

## **The complaint**

Mrs H complains that Promas Enterprises Limited unfairly levied a £500 fee when she cancelled a proposed personal contract hire agreement.

## **What happened**

On 14 September 2020 Mrs H placed a personal contract hire order with Lease 4 Less. The order recorded that the expected delivery date of the car was 5 October 2020. The terms of the order included:

*“This Order Form represents a contract for both the supply of the vehicle and the finance element associated with its supply, and only in exceptional circumstances and at the discretion of the company will cancellation of the order of the vehicle be accepted. A cancellation fee of £500.00 will be required. However, you may have certain rights governed by current legislation, to cancel the finance agreement...”*

On 25 September 2020 Mrs H sent an email to Lease4Less saying that she wanted to cancel the order. No personal contract hire agreement had been signed and none was signed. Lease4Less said however that Mrs H would have to pay the cancellation fee of £500 referred to on the Order Form. Mrs H did not think this was fair. The fee was, she said, more than Lease4Less was entitled to charge under section 155 of the Consumer Credit Act 1974.

Lease4Less said that the fee was not a brokerage fee but represented its own costs of the work it had done. It represented the reasonable costs incurred in placing and then cancelling the order.

Mrs H did not accept what Lease4Less said and referred the matter to this service. Our investigator accepted that Lease4Less was entitled to charge a fee but thought that £500 was too high, given the work that had been carried out. She recommended that the fee be reduced by £250 – to which Lease4 Less agreed.

Mrs H did not agree however and asked that an ombudsman review the complaint.

## **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.

The fee of £500 was clearly documented in the personal contract hire order that Mrs H agreed to. And the usual position is that a party who agrees to a contract is bound by its terms.

In some cases, however, that general position is amended by legislation or regulators’ rules. And, as Mrs H has identified, section 155 of the Consumer Credit Act says that, if no credit agreement is entered into, any brokerage fee is limited to £5.00. Lease4Less says that the fee here was not a brokerage fee; that is, it was not a fee for setting up the finance agreement, but a fee for sourcing the car and the work associated with that. I think that is the

correct analysis. The part of the order form dealing with the fee drew a distinction between cancellation of the finance and the legislation that covers that and the cancellation of the order.

The fees (aside from brokerage fees) that Lease4Less could charge were also restricted by the Financial Services (Distance Marketing) Regulations 2004. Under those regulations, Lease4Less could charge for any service it had actually provided before the cancellation, but any charge had to be proportionate when compared to the full value of the contract. The Financial Conduct Authority's Handbook includes similar provisions. The fee of £500 was very much less than the value of the car in this case (£36,200); had the finance agreement been completed, Mrs H would have had to pay over £340 a month for three years.

The investigator took the view that it did not reflect the work that Lease4Less had carried out, and Lease4Less agreed to a reduction. In my view, that is a fair resolution to Mrs H's complaint.

### **Putting things right**

Although Lease4Less has made what I consider to be a fair offer in this case, I will make a formal award so that Mrs H can enforce it, should that be necessary.

### **My final decision**

My final decision is that, to resolve Mrs H's complaint in full, Promas Enterprises Limited should reduce the cancellation to £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 April 2022.

Mike Ingram

**Ombudsman**