

The complaint

Mr H complains Shak's Specialist Cars (SSC) mis-sold him a car finance agreement.

What happened

In October 2018, Mr H entered into a 24 month variable rate hire purchase agreement for a used car with a finance provider, who I will refer to as T. The car's cash price was £91,995. Mr H paid a cash deposit of £15,000. He was required to pay monthly repayments of £838 followed by a final payment of £68,000.

When the agreement was coming to an end, Mr H was contacted by T and told he was required to pay the final payment of £68,000. Mr H said he was shocked by this. He discovered it wasn't a personal contract purchase (PCP) agreement, so he had to pay the final payment and keep the car - there was no option to return the car without any further liability.

As Mr H couldn't afford the final payment, T agreed to treat the agreement as a termination. The car was returned in May 2021 and sold for over £60,000. The sales proceeds were offset against the outstanding balance which left a shortfall of £7,481, which Mr H was required to pay to T.

Mr H complained to SSC that they mis-sold him the agreement because he asked for a PCP which included an optional final payment and the ability to hand the car back. SSC said the agreement wasn't mis-sold.

Dissatisfied with their response, Mr H referred the complaint against SSC to our service. Our investigator said SSC wasn't the credit broker, it was another party but Mr H maintained SSC mis-sold him the agreement.

In October 2022, I issued a decision. I said I could consider the complaint point concerning credit broking which is a regulated activity and I was persuaded it was carried out by SSC. However I said I couldn't consider the secondary complaint point regarding the quality of the car.

My provisional decision

In November 2022, issued a provisional decision about the broking of the agreement and my intention to uphold the complaint, I said:

"In this decision I've reviewed the circumstances and considered whether I'm persuaded the agreement was mis-sold as alleged by Mr H. Having done so, I intend to uphold the complaint. I'll explain why.

When reviewing this complaint, I've considered the principles for financial businesses set by the financial regulator, The Financial Conduct Authority (FCA). In part, it says a firm should:

- *Conduct its business with integrity;*

- Conduct its business with due skill, care and diligence;
- Pay regard to the interests of its customers and treat them fairly;
- Communicate information in a way which is clear, fair and not misleading.

I've also taken into account the Consumer Credit Sourcebook. It's a specialist sourcebook for credit related activities which can be found in the FCA's handbook. Section 2.5 of CONC sets out the requirements and expectations on firms when it comes to credit broking. These requirements apply to exempt credit agreements such as this one as defined under section 36A Financial Services and Markets Act 2000 (Regulated Activities) Order 2013 (the RAO). So it's reasonable for me to rely on the same when considering this case.

There are many parts that apply. I won't list them all but I wish to stress a couple which I consider most relevant. Section 2.5.3 of CONC says a firm must:

- *"Where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice..."*
- *"Take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer's needs and circumstances"*

In line with above FCA principles and CONC requirements, as the credit broker, SSC would be expected to act fairly and with due skill and care in providing suitable finance options based on Mr H's needs and circumstances and to communicate them in a clear manner.

I've carefully considered what Mr H has said about his discussions before entering into the agreement. He said he made it clear from the outset that he wanted a PCP agreement. He wanted to pay a deposit, pay fixed monthly instalments, have an annual mileage and be able to give the car back at the end. SSC has provided little information about these initial conversations or what they were told by Mr H that he wanted. All they've said is Mr H initially approached them for a personal finance agreement but they declined to do so.

I wasn't present during these initial conversations so I have to decide what I consider is most likely to have happened. Having done so, I'm persuaded Mr H told SSC that he wanted the ability to give the car back at the end of agreement and he had no intention of owning it amongst other things. His testimony has been consistent from the outset and I find it to be plausible and persuasive. The fact SSC initially provided quotes for two PCP agreements and two hire agreements supports my belief that they were aware he wanted to be able to return the car. I've also seen evidence of conversations via phone between Mr H and SSC where he talks about handing the car back at the end. Although I accept this was after the agreement was entered into, in my opinion it further demonstrates Mr H's belief that this was a PCP agreement and he could hand the car back. In the messages, there is no evidence SSC corrected him about this or reiterated the agreement doesn't allow for that to happen. For these reasons, I'm convinced Mr H made his intentions and needs clear to SSC before entering the agreement, which was he wanted a PCP agreement.

The monthly costs of the initial four quotes ranged from £1,158 to £1,372 but Mr H said these payments wouldn't be affordable. According to him, shortly thereafter, he received a call from SSC to say they had found another finance option where the monthly payments were lower however he needed to act quickly and return the signed agreement. No copy of this call has been provided and given the time that has passed, it's unlikely to be available. But I've seen a copy of SSC's email following that call. Unlike their earlier emails, it didn't include the quote but the agreement itself with instructions on how to complete and return it along with the documents required.

I've reviewed the agreement. At the top, it states it's a 'Variable Rate Hire Purchase Agreement (Non-Regulated)'. It sets out the details of the car and the financial information

such as the car's cash price, cash deposit, the amount to finance, etc. It said there would be 25 monthly payments of £838 followed by a final basic payment of £68,000.

Given Mr H had made it clear he had no intention to own the car at the end, I'm not satisfied SSC acted fairly nor reasonably by suggesting such an agreement. I say this because the final payment wasn't optional, Mr H would be required to pay it meaning he would own the car but this is not what he wanted. As this agreement was significantly different from what Mr H had asked for and not of similar nature as the earlier quotes, I would've expected SSC to have clearly and sufficiently pointed out the differences and key features of this agreement. The most notable one being that the final payment wasn't optional he would have to pay it and he couldn't hand the car back. As there isn't any evidence this happened, I'm not persuaded SSC paid due regard to Mr H's needs and wishes in suggesting this agreement.

Moreover, I would've also expected SSC to have provided an adequate explanation of this type of agreement in a clear and fair manner. This is because it was unregulated rather than a standard car finance agreement that provided certain protection and remedies such as voluntary termination rights. SSC said their sales manager explained the finance requirements, went through the affordability aspects and the differences between regulated and non-regulated agreements with Mr H. Limited evidence has been presented to me but based on the correspondence I've seen including the email following the call there is no mention of such explanations, nor does it reference the agreement's key features. For this reason, I'm not convinced the agreement's features were discussed during the call or in writing via email by SSC.

According to SSC, they explained although the monthly payments were affordable, the final payment would be high and Mr H agreed to proceed. However I haven't been provided with any evidence to support this. I consider this to be important considering the significant size of the final payment (£68,000) and how Mr H would be expected to afford this as there wasn't an option to hand the car back.

Had SSC clearly explained the features of the agreement, most notably the considerable size of the final amount with no option to give back the car, I'm not convinced Mr H would've entered into it. I say this because it would appear the monthly payments and the overall amount required to pay was a key factor in his decision making. He had already said the monthly payments of the three and four year PCP and hire agreement quotes weren't affordable and in those agreements, the car could be returned. Therefore I find it highly unlikely he would agree to pay a final amount of £68,000 at the end of a two year agreement on top of the monthly instalments.

Mr H would be required to pay over £100,000 under this agreement which I consider a significant amount over a relatively short period of time (24 months). I would've expected SSC to have taken reasonable steps to make sure Mr H was aware, understood and had the means to afford not just the monthly payments but also the final payment. However there is no evidence that happened. There is nothing to indicate there were any specific discussions about how Mr H would be able to afford the final payment at the end of the agreement. SSC may argue that the agreement was sent to Mr H, he signed it, initialled each page to confirm he read the terms and conditions and he had the opportunity to ask questions if he was uncertain about anything. While I accept that to be the case and it could be argued Mr H should have been more prudent before entering into the agreement, that doesn't negate SSC's obligations as set out above.

In summary, Mr H wanted a PCP agreement, to pay monthly instalments and to have the ability to give the car back at the end without owning it but that's not the agreement SSC provided. I'm not convinced SSC acted with due skill, care and diligence in presenting this

agreement as it didn't meet Mr H's needs nor did they provide sufficient or clear explanations for him to make an informed choice. Had Mr H been adequately informed, I'm not persuaded he would've entered into the agreement. For the reasons explained above, I can't say SSC acted fairly or in line with FCA's principles and the CONC requirements when they sold this agreement. I agree with Mr H that it was mis-sold.

How to put things right

Having decided the agreement was mis-sold, I must now decide how to put things right. Generally speaking, in such cases we're likely to say the financial business should end the agreement, collect the car and refund the payments less the cost of fair usage.

However in this case, the agreement has already come to an end and Mr H did have use of the car for 24 months. The lender, T, has agreed to take back the car, it was sold but there is a shortfall balance of £7,481 which Mr H owes. From my understanding, he has been paying £50 per week since late March 2020 towards that outstanding balance.

In light of the above, I consider the most fair resolution would be for SSC to cover the cost of the shortfall balance. That means SSC must pay the remaining outstanding amount to T to settle the agreement in full. They will also need to reimburse Mr H for any payments he's already made to T regarding this shortfall balance plus pay 8% simple interest from the date of each payment to the date of settlement. I won't be asking SSC to refund the monthly payments as Mr H had use of the car throughout the duration of the agreement.

I've also thought carefully about the impact this situation has had on Mr H. He's told our service about the worry and upset it has caused by being told he owed a significant amount of money and the agreement wasn't what he wanted. Given the circumstances, I find it's fair for SSC to pay £200 for the trouble and upset caused".

Response to the provisional decision

In response, Mr H largely agreed with the findings but said the following:

- The compensation wasn't enough given the time, effort and stress it has caused and the impact of this situation on his mental health;
- The value of second-hand cars has increased in recent times. Had SSC accepted the return of the car and the value of it had increased, any surplus could've been used towards another car.

SSC disagreed. In summary, they said:

- Mr H was offered a number of financial options, which were tailored to his requested monthly budget. Such options differed in length, deposit and type of agreement;
- Another party was the broker and they provided options of finance products and quotes to allow Mr H to make an informed choice;
- The agreement clearly outlined the charges and the payments. Mr H knew he had to pay the final payment;
- As part of the application, Mr H contacted his accountant who provided a letter which confirmed his ability to pay;
- Mr H is bringing this complaint because SSC were unwilling to come to a private agreement about the funding of the car.

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 thank both parties for their further comments and information which I've carefully considered.

I wish to reiterate that as per my earlier decision, I found SSC was the broker in this agreement, not another party and I provided my reasons as to why. I've already set out the key expectations and responsibilities of SSC being the broker so I won't repeat them again here. I accept a letter was provided by Mr H's accountant and I note the contents of the agreement however that doesn't negate SSC's obligations to clearly explain the features of the agreement, including the requirement to pay the final payment to enable him to make an informed choice. As already explained there is no evidence such conversations or explanations took place. Equally, I remain of the opinion had the features of the agreement been adequately explained, I'm not convinced Mr H would've entered into it.

Turning to Mr H's comments. As this wasn't a PCP agreement, I can't consider what would've happened if the car was returned nor the value of it. I've taken into account the trouble and upset caused by the situation and its impact, but I still find £200 compensation is fair given the circumstances.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr H's complaint.

To put things right, Shak's Specialist Cars must:

- Pay the remaining balance of the outstanding debt owed to T in order to settle the agreement in full;
- Reimburse Mr H for the payments he's paid towards the shortfall balance plus pay 8% simple interest from the date of each payment to the date of settlement;
- Pay £200 compensation to Mr H for the trouble and upset caused.

If Shak's Specialist Cars considers tax should be deducted from the interest part of my award it should provide Mr H with a certificate showing how much it has taken off, so he can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 January 2023.

Simona Charles
Ombudsman