

## **complaint**

Mrs R has complained that FirstRand Bank Limited unfairly recorded a default against her credit file, and repossessed her car.

## **background**

Mrs R entered into a hire purchase agreement for a car in February 2014. She paid a £600 deposit and FirstRand provided the remaining finance of £5,100. This was to be repaid in 48 monthly instalments of £148.43.

Everything went as it should until 3 December 2014, when Mrs R missed a payment. FirstRand issued a default notice on 12 December. As Mrs R didn't pay the arrears, the default was recorded on her credit file on 30 December.

Mrs R contacted FirstRand on a number of occasions to explain her circumstances and try to agree a repayment schedule. This was unsuccessful, and FirstRand repossessed the car in March 2015 and sold it at auction. This left an outstanding balance of £2,508.52, which was passed to FirstRand's recoveries department. Mrs R is being pursued for this debt.

Our adjudicator recommended that the complaint should be upheld, as he felt FirstRand had been unfair to Mrs R. As FirstRand disagreed, the complaint has been passed to me for my final decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Unfortunately, Mrs R fell ill and was having medical treatment. She understood that she'd be back at work in around three months. But this meant she was only receiving statutory sick pay, which is why she couldn't make the December payment.

Mrs R first spoke to FirstRand about this on 26 November. There was then another call on 12 December and Mrs R explained her situation and offered a token payment of £20. On this call, Mrs R was unable to advise how long she'd be off sick for, as she was due to discuss this with the doctor on 15 December. Following this appointment, on 22 December, she told FirstRand that her sickness was expected to be short-term and she should be back at work by the end of January. This shows to me that Mrs R was maintaining regular contact with FirstRand to give it updates, and was taking her financial commitment seriously.

There was then a further call on 3 January 2015, where Mrs R confirmed she expected to be back at work by the thirteenth. She also made a further payment of £50. FirstRand has said that on this call Mrs R agreed to pay back all of the arrears during January. I can't be certain of this, but as Mrs R had previously said she wouldn't be paid until the last day of January, I'd be surprised if she'd committed to this. In any event, it shows to me that Mrs R was proactively addressing the issue by advising FirstRand about her return to work, and paying the £50.

There was then another call on 16 January. It was on this call that FirstRand discussed repossessing the car. Mrs R explained she needed it for work. I feel FirstRand's attitude on this call was overly forceful and that Mrs R felt very much pushed into a corner, resulting in

her agreeing to make a £225.59 payment. As only two instalments had been missed at this point, and token payments made, I feel FirstRand was heavy-handed in its approach. I think it could have responded far more positively than it did.

At this point, Mrs R's plan was that the full monthly repayments would resume in the February, and she offered an extra £20 a month from 3 February onwards, so she could pay back the arrears. I consider that this was a sensible and reasonable proposal. Unfortunately, FirstRand wouldn't agree to it. She then offered an extra £40 a month, with any extra payments if she could afford them. Again, FirstRand refused to accept this offer, which I feel was unreasonable of it. This is because it was clear that Mrs R's financial problems were short lived, and she was being proactive and reasonable.

During this call, Mrs R felt she had no choice but to agree to the £225.59 payment I've referred to above. This was to be before the end of January. I cannot see why FirstRand thought this was fair, given that Mrs R had already explained she wouldn't have received her salary by then. It was therefore somewhat inevitable that this payment would fail.

FirstRand then repossessed the car. Having done so, it offered a 20% reduction on the outstanding balance on 30 March.

Mrs R was able to return to work in the March, so repayments could have started again in full then. This was slightly longer off work than anticipated, but not by much, and Mrs R kept FirstRand fully informed throughout. Unfortunately, the car had already been repossessed.

In summary, I feel that it was unfair of FirstRand to have recorded the default as soon as it did. I also think it was unreasonable to reject what I consider to have been reasonable repayment offers, particularly given the temporary nature of Mrs R's financial difficulties. I do not think it's actions were positive or sympathetic.

Because of this, I agree that the adjudicator's settlement proposal, is fair overall to settle the dispute. Accordingly, FirstRand should write off the remaining balance in full, and cease all collection activity. It should also refund half of the deposit. Like the adjudicator, I think it fair for it to keep the other half, given that Mrs R had use of the car for around a year.

I also agree that the default should be removed from Mrs R's credit file. That said, it is reasonable for records to reflect the other (correct) account details, such as the arrears, until the car was repossessed. As I am treating the account as 'settled' at that point, this should be reflected on the credit file.

I turn now to the distress this matter has caused Mrs R. It's clear to me that she was ill and was doing all she could to meet her financial obligations and keep FirstRand fully informed throughout. As explained, I feel that its behaviour was unreasonable and unhelpful. I do not think it addressed her circumstances positively or sympathetically. This caused Mrs R significant worry at a time when she was already unwell. She then had the car unreasonable repossessed, which not only deprived her of her means of getting to work and earning a salary, but was also upsetting in itself. Because of this, I agree that FirstRand should pay her £300 compensation for the distress and upset caused.

**my final decision**

For the reasons given above, it's my final decision to uphold this complaint. I require FirstRand Bank Limited to:

- a) waive the outstanding debt in its entirety and stop collections activity;
- b) amend Mrs R's credit file to remove the default, and mark the account as 'settled' at the date of repossession; and
- c) pay her £300 for the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 October 2015.

Elspeth Wood  
**ombudsman**