



THE UK INSOLVENCY HELPLINE

HOW TO DEAL WITH HIRE PURCHASE DEBT

F A C T S H E E T N O 16

WHAT IS HIRE PURCHASE/ CONDITIONAL SALE?

Nowadays Hire Purchase and Conditional Sale agreements usually relate to cars although they are sometimes seen for furniture and white goods. They are different from ordinary credit agreements because under Hire Purchase and Conditional Sale agreements you do not own the goods until you have paid off the agreement.

This means you cannot sell the goods yourself without the creditor's written permission. If you sell the goods without permission, it can be a criminal offence.

Also, with Hire Purchase and Conditional Sale agreements, if you do not keep up with the payments it is possible for a creditor to repossess the goods. With ordinary credit agreements, the goods you buy belong to you from the time you take out the credit. The lender cannot take the goods back. They can only ask you to pay the money you owe under the agreement.

If you are not sure what type of agreement you have, check your contract. If it is a Hire Purchase/Conditional Sale type agreement it will look like the example in *Appendix II*. ☎
Phone us for advice.

WHAT IF I CANNOT AFFORD TO PAY?

If you fall behind with your payments on a Hire Purchase or Conditional Sale agreement, the creditor may be able to repossess the goods. Look at your agreement. There will be a box "*Repossession: Your Rights*" telling you how much you need to have paid to stop the creditor taking the goods back without a court order (or your consent). This should be a third of the total amount payable under the agreement.

If you have paid a **third or more** of the total amount payable, the goods become "protected goods" and the creditor must go to court for an order for the goods to be returned unless you consent to the repossession. They cannot just come round and remove them ("snatch them back").

WARNING: If you want to work out if you have paid a third or more remember to include any deposit or part exchange as well as the instalments that you have paid.

If a creditor "snatches back" goods without a court order and without your consent where a third or more has been paid, you are entitled to a refund of all the money you have paid under the agreement.

Also, even if you have not paid more than a third of the total amount payable under the agreement, the creditor will need an order from the court, or your consent, to remove the goods from "any premises" they are on.

“Any premises,” is not defined but includes your garage or drive but **not** the roadside. If your car is parked on the road (and you have not paid a third) then it is at risk of being “snatched back”. The position of car parks is not clear.

WHAT IS THE PROCEDURE IF THE CREDITOR HAS TO GO TO COURT BEFORE THEY CAN GET THE GOODS BACK?

There is still a chance that you can keep hold of the goods as the court has the power to agree to this as long as you can pay the debt back in reasonable instalments.

If you have paid a **third or more of the amount payable** under the agreement or the goods are kept on your premises, and you do not consent to their repossession, the creditor will ask the court to send you a claim form asking for the goods to be returned. This is called an application for a "Return Order". Notice of a hearing date with a district judge is included. This hearing should be in your local county court.

There will be a form (N9C) with the claim that you should fill in and send back to the court within 14 days. You **must** fill this in if you want the court to suspend the Return of Goods Order and allow you to keep the goods. You need to offer to pay the debt back in monthly instalments you can afford. **Especially where you really need to keep the goods, it is important to treat this debt as a priority over ordinary credit debts and offer as much as you can.**

Send the form back to the court, **not** the creditor. The court will send a copy of your form to the creditor. If the creditor accepts the offer the hearing will be

cancelled. If the creditor does not accept the offer the hearing will go ahead..

You must attend the hearing. The court will decide at the hearing whether they will suspend the Return Order and what monthly instalments you should pay from then on. If you do not fill in the admission form there will be a hearing anyway. If you don't go to the hearing the court will probably grant the creditor an order telling you to return the goods. If the court has already made an Return Order and you still wish to keep the goods, it is possible to apply for the order to be suspended. ☎ Phone us for advice.

WHAT IF I HAVE PAID LESS THAN A THIRD AND THE CREDITOR WANTS THE GOODS BACK?

Where you have not paid a third of the total amount payable under the agreement and if you want to keep the goods, you should ask the creditor to agree to a payment arrangement with you. The creditor is most likely to accept if you can afford the full monthly instalments plus something towards the arrears.

If you can't make the full payments, the creditor may agree to reduce the payments, but usually by a small amount and only for a short time. In certain circumstances you may be able to go to court and ask to pay less than the full monthly instalment and extend the length of the agreement.

This is called a “Time Order”. We have a factsheet we can send you. 📞 **Phone us for advice.**

The court may be willing to make a Time Order for a specific period if you have temporary financial difficulties. They may make a Time Order even if your financial problems are long term. However, if you have a drop in your income that is permanent you may no longer be able to afford to make more than token payments to the lender. If this is the case then you may have to decide whether you can realistically afford to keep the goods any more. If you decide that you cannot afford the goods you need to decide the best way of ending the agreement.

If you want advice about the options you have 📞 phone us for advice.

HOW MUCH WILL I OWE IF THE AGREEMENT ENDS?

If you have to decide whether to end a Hire Purchase or Conditional Sale agreement there are two options:

- terminate and end the agreement, and return the goods voluntarily
- or*
- let the creditor terminate and end your agreement and repossess the goods.

There can be a difference in the amount you end up owing depending upon how the agreement is ended.

YOU END THE AGREEMENT

You have the right to terminate and end your agreement under **Section 99 of the Consumer Credit Act 1974**

at any time before your last instalment is due, although you will have lost the right to terminate your agreement if the creditor has already terminated it or if the full balance of the agreement has become payable.

If you decide to terminate your agreement voluntarily and hand back the goods to the creditor, you should only have to pay up to **half** of the total amount payable under the agreement, **minus** sums that you have paid and sums that are due. Sums that you have paid include any deposit plus the instalments that you have paid: sums due are any arrears/missed payments due at the time of termination.

The one half or 50% figure is stated on the agreement in the box headed “**Termination: Your Rights**”.

You will then also owe any arrears (missed payments) plus damages if you have failed to take reasonable care of the goods (over and above normal wear and tear). The creditor might argue that there will be an extra charge for damage or unusual wear and tear. It is important to look at any charges to see if they are reasonable. See the example in *Appendix 1*.

It is very important that you tell your creditor **in writing** that you are terminating and ending your agreement. If you do not terminate in writing the creditor will not treat it as a voluntary termination and you will not be able to benefit from the 50% limit on your liability. Keep a copy of the letter of termination in case you need proof of this later. We have included a sample letter in *Appendix III*, which you may want to adapt and to send to your creditor when terminating your agreement.

Warning: You may have a default notice sent to you by the creditor because you are behind with the payments on your agreement. Once the time has run out on the default notice this may mean you will have lost the right to end the agreement voluntarily and return the goods yourself. It depends upon your agreement. Your creditor may have called in or “terminated” the agreement when the default notice runs out. Some agreements say another notice to terminate the agreement has to be sent to you after the default notice has run out. ☎ Phone us for advice.

Warning: You do not need to have paid the “50%” to be able to terminate your agreement although some creditors say you do. All that is necessary is for you to give notice to the creditor in writing that you are terminating the agreement.

Also, where an Hire Purchase agreement contains a separate subsidiary agreement for insurance products (e.g. for payment protection insurance and/or a guarantee or warranty), it is not necessary to pay off this agreement before terminating the Hire Purchase agreement.

However, terminating/ending your Hire Purchase agreement does **not** terminate a subsidiary insurance agreement. You will remain liable to pay it.

Some creditors try to charge you for collecting the goods after the agreement has been terminated. It appears that this is not allowed under the Consumer Credit Act. If asked to pay an additional charge, you can complain to your Trading Standards Department or ☎ **phone us for advice.** Your agreement may say that you have to return the goods to your original supplier or somewhere similar. You should not be asked to return the goods further away than is reasonable on the grounds of cost and distance.

THE CREDITOR ENDS THE AGREEMENT

If you fall behind on the agreement, the creditor can terminate the agreement in writing. They must send you a "default notice" under the Consumer Credit Act 1974. They will then order you to return the goods. The default notice tells you what payments are outstanding and gives you a date by which to make up the arrears. If you cannot pay the arrears within the time specified, the whole balance may then automatically become payable and the agreement terminated. However, some agreements require notice to be sent to you by the creditor **before** the agreement is terminated.

Where a creditor terminates an agreement and repossesses the Hire Purchase goods you will usually have to pay the **full** amount owed on the original Hire Purchase agreement, **minus** what you have paid and **minus** the amount the creditor gets back from selling the goods. The “*option to purchase fee*” is also deducted. The example in *Appendix I* may be helpful.

WHAT HAPPENS ONCE THE GOODS HAVE BEEN RETURNED?

Once the goods have gone back to the creditor, they can try to recover any balance still owed by you. You can treat the debt as an ordinary credit debt and make an offer of payment using the information pack and your personal budget. If you have not received a self-help information pack “Dealing with your Debts” ☎ **phone us for advice.** If the creditor does not accept your offer, they can sue you in the county court for the balance. We have a factsheet called "What if a Creditor Refuses my Offer of Payment?" which has a set of sample letters that may help. ☎ **Phone us for advice.**

If you dispute the balance the creditor says you owe, then it is important to write to the creditor and tell them. You may have to put a defence in when they send you the county court claim form.

If you put in a defence, there will be a hearing at the county court where the district judge will make the decision about how much you owe. They may decide that you owe less than the creditor has claimed. You will then have a county court judgment which you can offer to pay in instalments that you can afford.

Also the creditor may work out the amount you owe using a different calculation to those shown in *Appendix I*. ☎ Phone us for advice if you want to dispute the balance.

The Office of Fair Trading agrees with this way of working out the debt owed but creditors often dispute it.

If you have a Hire Purchase or Conditional Sale agreement and you are not sure what to, ☎ phone us for advice. It would be helpful if you have your credit agreement and any default notice with you when you call.

REMEMBER: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone: 0800 074 6918

Website: www.insolvencyhelpline.org

© Copyright Money Advice Trust (updated July 2005)

Whilst we endeavour to keep our factsheets as up to date as possible, The UK Insolvency Helpline cannot be held responsible for changes in legislation or for developments in case law since this edition of the factsheet was issued.

APPENDIX I

EXAMPLE AGREEMENT HOW THE AMOUNT YOU OWE CAN DIFFER

| | |
|--|--------|
| Total amount payable under the HP agreement | £4,000 |
| Amount already paid (deposit + instalments) | £1,600 |
| Arrears ("sums due") | £200 |
| Damages for failure to take reasonable care of goods | £250 |
| Value/sale proceeds of goods | £900 |
| "Option to Purchase" fee | £5 |

WHERE YOU TERMINATE/END THE AGREEMENT

| | | |
|-------------------------|-----------|--------------------|
| 50% of amount repayable | | £2,000 |
| LESS | | |
| | Sums paid | £1,600 |
| | Sums due | <u>£200</u> |
| | = | £200 |
| PLUS | Arrears | £200 |
| | Damages | £250 |
| TOTAL LIABILITY | | <u>£650</u> |

CREDITOR ENDS THE AGREEMENT

| | | |
|---|--------------------------|----------------------|
| Total amount payable under the HP agreement | £4,000 | |
| LESS | | |
| | Amount already paid | £1,600 |
| | Sale proceeds | £900 |
| | "Option to purchase" fee | £5 |
| YOU WILL OWE | | <u>£1,495</u> |

APPENDIX II

Company Name: _____

Agreement No: _____

Plan Assess Purchase

Scheme No: _____

HIRE PURCHASE AGREEMENT REGULATED BY THE CONSUMER CREDIT ACT 1974

Between: the Customer named below ('you') and
office is at _____

Limited Company (including its successors and assigns) ('us') whose registered
England and Wales.

1 NAME AND ADDRESS OF CUSTOMER _____

4 GOODS RETURN OPTION see clause 7 of terms and conditions _____

Mileage: Permitted maximum _____

Mileage reading on delivery of the Goods to you _____

Excess Mileage Charge Rates applicable if the Permitted Maximum is exceeded:

-if the excess miles are 4999 or less pence/excess mile + VAT
- if the excess miles are 5000 or more pence/excess mile + VAT

Other: Goods Collection Charge £ per attendance + VAT
Selling Agency fee £ + VAT
Guaranteed Future Value £ _____

2 DESCRIPTION OF THE GOODS _____

5 FIRST SCHEDULE – relating to the Goods _____

| | | | | | |
|---------------------------------------|--------------------------------|-------|---|----------------------|------------------|
| Total Cash Price of the Goods* | | | | | £ 4400.00 |
| <i>Deduct</i> | - Cash Deposit | (i) | £ | 1000.00 | |
| | - Part Exchange | (ii) | £ | 0.00 | |
| | - Total Deposit | | | [(i) + (ii)] | (A) £ 1000.00 |
| Amount of Credit | | | | | (B) £ 3400.00 |
| <i>Add</i> | - Hire Purchase Charges | (iii) | £ | 2039.84 | |
| | - Acceptance fee § | (iv) | £ | 65.00 | |
| | - Option to Purchase fee* | (v) | £ | 25.00 | |
| | Total Charge for Credit | | | [(iii) + (iv) + (v)] | (C) £ 2129.84 |
| | Repayment Balance | | | {(B) = (C)} | (D) £ 5529.84 |
| | Total Amount Payable | | | [(A) + (B) + (C)] | (E) £ 6529.84 |

*including VAT

§ Our fee for arranging this credit

APR 30.0 %

6 SECOND SCHEDULE _____

| | | | | |
|-----------------------------------|------------------|-----|---|---------|
| Cost of Payment Protection Plan = | Amount of Credit | (F) | £ | 727.27 |
| Total Charge for Credit | | (G) | £ | 437.61 |
| Total Amount Payable | (F) + (G) | (H) | £ | 1166.88 |

APR 28.4 %

The Repayment Balance [(First Schedule (D))] and the Total Amount Payable [Second Schedule (H)] are payable as shown below under the heading

'7 YOUR REPAYMENTS':

Payment Protection Plan – Type required (if none required enter 'N' ▶ C)

Nominated Person (s) _____

7 YOUR REPAYMENTS _____

1 repayment **one month after the date of this agreement**
46 repayment(s) at 1 monthly intervals starting 1 month(s) thereafter each
1 repayment 48 months after the date of this Agreement (the Final Repayment)

| | | | |
|---|----------------------------------|--------------------------------------|----------------------------------|
| First Schedule repayments of £ 113.33 = (1) of £ 113.33 | (1) Acc. Fee (2) OTP FEE £ 65.00 | Second Schedule repayments + £ 24.31 | Aggregate instalments = £ 202.64 |
| | | + £ 24.31 | = £ 137.64 |
| | of £ 113.33 + (2) £ 25.00 | + £ 24.31 | = £ 162.64 |

TERMINATION: YOUR RIGHTS

You have a right to end this agreement. If you wish to do so, you should write to the person authorised to receive your payments. We will then be entitled to the return of the goods and half the total amount payable under this agreement that is £ 3264.92*
If you have already paid at least this amount plus any overdue instalments you will not have to pay any more, provided that you have taken reasonable care of the goods.
* INSERT ONE HALF OF THE TOTAL AMOUNT PAYABLE (First Schedule (E) above)

REPOSSESSION: YOUR RIGHTS

If you fail to keep to your side of this agreement but you have paid at least one third of the total amount payable under this agreement, that is £ 2176.61* we may not take back the goods against your wishes unless we get a court order. (In Scotland, we may need to get a court order at any time.) If we do take them without your consent or a court order, you have the right to get back all the money you have paid under the agreement.
* INSERT ONE THIRD OF THE TOTAL AMOUNT PAYABLE (First Schedule (E) above)

8 CREDIT OFFERS see clause 1 of Terms and Conditions By signing this Agreement you request us to send you any offers of credit or credit tokens which we think will be of interest to you. You understand that you will be under no obligation to accept any such offers or tokens and that you may at any time ask us to stop sending you such offers. **If you would prefer NOT to receive credit tokens** (which are offers of guaranteed credit) **Please enter an 'X' in this box.**

Witness to the signature of the Customer

Name

Address

This is a Hire-Purchase Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms.

Signature of Customer

Date of Signature

The goods will not become your property until you have made all the payments. You must not sell them before then.

Applicable only if section 4 (GOODS RETURN OPTION) is completed
If we agree to sell the Goods as your agent in accordance with the provisions of clause 7 of the Terms and Conditions the two sentences at the foot of the signature box opposite will not apply.

Signature on our behalf _____ Date of signature on our behalf which is the date of this Agreement 4th April 1997

IMPORTANT NOTE TO CUSTOMERS **This is your second copy of your Agreement. Please keep it in a safe place.**

APPENDIX III

| |
|---|
| TO BE USED WHEN YOU WANT TO TERMINATE A HIRE PURCHASE AGREEMENT WITH YOUR CREDITOR |
|---|

(Your home address)

Date: _____

To: _____

Dear Sir/Madam

VOLUNTARY TERMINATION OF AGREEMENT

Account No: (CAR MAKE/MODEL/REGISTRATION NO)

I am/we are writing to notify you that I am/we are exercising my/our right to terminate the above Agreement under **Section 99 of the Consumer Credit Act 1974.**

I/we understand that I shall/we will be liable to you for the amount calculated under the formula in **Section 100 of the Consumer Credit Act 1974.**

Please send me/us details of how the vehicle can be returned to you.

Please confirm receipt of this request by telephone/fax to me/us on (*your telephone number or fax number*).

Yours faithfully

(Your Signature)

**REMEMBER
TO KEEP A COPY OF LETTERS YOU SEND TO YOUR CREDITORS**