

## **The complaint**

Miss A says that FLEETPRICES.CO.UK LIMITED, who I'll call "Fleetprices", were wrong to withhold a processing fee when she cancelled a car order that they had arranged, and brokered finance for.

## **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 Fleetprices, 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.

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. Fleetprices ordered the car for Miss A as an ancillary action to their credit broking activity; the two are intrinsically linked. So, as credit broking is a regulated activity, this complaint is something we're able to look at. And it's for this reason I'm also satisfied that the Consumer Credit Act 1974 (CCA) applies in this instance.

When Miss A ordered the car she paid a fee of £199 inclusive of VAT. Fleetprices have explained, and the information sheet they say they provided to Miss A at the time sets out, that:

*"We will charge a processing fee for providing our consultancy service and sourcing your chosen motor vehicle."*

The information sheet explains that the processing fee isn't refundable.

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 Miss A has entered into a relevant agreement within six months of the £199 fee being paid, I'm satisfied that section 155 of the CCA only allows Fleetprices to keep £5 of the fee so, £194 should be refunded to Miss A.

However, I also need to consider that the terms Miss A 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 Miss A signed with Fleetprices 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 Fleetprices 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, Fleetprices term is void and Miss A is entitled to a £194 refund.

### **Putting things right**

Based on the above, Fleetprices should refund Miss A £194 of the £199 fee she paid, and apply 8% simple yearly interest on this refund, calculated from the date Miss A made the payment to the date of the refund.

HM Revenue & Customs requires Fleetprices to take off tax from this interest. Fleetprices must give Miss A a certificate showing how much tax they've taken off if she asks for one.

### **My final decision**

For the reasons I've given above, I uphold this complaint and direct FLEETPRICES.CO.UK LIMITED to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 4 October 2023.

Phillip McMahon  
**Ombudsman**