

FLAC

FLAC sheet on Terminating Hire Purchase Agreements: Update

O'Brien v Permanent TSB Finance (PTSB): Implications for people frustrated in their attempts to end Hire Purchase Agreements

The most recent finding of the Financial Services Ombudsman (FSO) in the case of ***O'Brien v PTSB Finance*** in May 2014 will have implications for people who tried to end their Hire Purchase agreements and return the hired goods (usually a motor vehicle) over the past six years, only to be refused by the provider. However time is of the essence, as the clock is already running for people who may still be in a position to bring similar complaints to the Ombudsman.

Background: The Hire Purchase agreement and first attempt to end it

In May 2008, some six years ago, David O'Brien entered into a 60-month Hire Purchase agreement with PTSB for a motor vehicle. Under the terms of this deal, if he made all the payments, he would own the vehicle at the end of the 5-year period. However, Mr O'Brien wrote to PTSB in November 2010, attempting to end that agreement under the terms of Section 63 of the Consumer Credit Act 1995. This section allows a Hirer to end a Hire Purchase agreement in writing, hand back the goods and pay the Owner the difference between what has already been paid (including any deposit) and half the HP price (the total amount owed including interest and charges).

In Mr O'Brien's case, at the time he tried to end the agreement, he was €681 short of having paid half the HP price. PTSB refused to accept the termination of the agreement and the return of the vehicle unless he paid this money in advance. Mr O'Brien was not in a financial position to pay this amount in one sum. Thus, he had no option but to continue the agreement and so resumed paying the instalments.

The *Gabriel* case and its implications

In July 2011, the High Court decided in the case of ***Gabriel v Financial Services Ombudsman*** (also an appeal brought on Ms Gabriel's behalf by FLAC against a decision of the FSO) that the proper interpretation of Section 63 of the Consumer Credit Act 1995 meant that a Hirer had a right to end a HP agreement in writing and the Owner could not insist on payment up-front of any monies then owed. The Hirer would still have to pay whatever sum was owed, but not as a pre-condition to end the agreement. Crucially, this meant that the Owner would have to accept the return of the vehicle.

In September 2011, having become aware of this decision, Mr O'Brien wrote to end his HP agreement with PTSB a second time. This time PTSB accepted the return of the vehicle. By this point, Mr O'Brien had paid more than half the HP price, but he was in arrears with the payments and between this and an amount levied for alleged damage to the vehicle, he was billed for €847.12 by PTSB when the vehicle was returned. Unable to pay this amount in one lump sum either, an agreement was reached to pay 10 instalments of €84.71.

The complaint to the Financial Services Ombudsman

In October 2011, Mr O'Brien complained to the FSO that PTSB had failed to reimburse him for the ten instalments he had paid under the Hire Purchase agreement between November 2010, when it incorrectly refused to allow him to

end the agreement, and September 2011, when it finally came to an end. He claimed that he should be compensated for PTSB's mistaken interpretation of Section 63 of the Consumer Credit Act 1995, following the High Court ruling in the *Gabriel* case.

In April 2012, the Financial Services Ombudsman dismissed Mr O'Brien's complaint, finding that the decision in the *Gabriel* case "is not retrospective" and that PTSB "cannot be faulted for its behaviour as it was acting in accordance with the then widely accepted interpretation of Section 63 (2) of the Consumer Credit Act 1995".

The High Court appeal and re-investigation by FSO

The following month, in May 2012, Mr O'Brien appealed this decision to the High Court – which is the only avenue of appeal from a decision of the Financial Services Ombudsman. In September 2012, solicitors on behalf of the FSO indicated that it did not intend to contest this appeal, as it was not satisfied that it had taken sufficient account of the decision in the *Gabriel* case in reaching its decision in Mr O'Brien's case. The original Financial Services Ombudsman's finding was quashed and, by order of the High Court, the matter was sent back to the FSO to be considered afresh by a different investigator in that office.

Finally, on 21 May 2014, the Financial Services Ombudsman upheld Mr O'Brien's original complaint from October 2011, finding that in light of the High Court decision in the *Gabriel* case, PTSB was mistaken in not allowing Mr O'Brien to terminate his Hire Purchase agreement in November 2010.

In pursuit of his complaint, Mr O'Brien had sought compensation of €4690 (which equalled the extra 10 instalments of €469 each that he had to pay). The Financial Services Ombudsman awarded Mr O'Brien €3,000 of this amount, as it considered that he had also had the benefit of the use of the vehicle during the ten-month period in question and that he could have terminated the agreement earlier, at the point where he had paid half of the total HP price.

In addition, the Financial Services Ombudsman awarded an additional payment of €500 in recognition of the very long period that had elapsed during which Mr O'Brien had not had access to or the use of the money he used to pay the instalments. Therefore he received a total award of €3,500.

The potential application of this decision to other Hirers

FLAC supported the *Gabriel* appeal in the High Court as a test case, aware that hundreds of hirers were being blocked in their attempts to end their Hire Purchase agreements and return a vehicle that they did not own to the rightful owner. This is a right enshrined in legislation. When Mr O'Brien, aware of the importance of the *Gabriel* decision, attempted to obtain redress and was frustrated by the decision of the Financial Services Ombudsman, FLAC similarly supported his appeal.

One thing is now clear from the revised decision of the Financial Services Ombudsman of May 2014: Any Hirer who can show that she or he tried to end a Hire Purchase agreement in writing under section 63 of the Consumer Credit Act 1995, and who was not allowed to do so by the owner/lender, may have a legitimate right of complaint to the FSO.

It is vital to note, however, that under the legislation establishing the FSO, a consumer is not entitled to bring a complaint if the conduct complained of occurred more than six years before the complaint is made – the so-called 'six-year rule'.

If you were in a similar position to Mr O'Brien, you might wish to complain about the conduct of an Owner/Lender who failed to accept a termination in writing of a Hire Purchase agreement under Section 63 of the Consumer Credit Act 1995. However, at the time of writing – June 2014 – you could in theory only go back as far as a lender's refusal to accept the termination of Hire Purchase agreements from June 2008 onwards. **With every month that passes, this time limit moves forward.**

It is also important to note that in order to be awarded some form of monetary compensation by the Financial Services Ombudsman, you will likely have to show that you **sustained some financial loss as a result**, such as Mr O'Brien did by having to pay an additional ten instalments under his hire purchase agreement.

It is also very important to understand that in order for the Financial Services Ombudsman to deal with your complaint, **you must first have made a complaint to the financial service provider itself** and given it an opportunity to resolve the matter. Under the terms of the Central Bank's Consumer Protection Code, the provider must attempt to resolve your complaint within 40 business days. If the provider does not meet this deadline, or if you are not satisfied with its decision, you may refer the matter on to the Financial Services Ombudsman. You can get further information on the relevant procedures at www.financialombudsman.ie.

FLAC recommends that any complaints, whether to the provider or to the Financial Services Ombudsman or both, be **made by registered post**. You should keep copies of all documents and letters in an organised file and avoid phone contact with the provider as much as possible. If it is necessary to make any phone calls in relation to your case, you should note the time, date and content of the call and always look for matters to be followed up in writing.

- You can read more about *Gabriel & Anor -v- Financial Services Ombudsman* [2011] IEHC 318 at <http://bit.ly/GabrielvFSO>
- You can read the full text of the decision in *O'Brien v Permanent TSB Finance* at <http://bit.ly/OBvPTSB>

For more information in relation to the above, please contact the FLAC information and referral line at lo-call 1890 350 250. You can also visit your local FLAC advice centre for a free consultation with a volunteer lawyer face to face – details of your nearest centre are at www.flac.ie/help