

The complaint

Ms R complains RCI Financial Services Limited trading as Nissan Financial Services (RCI) unfairly terminated her car finance agreement.

What happened

In December 2022, Ms R entered into a 49 month personal contract purchase (PCP) agreement for a new car. The car's cash price was £18,580. The monthly payments were around £280 with a final optional payment of around £7,720. The total amount payable under the agreement was over £22,300.

In February 2023, Ms R contacted RCI to say she was experiencing financial difficulty and was unable to pay the monthly instalments. She asked for a payment holiday but this was declined by RCI. However they said they could set up an arrangement to pay but they needed more information about her financial circumstances. This information wasn't received by RCI.

By May 2023, the account had fallen into the equivalent of three months arrears (around £860) so RCI issued a default notice. As the notice wasn't satisfied in full, RCI terminated the agreement in June 2023 and started proceedings to take back the car. Ms R complained, she explained she had lost her job and suffered bereavement but she was now in the position to resume making payments.

RCI said they had made several attempts to contact Ms R to discuss the arrears on the account and they were waiting on information from her to complete an affordability assessment but to no success. They also said they had outlined exit options and suggested Ms R part exchange the car for one that was more affordable. They concluded as the default notice wasn't satisfied, they had followed their internal process to end the agreement. They said if Ms R wanted to keep the car, she needed to pay the full balance otherwise she would need to return the car and it will be sold at auction. Thereafter, the proceeds will be put towards the outstanding balance and she would be liable for any shortfall.

Unhappy with their response, Ms R referred the complaint to our service. Our investigator recommended the case wasn't upheld. She said RCI had acted fairly and had made several attempts to assist Ms R. She concluded given the amount of the arrears and the unsatisfied default notice, RCI didn't do anything wrong by terminating the agreement.

Ms R disagreed and maintained her position. She commented she had been communicating with RCI but she received no assistance from them. She said she had resumed the monthly payments and was willing and able to pay the arrears. She said the situation had negatively impacted her credit file and she needed the car for her employment.

As an agreement couldn't be reached, the complaint has been referred to me to decide.

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 decided not to uphold Ms R's complaint. I will explain why.

In instances of financial difficulty, I expect financial businesses such as RCI to treat their consumers with forbearance and due consideration as outlined in the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC). There's not a defined list as to what supportive measures should be applied but it may include accepting reduced payments, waiving interest, setting up a payment plan, applying a payment deferral, etc.

In this case, Ms R initially contacted RCI in February 2023 to say she was struggling financially and she asked for a payment holiday. They said they couldn't offer one due to the level of arrears but they offered to set up a payment plan. I know Ms R disputes receiving this correspondence but I've seen a copy of the same and I'm satisfied it was sent to the same email address that we hold on our system.

I can see RCI said in order to set up a payment plan they needed to know more about her financial circumstances. They asked her to complete some information online and provide her bank statements (the link was provided). I consider this a fair course of action as this information would be used to determine what Ms R could afford to set up a payment plan. However there is no evidence Ms R provided this information as RCI had requested. Instead she responded to ask for a payment holiday. But as stated above, they had already told her this wouldn't be possible. I find the payment plan was a fair alternative option in RCI's attempts to provide support during her time of financial hardship.

Thereafter based on RCI's contact notes, it's evident they tried to contact Ms R by calls, letters and emails to discuss the agreement further but they were unable to speak to her. This demonstrates they were trying to proactively engage with her but she failed to provide them with the information required. Therefore as the arrears continued to increase, I find it was reasonable for them to send correspondence outlining their intentions to start default proceedings. From reading the default notice, it was clear they would take further action should the arrears not be paid. They also outlined the exit options including voluntary termination or selling the car and they provided the amount to settle the agreement in full. Based on this notice, I'm satisfied it was made clear to Ms R that she needed to take action. In response, she asked for the arrears to be added to the monthly instalments but without having an understanding of her financial circumstances and whether she could afford this, I can understand why RCI wasn't willing to consider this.

I note Ms R questions whether it's normal practice for a business to take such action when the account is a few months in arrears. To answer her question, such course of action is common and widely accepted. Industry guidance published by the Information Commissioner's Office says where a consumer is at least three months behind in payments,

a default may be registered. It goes on to say it would expect a default to be registered by the time it's six months in arrears. The terms of Mrs R's agreement also make it clear what may happen if payments aren't met.

In this case, by the time the default notice was issued in May 2023, the agreement was at least three months in arrears (around £860) so in line with the above, I can't say RCI did anything wrong by instigating such proceedings.

I've also taken into account that the agreement had only started a few months before Ms R started struggling financially. So with such limited payment history to rely on, I can understand why RCI had concerns about her ability to pay and why they didn't want the arrears to accumulate as that would make matters worse for her.

Before the deadline of the default notice, I can see Ms R contacts RCI outlining that she can get back on track and make additional payments to clear the arrears. From my understanding, she also made a payment on that day, presumably to demonstrate her willingness and ability to do so.

Ms R has provided a copy of her bank statements around the time of the default. Having carefully reviewed them, I'm not satisfied she was in the financial position to resume paying the contractual payments nor the arrears as she alleged. I say this because I can see her bank account was in an arranged overdraft and remained so for at least a couple of months which would suggest she was still struggling financially. In light of the same, I'm not convinced she was in the financial position to get the account back on track in a reasonable period of time. I appreciate her comments that she is now working and able to meet the contractual payments but I need to consider the circumstances at the time of the default notice.

As the default notice wasn't satisfied by the deadline nor a payment plan in place, RCI proceeded to default the account and terminate the agreement. Given the circumstances, I consider it was reasonable for them to do so. I can't agree with Ms R's comments that the agreement was terminated due to an angry customer service agent that she spoke to. Based on what's happened, I'm satisfied the agreement was terminated due to the account being significantly in arrears. I know Ms R has made repeated requests for RCI to reinstate the agreement stating she can afford the payments. But as the agreement has formally ended, RCI are not willing for this to happen and I must make it clear they are not obliged to do so.

Now the agreement has been terminated, RCI are entitled to demand the return of the car. If this isn't voluntarily surrendered by Ms R, they are permitted to make efforts to retrieve it and charge her for the same (recovery agent fees). RCI has confirmed once the car is returned, they will sell it at auction and the net proceeds will be used to reduce the overall balance that Ms R owes and she will be liable for any shortfall. This is in line with what I would expect in such circumstances,

I'm aware Ms R is also unhappy about the impact this situation is having on her credit file and her ability to obtain credit elsewhere. While I empathise with the situation she finds herself in, RCI has an obligation to report fair and accurate information to credit reference agencies. Therefore if there are missed payments, late payments or the account is

defaulted, this will be reported so I won't be asking RCI to remove it as that's a fair reflection of how this account was managed.

Other

While this complaint has been at our service, Ms R has told us she has concerns about the sale of this agreement including the amount the car was sold for. As that particular aspect wasn't raised at the time of this complaint, I won't comment on it. If Ms R wishes to pursue that aspect, she will need to complain to RCI and allow them time to investigate it.

Summary

Taking everything into account, I'm satisfied RCI treated Ms R fairly during her time of financial hardship. They made attempts to discuss the account, find out about her financial circumstances and when that wasn't successful, they initiated default proceedings. As the default notice wasn't satisfied, they proceeded to terminate the agreement which the terms of the agreement allows them to do so. I won't be asking RCI to do anything further to resolve this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Ms R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 14 February 2024.

Simona Reese
Ombudsman