

## The complaint

Miss R complains that Sytner Limited brokered two finance agreements that she couldn't afford.

## What happened

Miss R had acquired a car under a hire purchase agreement. She called Sytner in March 2021 and asked for some assistance as her car service was due soon and she couldn't afford to pay for it. Sytner suggested that they could look to get her out of her existing hire purchase agreement and into a new one, for a brand new car. Sytner explained this would mean Miss R wouldn't have to pay for a car service.

Several phone calls took place between Sytner and Miss R over the next few days to discuss the details of changing over the car and finance agreement. Miss R eventually agreed to part-exchange her existing car and enter into a new hire purchase agreement. However, there was negative equity on her existing hire purchase agreement so Sytner also brokered an additional fixed-sum loan agreement for Miss R to pay off that balance. The total combined monthly payments of the new hire purchase agreement and the fixed-sum loan agreement was £445.57. This was around £20 more expensive each month than what Miss R was paying towards her previous agreement.

Miss R attended the dealership to sign all the paperwork and take possession of the new car. Shortly after she raised a complaint with Sytner and asked to be able to withdraw from the finance and hand the car back. She said that she couldn't afford the new agreements and had explained this to Sytner at the time. She said that she was vulnerable and had asked for a relative to be present before signing the paperwork but Sytner had persuaded her this wasn't necessary.

Sytner didn't agree it had done anything wrong, however, it arranged to cancel the new hire purchase agreement and took back the car. It said that Miss R would need to continue making payments towards the fixed-sum loan agreement as this was the negative equity towards the old finance agreement and would always have been due to be paid. Miss R didn't think this was fair as she no longer had either of the cars and said she couldn't afford to pay the payments of £101.16 towards that agreement anyway.

Our adjudicator recommended the complaint be upheld. She said that Sytner were required to ensure it gave Miss R sufficient information about the new agreements to enable her to work out whether it was affordable to her. Further, she said that Sytner ought to have realised the agreement wasn't affordable to her based on what Miss R had said during some of the phone calls. She acknowledged that Sytner had acted fairly in buying back the new car and settling the hire purchase agreement, but she thought that Sytner should also settle the fixed-sum loan agreement and refund any payments Miss R had made towards it. This was because Sytner should have realised the agreements weren't suitable for her.

Sytner didn't agree. In summary, it said:

- Sytner acknowledged that Miss R is now without a car, but they considered their

actions were already a fair way to resolve the complaint. It said that the adjudicator's proposed remedy would place Miss R in a position of betterment as it will allow her to walk away from the previous agreement without having to pay everything she would have been contractually obliged to otherwise.

- Throughout all of the calls between Sytner and Miss R there was no evidence of a pressured sale.
- While the new financial arrangements were around £20 more expensive per month, no consideration has been given to the reduced running costs of taking out a new car, such as servicing, replacement tyres as well as Miss R having the benefit of a new warranty/breakdown period. The new agreement was also at a lower interest rate than her previous agreement, meaning it was a lower cost for credit.
- Sytner as a broker doesn't have access to information held on Miss R's credit file so it would be unreasonable to use information held there against Sytner when assessing affordability. It would be down to the lender to complete detailed affordability checks. Sytner asked Miss R to confirm she was happy the agreement was affordable to her, which she did.
- Sytner said it did provide Miss R with sufficient information about the agreements and associated risks prior to her entering into them. There were five days from when Miss R completed the demands and needs questionnaire to when she signed for the new finance agreements. It said this demonstrated Miss R had adequate time to assess whether the agreements were affordable and suitable for her.

The complaint has been passed to me for a decision.

### **What I've decided – and why**

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

Sytner has already taken some steps to try to resolve this complaint by settling the new hire purchase agreement and taking back the car. What's left for me to decide is whether it ought to also do something to put things right in relation the fixed-sum loan agreement it brokered for Miss R.

As a regulated credit broker, Sytner was required to follow the rules and guidance set out in the regulator's Consumer Credit Sourcebook ("CONC"). CONC 2.5 and 4.2 are particularly relevant here. These set out the requirements for credit brokers before introducing a consumer to credit.

Amongst other things, Sytner needed to ensure it gave Miss R adequate explanations of the key features, costs and risks associated with the credit in order for her to be able to make an informed choice about whether to enter into the agreements. Further, Sytner needed to take reasonable steps to satisfy itself that the credit agreements were not unsuitable for Miss R's needs and circumstances.

Having considered the circumstances and evidence, I'm not persuaded that Sytner acted fairly in brokering the two new credit agreements for Miss R. I'll explain why.

Before doing so, I note Miss R says she was pressured into taking out both agreements and that Sytner were aware she was vulnerable and ought to have therefore dealt with the sale differently. Having listened to all the calls Miss R had with Sytner I'm not persuaded that any

undue pressure was applied, nor have I seen or heard anything to persuade me that it's more likely than not Sytner knew that Miss R was vulnerable. I therefore don't consider Sytner acted unfairly in relation to these specific points.

The initial contact Miss R had with Sytner didn't involve her asking to enter into a new finance agreement or for any information about finance agreements. Instead, she asked Sytner what help it could offer her given that she wasn't able to afford her upcoming car service. It was Sytner, in response to this request for help with her financial circumstances, that suggested she take out a new credit agreement.

I note Sytner has sought to argue that by entering into a new car finance agreement and by extension a brand new car, it would alleviate Miss R's immediate affordability concerns regarding her upcoming service. This was because a brand new car wouldn't require a service and it was less likely she'd incur other maintenance costs such as having to replace tyres. This is also what Sytner's salesperson told Miss R during one of the calls she had with them.

However, I'm concerned that Sytner feels that a responsible and suitable recommendation to make to a consumer who cannot afford a service costing a few hundred pounds, is to suggest they enter into two finance agreements with a combined total repayable of over £32,000. This seems rather disproportionate to the issue Miss R had presented to Sytner. It might be a wholly different matter if Miss R had asked about finance agreements, but the discussion about finance was entirely instigated and driven by Sytner.

I note that in later phone calls with Sytner and prior to her signing the finance agreements, Miss R told Sytner she was 'skint' and couldn't afford to put down anything as a holding deposit, even the £200 that Sytner initially asked her to contribute. I think this, combined with her concerns about being able to afford the annual service ought to have alerted Sytner to the possibility that entering into two new finance agreements was unlikely to be suitable for Miss R's needs and circumstances. Fundamentally, what she needed was help with paying her car service, not to enter into a new finance agreement for a new car.

I appreciate that Sytner may not have been best placed to offer her any advice about her difficulty in paying her car service. Therefore, the most appropriate course of action ought to have been to tell her that, rather than recommend she take out a significant amount of new credit for something she hadn't asked for or needed, or, at face value, didn't really address Miss R's inability to afford a service.

I accept that Sytner did provide Miss R with sufficient information about the financial arrangements. It set out that her previous agreement would have negative equity, how this would be paid off and the total costs of the new finance arrangements. Miss R also had several days to decide for herself whether this was something she wanted to go ahead with before she eventually signed the finance paperwork.

However, it's clear throughout the calls Miss R had with Sytner that the inducement for her to enter into these new arrangements was the fact that she wouldn't, in the short term, have to find money to pay for an upcoming car service. When Miss R was told the new arrangements were to cost more each month than her current agreement, it's clear she hesitated because she couldn't afford to pay more. While I'm satisfied there wasn't undue pressure applied by Sytner, the finance deal was positioned to her as more financially beneficial to her because she wouldn't have to pay for an upcoming service or replacement tyres on her existing car. Sytner told her that the small increase in monthly payments therefore worked out better for her. On this basis, she agreed to proceed. I don't agree that entering into these agreements would have worked out better for her, was in her best interests, nor do I think it was suitable for her circumstances of which Sytner was aware. It

therefore acted unfairly and unreasonably in brokering the new finance agreements for her.

### **Putting things right**

As I've set out above, the new hire purchase agreement has been settled and the car returned so there is nothing further Sytner needs to do in relation to that agreement. However, the fixed-sum loan agreement wasn't settled by Sytner. Given that I don't think Sytner should have brokered the agreement and it acted unfairly in doing so, I think it should also ensure that it settles that finance agreement too. In addition, it should refund any payments Miss R has already made towards that agreement, adding 8% simple interest per year from the date of each payment to the date of settlement.

Sytner says that this would place Miss R in a position of betterment. I disagree. Miss R no longer has the car that was subject to that negative equity. But for Sytner's actions she would still be in that agreement and have the car. Her paying for negative equity without having a car is not a situation she would ever have been in if Sytner hadn't brokered the agreements. It isn't fair and reasonable that as a result of Sytner's actions Miss R continues to pay towards a car she no longer has access to. She is currently in a worse position than she should be in due to Sytner's actions. By asking Sytner to settle the fixed-sum loan agreement and refund the payments she has already made places Miss R, as close as possible, back in the position she would have been in but for Sytner's actions.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Sytner Limited to:

- Arrange to settle Miss R's fixed-sum loan agreement by paying off any remaining balance.
- Refund all the payments Miss R has made towards the fixed-sum loan agreement, adding 8% simple interest per year from the date of each payment to the date of settlement.

Sytner is required to deduct tax from the interest element of my award. It should provide Miss R with a certificate showing how much tax it has taken off, so she can reclaim that amount, should she be eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 13 June 2022.

Tero Hiltunen  
**Ombudsman**