

A reasonable opportunity to pay before repossession

Background

In late 2019 Ms C took out a loan and used her car as security for the loan. Only a couple of months later Ms C experienced financial hardship when a fire damaged her home. Ms C and her family were also impacted by COVID-19. These factors resulted in Ms C falling behind on the repayment of her loan.

The finance company made several attempts to get hold of Ms C but she was no longer staying at the address listed on her loan agreement. The finance company also posted a notice to Ms C's last known address (the notice). This notice explained Ms C had to repay the arrears amount, failing which her car would be repossessed to settle the loan. There was no evidence Ms C had received the notice.

Realising Ms C was no longer living at her old address, the financing company made enquiries and when it found Ms C's new address appointed an agent to repossess Ms C's car. Acting on this mandate, the agent repossessed the car despite Ms C offering to settle a portion of the loan within a couple of days.

Next steps

Even though Ms C acknowledged her account was in arrears she said the finance company should not have repossessed her vehicle as it should have given her an opportunity to settle a portion of the loan. She raised a complaint with her finance company and when the complaint was not resolved, it was referred to Financial Dispute Resolution Service. The parties were unable to resolve the dispute at mediation and Ms C asked that her matter be adjudicated.

Adjudication

A Zoom hearing was held where both parties presented evidence and made further submissions. The adjudicator considered these, as well as the provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

The adjudicator found that although the finance company was entitled to start a process to repossess Ms C's car, its process had to comply with the provisions of the CCCFA. Under the CCCFA a defaulting party should be given an opportunity to remedy any breach and should be informed of the consequences if the arrears are not paid. The adjudicator found the finance company was aware Ms C was living at a new address before it repossessed the car. Because it only served a notice at Ms C's old address, she was never given a chance to remedy the breach. The adjudicator concluded that the financing company breached the provisions of the CCCFA and was therefore not entitled to repossess Ms C's car.

Outcome

The financing company had to return Ms C's car and had to ensure it followed a proper procedure provided for under Part 3A of the CCCFA.