

The complaint

Mr J is unhappy that a car he ordered through L Y N C Limited trading as leaseyournextcar.com ('LYNC') wasn't provided. And, after he cancelled the order, LYNC didn't refund the fee he paid.

What happened

Mr J was an existing customer of LYNC, a credit broker. And, on 3 March 2022 he asked LYNC to order him a new car and arrange finance for this. Mr J paid LYNC a £234 fee, and says he was told the car would be ready for collection in late June / early July 2022.

Mr J also said that LYNC told him he was able to keep his existing car until the new one was ready. However, on 23 June 2022, the company financing the existing car advised Mr J that he'd need to return it. At this point LYNC were unable to supply a delivery date for the new car, nor were they able to source him an alternative. As such, on 5 July 2022, Mr J cancelled the order. And LYNC told him they were unable to refund the £234 fee.

Mr J wasn't happy with this, and he brought his complaint to us for investigation.

Our investigator said neither party had been able to provide a copy of the order form, so she couldn't say if the broker fee was made clear on any paperwork Mr J signed. But she did say the terms were clear that the fee wasn't refundable. The investigator also said she hadn't seen any evidence to show that Mr J has executed the finance agreement for the new car.

The investigator referred to the Consumer Credit Act 1974 ('CCA'), specifically sections 155 and 173. She said that, while the terms Mr J had agreed to said the broker fee wasn't refundable, section 155 of the CCA said that (because Mr J hadn't entered into a regulated agreement within six months) LYNC were only entitled to keep £5 of the fee. And section 173 said that, where LYNC's terms were inconsistent with the CCA, then the provisions of the CCA made LYNC's non-refund term void in these circumstances.

As such, the investigator said that LYNC should refund the broker fee to Mr J, less £5, and pay statutory interest on this refund.

LYNC didn't agree with the investigator. They said their fee wasn't part of the credit agreement, and no hire agreement was in place. As such, they didn't think the CCA applied in this instance. They also said that the industry body for renting and leasing also didn't agree with the investigator's conclusions.

Because LYNC didn't agree with the investigator, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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. LYNC ordered the car for Mr J as an ancillary action to their credit broking activity – the car was only ordered by LYNC as they were also arranging the finance for Mr J, so the two are intrinsically linked. So, as credit broking is a regulated activity, this is something we're able to look at. And it's for this reason I'm also satisfied that the CCA applies in this instance.

When Mr J ordered the car through LYNC, he paid a fee of £195 plus VAT (£234). LYNC have explained that this was a *"brokerage fee ... we pay fees to obtain the special offers from a various amount of companies."*

I've seen a copy of the dealership order form LYNC submitted and LYNC's terms and conditions, which say:

All agreements are subject to a Broker Agency Fee as detailed in the first page of your order form and the quotations you have received. The brokerage fee charged is non-refundable once the order has been placed by the customer and the order has been processed by our sales support team

The order form I've been supplied with makes no reference to the broker fee, nor have I seen any evidence of the fee Mr J actually paid. However, it's not disputed by either party that the fee was paid, nor the amount of the fee. Given this, I'm satisfied it's reasonable for me to issue my decision on the basis that Mr J paid a £234 non-refundable broker fee.

I've also noted that the above term has now been removed from LYNC's website.

Section 155 of the CCA says that *"Subject to subsection (2A), 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 in his entering into a relevant agreement within the six months following the introduction."*

Given that, as the car hasn't been supplied and I haven't seen that Mr J has entered into a relevant agreement within six months of the £234 fee being paid, I'm satisfied that section 155 of the CCA only allows LYNC to keep £5 of the fee i.e. £229 should be refunded to Mr J. However, I also need to consider that the terms Mr J agreed to say the fee paid isn't refundable.

Section 173 of the CCA says *"a term contained in a regulated agreement or linked transaction, or in any other agreement relating to an actual or prospective regulated agreement, or linked transaction, is void if, to the extent that, it is inconsistent with a provision for the protection of the debtor or hirer or his relative or any surety contained in this Act or in any regulation made under this Act."*

The agreement Mr J signed with LYNC is a linked transaction to the regulated agreement they were arranging to finance the car. As such, I'm satisfied that Section 173 of the CCA applies in this instance. This means that any of LYNC's terms are void if they are inconsistent with the CCA. And the no refund term is inconsistent with Section 155 of the CCA. Which means that, in this instance, LYNC's term is void and Mr J is entitled to £229 of the fee refunded.

Putting things right

Based on the above, LYNC should refund Mr J £229 of the £234 fee he paid, and apply 8% simple yearly interest on this refund, calculated from the date Mr J cancelled the order to the date of the refund.

HM Revenue & Customs requires LYNC to take off tax from this interest. LYNC must give Mr J a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr J's complaint. And L Y N C Limited trading as leaseyournextcar.com should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 July 2023.

Andrew Burford
Ombudsman