

The complaint

Mr A complains that PSA Finance UK Limited (PSA) didn't treat him fairly when he was in financial difficulty, and unfairly terminated his agreement.

What happened

Mr A entered a hire purchase agreement with PSA in November 2021 to acquire a used car. The agreement ran for 48 months and required Mr A to make a payment of £510.72 each month.

At the end of April 2022, Mr A contacted PSA to tell them he'd be going overseas for medical treatment, and so wouldn't be able to maintain his payments for a period of three months. He asked for a payment break.

PSA said they told Mr A they couldn't offer a payment break, but they referred his case to a specialist team to review his options.

The payment due on 15 April 2022 wasn't made, and PSA sent Mr A a letter on 5 May 2022 to set out that he'd missed this payment. The payment due on 15 May 2022 wasn't made, and PSA sent Mr A a default notice on 17 May 2022 for arrears of £1,021.44.

Mr A called PSA on 23 May 2022 and confirmed that he'd be out of the country for treatment. He asked for a payment break. PSA told Mr A they couldn't offer a payment break. They said they might be able to come to a payment arrangement, but this would require an assessment of Mr A's income and expenditure (I&E) before an arrangement could be put in place. Mr A said his I&E wouldn't be accurate until he returned to the country and went back to work.

Mr A said that PSA agreed to put his account on hold until he'd returned to work and could complete the I&E and enter a repayment arrangement. Mr A said he told PSA that he didn't want the agreement to go into default and offered to return the car but was told to call PSA once he'd returned to the country.

PSA said they asked Mr A for the date that he intended to return to work, and he agreed that he would send this. But, as no further contact was received and attempts at contacting Mr A failed, the arrears on the agreement continued to build.

PSA tried to contact Mr A about his arrears a number of times and ultimately terminated his agreement on 7 July 2022.

Mr A complained to PSA in July 2022 about the termination. He said he was told the account was on hold, and so was surprised that the agreement was terminated.

PSA sent Mr A their final response to his complaint in July 2022. They said they were waiting for Mr A to confirm his return-to-work date, and they issued ten notices asking him to contact them, so it was reasonable to say that the agreement was no longer affordable for Mr A, and so they terminated it fairly. They didn't uphold Mr A's complaint.

Unhappy with their response, Mr A brought his complaint to this service for investigation. He said PSA gave him advice that was inconsistent with their actions, and they shouldn't have terminated the agreement. Mr A would like the balance he's been asked to pay written off, and adverse information removed from his credit file, along with compensation for the distress and inconvenience caused.

Our investigator gave his view that PSA were waiting for information from Mr A, and when this wasn't received, they tried to contact him a number of times, so he thought PSA had acted fairly when terminating Mr A's agreement, particularly considering they have a duty to ensure arrears don't become unmanageable.

Mr A didn't agree. He said he told PSA he'd be going overseas and wouldn't be able to pay, he was told he could provide information when he returned to the country, and the agreement was unfairly terminated when the account should have been on hold.

Mr A said he'd offered to return the car before he went overseas to avoid a default on his credit file, but this was refused. Mr A said PSA made no meaningful attempts to contact him when they knew he wouldn't be at his home address and would be recovering from medical treatment.

As an agreement can't be reached, the case has been passed to me for a 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.

Mr A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. In considering what I believe to be fair and reasonable in all the circumstances, I'm required take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

The agreement requires Mr A to make a payment in full and on time each month. There are no provisions in the agreement for payment breaks or other alterations to the payment schedule, so whilst I understand that Mr A was due to leave the country for medical reasons, and a period of recovery, I'm satisfied that PSA acted in line with the agreement when they told Mr A that they couldn't offer him a payment break.

In not making his payment in April 2022, Mr A breached the terms of the agreement, and his account fell into arrears. Mr A went on to miss his May 2022 payment, putting his account further into arrears and PSA issued a default notice to Mr A.

In its *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*, the Information Commissioner's Office ("ICO") says in relation to payment arrangements, a default would not normally be registered unless the terms of a payment arrangement are broken. I consider this to be representative of good industry practice. And as a minimum would expect a lender to act in accordance with these principles when deciding whether to default a consumer's agreement.

In this case, I think it was appropriate for PSA to report a default to Mr A's agreement as he broke the terms of his payment arrangement. And so, PSA was entitled to register that the agreement had defaulted as per the ICO guidance.

The Consumer Credit Act 1974 (CCA) sets out in section 87(1) that a default notice is necessary before the creditor is entitled to terminate the agreement or recover the goods.

Section 88 of the CCA sets out that the default notice must:

- *"Specify the nature of the alleged breach*
- *If the breach is capable of remedy what action is required to remedy it and the date before which that action is to be taken*
- *If the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be repaid."*

I'm satisfied that the default notice that PSA issued was in line with the CCA requirements.

Where its customers are facing financial difficulty, PSA have a responsibility to treat them with due consideration and forbearance. I can see that PSA wrote to Mr A on at least two occasions and tried to call, text and email him a number of times, asking him to contact them in April and May 2022 when his account was in arrears.

I can see that Mr A asked for a payment break when he spoke to PSA in May 2022. He explained he'd be out of the country for some time. PSA explained this wouldn't be possible. PSA offered to hold the account, which would mean that Mr A would still accrue arrears on the account, and to arrange a payment plan to pay these arrears when he returned to the country. They also offered to restructure the agreement so that Mr A could repay the arrears. But they said they needed to complete an I&E in order to make sure that any restructuring or payment arrangement was affordable for Mr A.

Based on the evidence I have; I'm persuaded that PSA attempted to treat Mr A with due consideration and forbearance. Part of treating consumers with forbearance is ensuring that arrears don't build to unsustainable levels, and that debt can be repaid sustainably. So, I'm persuaded that it was reasonable for PSA to ask for Mr A's expected return to work date and an I&E before they were able to come to an affordable arrangement for him.

When this wasn't received, and another payment was missed after the default notice expired, PSA tried to contact Mr A a number of times by text, email and post. They didn't hear from him, and so the agreement was terminated in July 2022.

I do understand that Mr A was harder to reach because he was out of the country, and that PSA were aware of this. Taking into account the options provided to Mr A, and that he hadn't given PSA the information they needed in order to enter a payment arrangement for the arrears, alongside PSA's obligation to ensure that the arrears don't become unmanageable, I'm satisfied that the termination was completed in line with the terms of the agreement, and so I'm not asking PSA to do anything more.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 September 2023.

Zoe Merriman

Ombudsman