

The complaint

Ms S complains that Carfinance 247 Limited did not pay her £200 she was owed as part of a promotion.

What happened

In May 2022 Ms S bought a car with finance provided by Carfinance 247. She says she applied for the finance by visiting a third party retailer's website and then clicking on a button labelled "Click here to earn Cashback", next to which was some more text which said "Earn £200 on completed loans". Directly below that were the terms and conditions (I will refer to these as "the third party's terms and conditions"). Carfinance 247 has since provided some further terms and conditions which had been published on its own website but not on the third party's (I will refer to these as "Carfinance 247's terms and conditions").

Clicking on that button takes a customer to Carfinance 247's own website, where Ms S says she completed a loan application, which was approved, and she purchased the car. The third party's terms and conditions said that the cashback would be paid to her once the 14-day cooling-off period had expired. But after three months had passed and the cashback had not been paid, she complained to the third party.

The third party investigated and asked Carfinance 247 what had happened. Carfinance 247 told the third party – and subsequently told Ms S when she complained to our service – that she had not been eligible for cashback. That was because to qualify for cashback, she would have had to navigate to Carfinance 247's website directly from the third party's. But instead, it appeared from the data on Carfinance 247's systems that she had arrived at its website from a search engine instead. It shared this data with Ms S in the form of a spreadsheet.

Ms S did not accept that answer. She insisted that she never uses that search engine. She also explained that she would only have gone to Carfinance 247's website via the third party's website, because the third party is her employer, and she receives employee benefits via that website; she had used her work computer. She said that a spreadsheet is easy to edit, and she suggested that Carfinance 247 must have changed the evidence to get out of paying her.

Our investigator did not accept that last allegation, but as neither party had shared the spreadsheet with him, he accepted Ms S's account of what had happened. He therefore concluded that she had qualified for the promotion, and recommended that Carfinance 247 pay her £200, plus interest.

Carfinance 247 disagreed with the investigator's opinion. It insisted that its systems data showed that in May 2022, Ms S had reached its website via the search engine, and that this did not fulfil Carfinance 247's terms and conditions. It said she had apparently tried again in August, and on that occasion she had arrived at its website via the third party's website, but as the cashback had already been declined in May it was declined again.

Carfinance 247 then added a new reason why Ms S had not been eligible for the cashback promotion: it said that the promotion had only been valid in 2020, and had expired at the end of that year. Its own terms and conditions spelled this out.

Ms S did not accept that new reason. She said that the promotion had continued to appear on the third party's website in 2022, and that she had already provided screenshots (dated September 2022) showing as much. She also maintained that she had never used the relevant search engine, and that she had taken the same steps in May as she had shown us in the screenshots she took in September. She asked for an ombudsman's 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 asked Carfinance 247 for a copy of the spreadsheet, but it did not provide it; instead it just repeated what it had told us earlier, and insisted that it had not been aware of the third party's cashback offer, nor did it have any connection to that offer. It added that all its promotions are done in house, and that its own marketing team would control payments. It said the third party's offer was not related to Carfinance 247's promotions.

That testimony was contradicted by the third party, which insisted that this had always been Carfinance 247's own promotion, and provided a screenshot of the promotion from the affiliate network to prove it. I accept that evidence. Indeed, it is corroborated by Carfinance 247's own terms and conditions which describe the rules of the promotion. So I do not accept that this had nothing to do with Carfinance 247. I think it is the same promotion, which was somehow allowed to continue after the 31 December 2020 end date.

I asked the third party whether it had known that the promotion had ended, or was supposed to end, in December 2020. It answered that Carfinance 247 had never told it that the promotion had ended in 2020. As far as the third party had been aware, the promotion had continued until its relationship with Carfinance 247 had ended in November 2022. It said that over 30 of its customers had carried out relevant transactions during 2021 and 2022, and none of them had complained about missing cashback payments.

Based on that evidence, I accept that the promotion continued until November 2022, even if it was not supposed to. I don't need to decide whose fault that is, because section 56 of the Consumer Credit Act 1974 makes Carfinance 247 liable for the third party's actions as a credit broker, and the broker had advertised this promotion to Ms S. So I think it is fair to hold Carfinance 247 to it, subject to Ms S being eligible for the cashback.

I also asked the third party if it could confirm whether or not Ms S had used its website in May 2022. It replied to say that the transaction had been made via its website in May 2022, as described by Ms S. However, it did not go so far as to rule out that Ms S could have then used a search engine before completing her purchase; rather, it said that Carfinance 247 did seem to have a legitimate reason for rejecting her cashback payment. It had previously written to Ms S to explain this to her as follows:

"To track a transaction the retailer uses the cookies the websites generate. According to the retailer our website is not the last referrer as the last tracking cookie showed that you have gone onto their website via a PCC [pay per click] campaign on Bing. If at any point, after clicking the Cashback offer on our website, you have gone and checked on Bing, that would be the last cookie tracked and therefore the retailer will not award the Cashback through us."

That explanation is plausible, and it would explain why Ms S did not receive her cashback when 30 other customers apparently did. But on the other hand, Ms S emphatically denies that she ever used Bing, and Carfinance 247 has never provided its spreadsheet to show what the last cookie was, even when I asked for it twice. So I think it would be fair and reasonable to accept what she says, and to uphold this complaint accordingly.¹

My final decision

My decision is that I uphold this complaint. I order Carfinance 247 Limited to pay Ms S £200, plus simple interest on that sum at the rate of eight percent a year from 16 May 2020 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 September 2023.

Richard Wood
Ombudsman

¹ See rule DISP 3.5.9R (3) in the *FCA Handbook*.