



Specialist Debt Advice Service Spotlight

January 2019 edition

Shelter

Hire Purchase agreements and a debtor's right to terminate

Recently, we have seen an increasing number of creditors refusing a client's right to voluntarily terminate their Hire Purchase (HP) agreement. Their reasons being either, a client has arrears that need to be repaid first or that the client hasn't paid 50% of the agreement. This Spotlight piece addresses why this is incorrect.

Firstly, where a client knows they can no longer afford to maintain their agreement, it is likely to be in their best interest that they terminate the agreement rather than the creditor as this will limit their liability. Where a client exercises their right to terminate, their liability will not exceed 50% of the total HP price (including interest and charges) plus arrears.

Whereas, upon creditor termination, the full balance becomes due and this is only reduced by the proceeds of sale. Where the creditor has to repossess and sell the goods, further costs may be applied.

Details of the right to terminate should be included in all HP agreements, the right itself comes from [s99](#) of the Consumer Credit Act 1974 (CCA 1974). This right can be exercised **any time** before the final payment is due.

It is important to remember, if there is a joint agreement, termination by a single party is binding on joint debtors, in accordance with [s185](#) of the CCA 1974.

How to terminate a HP agreement

If a client wishes to terminate their HP agreement, this must be in writing as per [s189\(1\)](#) CCA 1974. Notice must be given to a person entitled to receive payments under the agreement.

If the client simply returns the goods and does not provide written notice, it will be viewed that the client has voluntarily surrendered the goods and their liability will not be limited under [s100\(1\)](#) CCA 1974.

National Debtline has a useful [template letter](#) your clients can use to terminate their agreement.

Issues with default notices

Please note, if a client receives a default notice, their right to terminate may be lost after expiration of the notice and the full balance becomes due.

From 1st October 2008, where a creditor serves a default notice in relation to a client's HP agreement, this must include a prescribed statement. Within the statement there must be information about the right to terminate as well as the amount that the client would have to pay if they choose to do so.

The confusion comes from *Schedule 2 of the Consumer Credit Regulations 1983* (note the amended version is not available on legislation.gov.uk), at 8A it is stated:

'If the date for final payment has not passed and you wish to end this agreement, you should write to the person to whom you make your payments. [You will need to pay [NOTE 2] if you wish to end this agreement by the date shown and we will be entitled to the return of the goods. You will also be liable for costs if you have not taken reasonable care of the goods.] [NOTE 3].

NOTE 2: creditor to insert the amount to be paid by the debtor calculated in accordance with the provisions of sections 99(2) and 100 of the Act and on the assumption that the debtor terminates the agreement on the date shown in this notice.'

As you can see, the wording used states a client must pay an amount if they wish to end the agreement. This is misleading as the amount entered is the liability owed under s100(1) which is due if the client exercises their right to terminate.

Many creditors are using these statements to argue it is necessary for the client to have paid 50% of the agreement if a client wishes to end the agreement. It was agreed by the Office of Fair Trading (OFT) that this is incorrect and it is only written notice that is required.

If you are assisting a client who is in this situation, we would advise that you raise a complaint pointing out that the wording of both s99 and s100 CCA 1974 does not make termination conditional on paying any sum.

Where the creditor is still refusing the client the right to terminate, a formal complaint should be made with a view to escalating it to the Financial Ombudsman Service.

If you have any issues with the calculation of liability after a client has terminated, please [contact us](#) for further advice.