

The complaint

N complains that a hire agreement was mis-sold to them by Propel Finance No1 Limited ("Propel")

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint Propel, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

N acquired their phone package through a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

Section 56 of the Consumer Credit Act 1974 (CCA) explains that finance providers are liable for what they say and for what is said by a credit broker before the consumer takes out the credit agreement.

So, if N was persuaded to enter into an agreement by information that was false and if N wouldn't otherwise have entered into the agreement I would think the agreement had been misrepresented to N and that Propel should put things right.

Here, I'm persuaded it's likely there has been a misrepresentation. I don't think the terms of the contract were likely to have been adequately explained to N. I say that because:

- N sought to terminate the contract as soon as they received a hard copy of it, and I think that suggests they were surprised by the details in the contract.
- The FCA's Consumer Credit Sourcebook (CONC) applies to all credit-related regulated activities. CONC 4.2.5R b (iii) says that where the information about the agreement is disclosed in person, as was the case here, the customer should be allowed to take that information away. That wasn't the case here.
- The agreement was signed in person by the owner of the business (Mr N) who has explained he isn't computer literate and communicates solely with pen and paper. I think it's likely that would have been apparent to the broker at the time. There was

therefore an added onus on the business to demonstrate that Mr N understood what he was entering into so he could ensure the agreement was suitable for his needs. Whilst I can see the contracts were supplied I don't think I have evidence that the key aspects of the agreement, that could have an adverse impact, were explained and CONC 4.2.5 (2) says they should have been.

So, I don't think N were given an adequate explanation and I therefore think this agreement has been misrepresented to them.

Putting things right

In these circumstances we'd usually try to put the consumer back in the position they would have been in had the misrepresentation not have taken place. So, the contract will need to be ended as if it hadn't been entered into and Propel will need to refund or waive payments, interest and charges for all periods except where N have had use of the goods (which it doesn't seem they have).

N have clearly been distressed and inconvenienced by these issues. I can see they've been pursued by debt collectors and haven't been able to use their usual telephone number. They've also had to escalate their complaint to this service when I think it could have been resolved earlier. In those circumstances I think Propel should pay N £150 in compensation for the distress and inconvenience caused.

My final decision

For the reasons I've given above I uphold this complaint and tell Propel Finance No1 Limited to:

- Void the contract as if it had never been entered into.
- Buy back the debt if they've sold this on to a third party.
- Waive the amount they've asked N to pay and any associated interest and charges that have been applied for the time that N wasn't using the telecommunications. If there was a period that N has been using the handsets under the contractual terms, I think it's fair that they pay for any use they've had.
- Release N's telephone number back to their previous supplier,
- Refund the administration cost of £100 adding 8% interest per year from the date of payment to the date of settlement.
- Ensure that no adverse credit information regarding this contract has been recorded on Mr N or N's credit file.
- Pay N £150 compensation for the distress and inconvenient caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 4 October 2022.

Phillip McMahon
Ombudsman