

The complaint

Mr P is unhappy with a processing fee charged by TJM Cars Ltd trading as Discover Car Leasing ('TJM').

What happened

In February 2022 Mr P paid TJM a £280 'processing fee' as a broker when he ordered a car.

It appears Mr P later intended to enter into a Personal Contract Hire ('PCP') agreement to fund the acquisition.

Due to manufacturing delays, Mr P says the estimated delivery for the car went from around 16 weeks to over 40 weeks. So, he decided to cancel the order. Mr P requested that TJM reimburse him the £280 fee he had paid. But TJM said this wasn't due back.

Mr P was unhappy with this and complained to TJM. It issued a response to Mr P's complaint, that TJM said was sent in July 2022. This said, in summary, that it would like to reimburse all of its customers who have experienced a delay, but this would cause it to go into debt. TJM said it had made sure 'it was covered' on the order form.

Mr P remained unhappy with this and referred the complaint to our service.

Our investigator issued an opinion. She explained, in summary, that the Consumer Credit Act 1974 ('CCA') sets out that if a consumer doesn't enter into a finance agreement within six months of an introduction to a source of credit or hire, they can recover their money back from brokerage fees, save for £5. So, our investigator said TJM should reimburse Mr P £275.

Mr P agreed with the outcome.

TJM didn't agree. It said, in summary, that its order form makes it clear the processing fee is strictly non-refundable. It said it could've charged Mr P a cancellation fee of £299, but didn't. It said it wasn't reasonable to reimburse all consumers where delivery had been delayed. And it pointed to a different case with our service which it said had a different outcome.

Our investigator explained this didn't change her opinion. So, the case was passed to me to decide.

I sent Mr P and TJM a provisional decision on 11 August 2023. My findings from this decision were as follows:

Mr P complains about fees charged for credit broking services. Assisting an individual by undertaking preparatory work with a view to that person entering into a regulated credit agreement is a regulated activity as set out in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. I'm satisfied this means I can consider Mr P's complaint about TJM.

What I need to consider here is whether it was reasonable for TJM to decline Mr P's request

for a refund of the £280 he paid it.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. The CCA is relevant to this complaint.

Section 155 of the CCA explains:

"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"

It goes on to explain a relevant agreement would be a 'regulated agreement'.

So, what I need to consider here is, firstly, whether the £280 charged to Mr P by TJM falls under the description above. And secondly, whether Mr P entered into a regulated agreement within six months.

I've looked at the 'Vehicle Order Form' and the associated terms Mr P signed. This makes several references to the £280, and every time this charge is referred to as a "processing fee".

The vehicle order form explains:

"When using our credit broking services, you may be required to pay a charge in relation to those services which constitutes our processing fee"

While I believe TJM have implied this fee was for services other than, or in addition to, credit broking - I can't see any explanation of this. And no further breakdown of this cost is provided to suggest part of it was for credit broking and part for another service, nor is it set out what proportion of the fee this may be.

Thinking about this, I'm satisfied the order form makes it clear the £280 charged is a fee specifically for TJM's credit broking services. It follows that I think it's quite clear this meets the description of "fee or commission for his services" as set out in S155 of the CCA.

So, I then need to consider if Mr P entered into a regulated agreement. But, all parties here agree this wasn't the case. Mr P cancelled the order for the car before any credit agreement was entered into.

TJM has referenced a specific part of its order form that it says means it doesn't have to reimburse Mr P. That being:

"Any estimated date quoted for delivery of the Goods is approximate only and the Company shall not be liable for any loss suffered by the Customer arising from any delay in delivery of the Goods, howsoever caused"

I've thought carefully about this. I'm not sure that the event of TJM declining to reimburse the processing fee could be fairly described as a loss arising from a delay in the context above.

But, either way, even I accepted that this was the case, I'm satisfied this term doesn't take precedence over what is set out in the CCA.

Thinking about all of this, I'm satisfied S155 of the CCA explains that Mr P had a right to

recover all but £5 of the fee he paid to TJM for its credit broking services.

I appreciate TJM said it could charge Mr P a cancellation fee of £299, but it chose not to. But, I don't think this affects the situation with the £280 fee.

I appreciate TJM has referenced another case with our service that it believes shows the fee shouldn't be reimbursed. But I need to consider what's fair and reasonable in the specific circumstances of this complaint. So, this doesn't change my opinion.

I gave both parties four weeks to come back with any further comments or evidence.

Mr P got in touch and said he was satisfied with the decision.

TJM got in touch and said it understood the decision and didn't wish to provide any further information. It said it would give Mr P £297.40.

But, TJM also said it would now charge Mr P a £299.99 cancellation fee.

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 thought about all of the information and comments on this case again, I still think it should be upheld. This is for the same reasons I explained in my provisional decision and set out above.

It isn't my place to check the figures TJM gave us, but I would ask it to make sure any payment is in line with the directions given below.

I understand as a response to my provisional decision that TJM now plans to charge Mr P a cancellation fee of around £300. To be very clear, I am not making any finding about this fee in this decision. If TJM charges Mr P the cancellation fee and he is unhappy, he will need to complain to TJM and may ultimately have the right to bring a further complaint to this service.

That being said, I would politely remind TJM of its responsibilities as a regulated business. It may wish to consider if charging Mr R nearly £300 well over a year after the 'cancellation', in what could potentially be seen as a punitive response to him referring a complaint to our service, meets its obligations as set out by the Financial Conduct Authority ('FCA').

In particular, it might be prudent to think about whether this is in line with the guidance the FCA sets out in its Principles for Business ('PRIN').

This includes under PRIN 2.1.1 that:

"A firm must conduct its business with integrity."

and

"A firm must pay due regard to the interests of its customers and treat them fairly."

My final decision

My final decision is that I uphold this complaint.

I instruct TJM Cars Ltd trading as Discover Car Leasing to put things right by reimbursing Mr P £275 of the £280 fee he paid.

This amount should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If TJM considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 October 2023.

John Bower
Ombudsman