Mrs E signed on 15 December 2012. I've noted the terms and conditions to this agreement say:

9.4 If any of the following events happen, we may at any time serve on you a notice under the [Consumer Credit Act 1974] telling you what you must do to remedy the situation. If you do not do what the notice requires you to do within the time limit specified, we may end your right to hire the Vehicle and, at our discretion, end the agreement. The events referred to are :-

9.4.1 you do not pay any Repayment or other sum due under this Agreement when it is due;

10. What you must pay if condition 9.4 applies

10.1 If we end the hiring or this Agreement under Condition 9.4 then:

10.1.5 you will pay all reasonable costs and expenses ... we incur in retaking possession of, storing and transporting the Vehicle and in enforcing any term of this Agreement.

I've also seen that Startline sent a letter to Mrs E dated 10 April 2022, terminating the agreement. In this letter they advised her that they were looking at "*court proceedings being issued against you [and that] you will be liable for these additional costs incurred.*"

Whilst Mrs E then made a payment arrangement with Startline to bring her account up to date, Startline started repossession proceedings on 4 January 2023 because payments under this arrangement hadn't been made. And this incurred the £330 fee.

Based on what I've seen, I'm satisfied that the £330 fee was applied in line with the terms and conditions Mrs E agreed to. And, while the amount of the fee itself wasn't mentioned, Startline also advised Mrs E on 10 April 2022 that repossession proceedings would incur an additional fee.

Given this, I'm satisfied that Startline acted reasonably when applying the repossession fee.

When Mrs E spoke to Startline on 27 January 2023, asking what she still needed to pay to bring her account up to date, she should've been told about the £330 fee. And had she been advised of this, given that she didn't have the funds to pay this outright, I think she would've arranged to pay this in instalments, on top of her normal monthly payments.

When a financial business has done something wrong (as was the case here with Startline failing to advise Mrs S in the call of 27 January 2023 that a £330 fee was also payable) where possible we look to put the customer in the same position they would've been in had the error not happened. And, in this case, the fee would still be payable, and Mrs E would most likely have arranged to pay this in instalments.

As such, and for the reasons already given, I'm satisfied that Startline were able to charge this fee, and I won't be asking them to waive this. Instead, I would expect them to arrange an affordable repayment plan with Mrs E, while taking into consideration the FCA requirements to treat customers in financial difficulties with forbearance and due consideration.

However, it's still the case that Startline tried to collect £330 more from Mrs S than she was expecting, and that this would've caused her some shock and upset. But I also need to consider that this payment wasn't collected, and Mrs E wasn't caused any additional financial hardship as a result.

Startline have already offered Mrs E £75 for the trouble and upset caused by what had happened, which is in line with what I would've directed had no offer been made. So, I won't be asking Startline to increase their offer, and it's now for Mrs E to decide whether to accept it.

My final decision

For the reasons explained, I don't uphold Mrs E's complaint about Startline Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 25 October 2023.

Andrew Burford
Ombudsman