

## The complaint

Mr E complains that Big Media Presence Limited t/a Contractcars won't refund the fees he paid after he cancelled his order for a new car.

## What happened

In April 2022, Mr E placed an order for a new car with Contractcars. He signed an order form on 28 April 2022, agreeing to be supplied with a new car under a personal contract hire agreement. The order form recorded that the expected delivery date of the car would be "26 weeks later approximately".

On 20 May 2022, Mr E confirmed he wished to cancel the order. He said that a change in his personal circumstances meant he no longer wanted the car, and he asked Contractcars to refund the £660 in fees he paid it – but it refused to refund any of this.

Mr E complained to Contractcars. He said he'd had very limited interaction with it and keeping his money wasn't the right thing for it to do. And although Contractcars had offered, as a gesture of goodwill, to deal with a future order without charge, Mr E said he was not in a position for the foreseeable future to order another car.

Contractcars rejected Mr E's complaint. It said the terms and conditions on the order form signed by Mr E confirmed that any monies paid were non-refundable in the event of cancellation. It said that this was because the payment was a processing fee for its professional services.

Our investigator looked at this complaint and said he thought it should be upheld. He explained that the Consumer Credit Act 1974 set out what could be charged if an agreement was cancelled before the goods were supplied. He said he thought the quotation and order were a linked transaction to the personal contract hire agreement that Mr E didn't proceed with, and because of this, the maximum that Contractcars can charge for its work is £5.

Contractcars didn't agree so the complaint comes to me to decide. It said the fee reflected the work it had undertaken and the time it had spent on Mr E's behalf. And it said that as its processing fee wasn't part of any credit agreement, it wasn't certain that a complaint about it would fall under this Service's jurisdiction.

## 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good

industry practice at the time. And, in making my decision, I'll also set out the relevant parts of the legislation and regulator's rules that are applicable in this case.

The Perimeter Guidance Manual (PERG) of the Financial Conduct Authority handbook says:

*2.7.7E There are six activities that fall within credit broking. These are:*

*(2) effecting an introduction of an individual who wishes to enter into a consumer hire agreement ...*

I think that's what Contractcars were doing here, and I think the processing fee is a fee associated with processing a credit agreement. Accordingly, I think the activity carried out by Contractcars for which they charged a processing fee was an ancillary activity carried out in relation to their regulated credit broking activities. And this can therefore be considered by this Service.

Section 19 of the CCA says:

*(1) A transaction entered into by the debtor or hirer ... with any other person (the "other party") ... is a linked transaction in relation to the actual or prospective regulated agreement (the "principal agreement") of which it does not form part if –*

*(c) the other party is a person mentioned in subsection (2), and a person so mentioned initiated the transaction by suggesting it to the debtor or hirer ... who enters into it –*

*(i) to induce the creditor or owner to enter into the principal agreement; or  
(ii) for another purpose related to the principal agreement; or  
(iii) where the principal agreement is a restricted-use credit agreement*

*(2) The persons referred to in subsection (1)(c) are –*

*(a) the creditor or owner...;  
(b) a person who, in the negotiation of the transaction, is represented by a credit-broker who is also a negotiator in antecedent negotiations for the principal agreement;  
(c) a person who, at the time of the transaction*

*(3) A linked transaction entered into before the making of the principal agreement has no effect until such time (if any) as that agreement is made.*

Mr E was looking to enter into a personal contract hire agreement with a third-party finance provider, which was to be initiated and arranged by Contractcars. So, under CCA 19, the quotation Mr E signed is a linked transaction to the contract hire agreement. And it has no effect until the contract hire agreement came into force. Which didn't happen.

Contractcars maintains that the processing fee is still payable as this doesn't form part of the credit agreement.

Section 155 of the CCA says payments for credit broking should be refunded if the consumer doesn't enter into the finance agreement within six months. Specifically, it says:

*(1) Subject to subsection 2(a), the excess over £5 of a fee or commission for his services charged by a credit-broker to an individual to whom this subsection applies shall cease to be payable or, as the case may be, shall be recoverable by the*

*individual if the introduction does not result into his entering into a relevant agreement within the six months following the introduction ...*

*(2) Subsection (1) applies to an individual who sought an introduction for the purpose which would have been fulfilled by his entry into –*

*a) a regulated agreement*

I'm in agreement with Contractcars that the processing fee doesn't form part of the credit agreement. But a credit agreement is the regulated contract hire agreement between Mr E and any third-party finance provider – an agreement that wasn't entered into. The processing fee, as confirmed by the quotation, was Contractcars' fee for locating and sourcing the car. So, this is 'a fee or commission for services charged by a credit broker', which, under CCA 155(1) is fully refundable, less £5. So, I'm satisfied that the processing fee, less £5, should be refunded to Mr E.

### **Putting things right**

Mr E did not proceed with a credit agreement. Section 155 is clear that in those circumstances the processing fee, less £5, should be refunded. Mr E has been deprived of that money so, Contractcars should also add interest to the refund from the point at which Mr E signed the cancellation paperwork – the point at which Mr E could've reasonably expected to have had his money returned.

Contractcars should

- refund payments made by Mr E to it, less £5
- apply 8% simple interest to that refund, calculated from the date Mr E cancelled the order to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint and require Big Media Presence Limited t/a Contractcars to pay compensation to Mr E as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 20 February 2023.

Andrew Macnamara  
**Ombudsman**