

The complaint

Mr M complains that CA Auto Finance UK Ltd wrongly made him a party to a credit agreement when he had instructed it to make him a guarantor.

What happened

In May 2023 Mr M's teenage son applied (via a broker) for a regulated personal contract purchase agreement with CA Auto Finance to finance his acquisition of a used car. Mr M intended to support his son's application by acting as a guarantor. But he subsequently found out that he had been treated as a joint applicant instead, and that he was actually a party to the agreement.

Mr M says that he and his son were never shown the application, nor did they see the written agreement, and they deny that they even signed it. The terms of the agreement were not provided to them until a few days later, and only after they had asked for them repeatedly in emails. Mr M says that he had agreed with the garage on the phone that he would be a guarantor. If he had known it had been a joint application, he would not have proceeded with it; instead, he could have got a better interest rate if he had made an application in his sole name. (The APR was 11.9%.) As things stand, the agreement is appearing on his credit file, and he is worried about this affecting his upcoming mortgage renewal. (His son is making his monthly payments and has no issue with the agreement continuing in his own name.)

Mr M complained to CA Auto Finance, and asked for the agreement to continue but without him on it. But CA Auto Finance told him that the agreement's terms and conditions had made it clear that everyone signing the agreement would be jointly liable to make payments under it. It said that Mr M had signed the agreement electronically next to text describing him as a "Joint Customer." CA Auto Finance said this evidence showed that Mr M had known he was a joint applicant and joint customer.

Being dissatisfied with that response, Mr M then brought this complaint to our service (represented by his wife).

Our investigator upheld this complaint. She concluded that Mr M had not been shown the agreement and had not signed it, nor had he seen the pre-contract credit information. She said that CA Auto Finance had not provided Mr M with all of the information he'd needed. So she recommended that it adjust the agreement to make Mr M's son the sole hirer, and remove the agreement from Mr M's credit file.

CA Auto Finance did not accept that opinion. It was adamant that Mr M would have known he was going to be a joint borrower and not merely a guarantor. It said that Mr M would have had to provide three correct answers to questions about his credit file in order to access and electronically sign the agreement. This case was referred 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.

The fact that Mr M had to answer three questions from his credit file doesn't prove that he knew he was going to be a party to the agreement. I would expect a creditor to carry out credit checks and security checks on a guarantor too.

CA Auto Finance is on stronger ground with its point about the text next to Mr M's signature on the agreement (if he signed it). Immediately above his signature, it says "Joint Customer", and right above that, it says "This is a credit agreement... Sign it only if you want to be legally bound by its terms." And just to the left of Mr M's signature was his son's, under the words "Primary Customer." Taking all of that together, I think that is a strong indicator to someone who is about to sign that they are signing as a hirer, rather than in another capacity.

So the question I have to decide now is whether Mr M and his son actually signed this agreement themselves, as this is in dispute. The signatures are in fact nothing more than their typed names.

Although it would have been the broker, not CA Auto Finance, who would have either obtained Mr M's signature or added a signature if he didn't actually sign himself, CA Auto Finance would still be responsible in two ways. It would be responsible in its own right because it would have improperly executed a credit agreement, and would have done so without Mr M's authority. And under section 56(2) of the Consumer Credit Act 1974, CA Auto Finance is liable for what the broker did as if the broker was its agent.

I asked both parties for further information about what happened. And I asked CA Auto Finance for evidence that the pre-contract credit information (PCCI) had been sent to Mr M or his son.

CA Auto Finance did not have evidence that the PCCI had been sent to Mr M or to his son. But it said that in the ordinary course of events, the PCCI would be sent to both applicants after they had had a chance to view it. It said there was nothing to suggest that this had not happened (other than Mr M denying it). It added that the credit agreement would have been emailed to both applicants for their signature, and then afterwards they would have received signed copies of the executed agreement.

Mr M said that he and his son had originally visited one of the broker's branches. While there, they had signed an application for credit with a third party (with Mr M as guarantor and his son as the sole applicant). But that application could not be processed right away because they were being served by a trainee, and they were later told over the phone that it had been declined. So a second application was made to CA Auto Finance, which they agreed to verbally, without ever signing it. And a copy of the executed agreement was not sent to them at first, and was only eventually provided after they had chased it several times by email. (By then, they had already collected the car.) Mr M says that he immediately complained to the broker, who told him that a guarantor and a joint applicant for credit are basically the same thing.

The situation Mr M has described certainly shouldn't happen, but I can't just assume that because it shouldn't happen means it didn't. So I've thought carefully about what both parties have to say, and about what evidence there is to support each case.

The signatures are date-stamped 26 May 2023. I've seen an email from the broker to Mr M's son, dated 29 May, in which the broker says he is sending the payment details which his parents had requested. Below that is a screenshot showing the details of the car and its cash price, the annual mileage limit, the term of the agreement, the amount of the deposit,

the amount financed, and the APR. Mr M wouldn't have had to ask for that information if the executed agreement had been sent to him earlier, so that evidence tends to support his testimony.

I've seen another email, dated 7 June 2023, from Mr M to the broker. The main substance of that email is a dispute about the annual mileage limit. But in that email, Mr M also says that the welcome pack contained no information about the finance agreement, and he describes himself as the guarantor of the agreement. And in another email of the same date, this time sent to CA Auto Finance, Mr M mentions that he never received a copy of the agreement or of the PCCI. (CA Auto Finance sent them to him the next day.)

Although our service does not have rules of evidence, I'm still conscious of the legal rule that a witness cannot corroborate himself. But nevertheless, those emails do indicate that Mr M acted consistently with his belief that he was a guarantor, and that he had not received information about the terms of the finance agreement. And as I've said, there is no evidence to show that the PCCI or the agreement were provided to him earlier than 8 June.

None of this evidence is by any means conclusive. But I think the weight of the evidence slightly favours Mr M, and so on balance I accept his account of what happened. On that basis, I uphold his complaint.

I broadly agree with the investigator's recommended redress, except that I think CA Auto Finance is entitled to have Mr M execute a guarantee for his son's payments, so I will make provision for that to happen.

My final decision

My decision is that I uphold this complaint. CA Auto Finance UK Ltd should (if it wishes to) promptly send Mr M the necessary paperwork for him to sign to guarantee his son's payments under the agreement. Then, once he has signed and returned that document (which may be done via our service if CA Auto Finance wishes) – or if CA Auto Finance declines to seek a guarantee – then (in either case) I order CA Auto Finance UK Ltd to:

- Adjust the agreement so that it is solely in Mr M's son's name, removing Mr M as a joint debtor, and
- Remove the agreement from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 November 2024.

Richard Wood

Ombudsman