

The complaint

Miss S complains that Pendragon Finance and Insurance Services Limited trading as Evans Halshaw ("PFIS") mis-sold a hire purchase agreement to her.

What happened

I sent Miss S and PFIS my provisional findings on this complaint on 3 December 2024. A copy of that decision is attached and forms part of this final decision.

I explained why I was not planning to uphold Miss S's complaint and asked both parties to let me know if they had anything to add.

PFIS didn't respond.

Miss S disagreed. She said:

- she took certain medication which caused her sometimes to not be fully present
- she wanted to surprise her son which is why she missed the 14-day cooling off period. Once her son had gone through the agreement with her, she asked the supplying dealer, who I'll refer to as "D", to be fair and reasonable and unwind the deal. But D refused
- this was the first financial agreement she had got into by herself
- she believed that PFIS acted unfairly when arranging the hire purchase agreement and it wasn't clear why the outcome was changed from the investigator's original view
- she didn't receive any paperwork at the dealership, instead she just signed a screen. She said the first paperwork she received was in the post from the lender
- she realised that she would have an indeterminate risk or exposure to the second-hand car market and the paperwork states that she could only sell the car back to D before it was paid off. She said regardless of the terms of the agreement, she would be at the mercy of their terms in relation to what she would get for the car. She said her choices would have been to accept their offer after six months or pay it off after five years, whilst also taking delivery of a car under the Government scheme
- it didn't make sense that she wanted two cars, one that she would keep for 60 months and one that she would keep for 36 months
- it was surprising that the buyback was discussed as it was informal and outside the regulated finance agreement. She said she wanted to know if D are permitted to tie informal arrangements to regulated finance deals and whether the ombudsman service can then incorporate those informal arrangements into their decisions
- the deal was inappropriate for my needs, she wanted a short-term lease deal and specifically asked about a PCP deal and the dealership cobbled something together just to get a sale. D seemingly lied about their actions on the day.

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'm sorry to hear about Miss S's health condition that she says causes her to sometimes not be fully present. I've taken into account what CONC 2.10(4) says:

"A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity."

The information Miss S has now provided to this service wasn't disclosed to PFIS. At the time of entering into the agreement, Miss S also mentioned discussions she'd had about the type of agreement she wanted with her cousin. It doesn't appear there was anything to suggest at the time, that Miss S didn't have the capacity to enter into the contract.

In relation to the comments about the agreement itself, Miss S says she didn't have sight of the agreement prior to signing it. Both parties have conflicting testimonies about this. I explained in my provisional decision that fact finds were completed for both agreements. During these fact finds Miss S was required to answer a set of questions to find the best product for her. These were answered by Miss S and when she signed on the tablet, it stated, *"it is my choice to proceed having read and understood all the information that has been presented to me."*

Miss S was also sent the information on 28 April 2023 from the lender which was the day after she signed the agreement. If Miss S says she didn't see any of the information on the day, I think it would have been reasonable for her to review the agreement when she got it and queried it then. Having carefully considered all of this, I think PFIS reasonably made Miss S aware that she was entering into a 60 month hire purchase agreement. I understand that Miss S says it doesn't make sense for her to enter into an agreement for 60 months and for 36 months, but Miss S in her own admission says she asked PFIS for the second car, she told it what agreement she wanted and she says she thought it was for 36 months at the time. So I think it's clear that Miss S was aware she was not entering into a short term arrangement as a bridge between until she would receive the car under the Government scheme, as she knew at the minimum it would be an agreement for 36 months.

The agreement states, *"We agree to supply the Vehicle to you under a hire purchase agreement. This means the Vehicle remains ours and we hire it to you from the date we sign the Agreement until you pay all sums due under the Agreement. These include the Final Repayment and any optional Purchase Fee. You then become the Vehicle owner. Until then you must not sell the Vehicle or try to sell it, abandon it or give it away, use it as security or let any person have any rights over it. If you do not buy the Vehicle, you must return it at the end of the Agreement."*

This doesn't state that Miss S was bound to sell the car back to D. Furthermore Miss S's agreement is with the lender and it doesn't mention anything about D. In every hire purchase agreement, the car is initially sold to the lender and it remains the legal owner of the goods until the full amount is paid under the agreement. If Miss S paid the amount due under the agreement, she would become the owner of the car. It didn't prevent Miss S from settling the finance and selling the car to another party. Generally part exchanges work this way and there are various companies that will buy a car even where that car is subject to an existing finance agreement. Typically, a customer takes the car to a dealer and a price will be agreed. In the first instance, the funds from any sale are used to reduce and clear (should the amount be sufficient) the balance remaining on the finance. This will mean that the proceeds from the sale will either cover the finance or leave an existing balance for the customer should the car be worth less than the finance balance. So, I don't think that Miss S was at the mercy of PFIS or the price it set, as it isn't mentioned in the terms of the finance agreement.

In relation to the buy back, it was discussed because that was a part of the complaint that was made by Miss S. I've explained in my provisional decision that the informal arrangement wasn't part of the lender's finance agreement. However, I'm required to consider what's fair and reasonable in all the circumstances and any other arrangements reached whether formally or informally are relevant to my consideration of these matters. In this case, I am persuaded that a buyback was agreed by PFIS (indeed it did buy the car back although Miss S returning it so early resulted in the finance outstanding not reducing as much as had been anticipated) and so, I don't think Miss S was mis-led about being able to sell the car back to it.

Overall, whilst I've considered Miss S's further comments, they don't persuade me to depart from my provisional decision. And so, it follows that I'm not asking PFIS to take any further action.

My final decision

My final decision is that I do not uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 February 2025.

Provisional decision

I've considered the relevant information about this complaint.

Having done so, I'm minded to reach a different outcome than our investigator. That is that I'm not minded to uphold the complaint. I've explained why in this provisional decision.

The deadline for both parties to provide any further comments or evidence for me to consider is 17 December 2024. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Miss S, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Miss S complains that Pendragon Finance and Insurance Services Limited trading as Evans Halshaw ("PFIS") mis-sold a hire purchase agreement to her.

What happened

Miss S acquired a used car under a 60 month hire purchase agreement with a lender in April 2023. The car cost around £15,230. Miss S also purchased a guarantee for £599 and GAP insurance for £319. Miss S paid a deposit of £2,401 and under the agreement, she was required to make 60 payments of £307.15. PFIS brokered the agreement and the car was supplied by a dealership I'll refer to as "D". As D is an appointed representative of PFIS, I have referred to both of them interchangeably throughout this decision.

Miss S says she had signed up to acquire a car ("C1") under a specific scheme and this was due be paid for by way of a contribution from the Government. However, she said the car was due to be delivered after six months, so she enquired with D about obtaining a short term lease in the meantime. She said due to the age of the car she picked, she was told it wasn't eligible for the scheme. But she says D told her that she could buy the car and then D would purchase it back from her after six months. On this basis, she said she acquired a car under a hire purchase agreement.

In May 2023, following a discussion with her son, Miss S decided to return the car to D. In effect this saw D buy the car from Miss S and settle the finance with the lender. Miss S lost the deposit she paid and had to pay a shortfall of £319 that was left on the finance. She also says that she didn't receive a refund for the GAP insurance. In June 2023, Miss S cancelled the order for C1.

In July 2023, Miss S complained saying that the finance deal didn't guarantee that D would buy the car back and neither did it provide a price. She also complained that D arranged a five year finance deal rather than a three year deal and that she would be repaying £19,500 for a car with no details of a settlement fee. Miss S said in light of this, she would make a large financial loss as she would have to dispose of the car once C1 arrived. Miss S said it was a completely inappropriate deal and she had lost faith in PFIS. She said she already had an existing car and she could have kept that for six months rather than being led into a five year finance deal whilst looking for a short term lease. She said she didn't believe that D had sufficiently checked her understanding of the finance agreement or whether she was able to weigh up the information provided to her. Miss S said she wanted PFIS to cover her losses in full.

PFIS issued its response to Miss S's complaint in August 2023. It said D had followed the correct sales process and had provided Miss S with the correct documentation at each stage of the sale. PFIS said there was no indication that Miss S didn't understand things or that Miss S had a vulnerability. It said D couldn't provide a guaranteed price to purchase the car at the end of the six months because it couldn't predict the value of the car in the future. It said D also said that Miss S would only pay the interest applicable to the loan until the period it was settled in full. It said Miss S agreed to go ahead with the purchase and D agreed to purchase it back from her for an agreed amount, which Miss S accepted.

PFIS said it thought Miss S only suffered the losses she is now claiming because she traded the car back in so soon after purchasing it. It also said Miss S had signed a declaration agreeing that she had no health concerns or other issues which might affect her understanding, memory or decision making. PFIS said D had returned the GAP premium and it had asked D to refund the £599 Miss S paid for a guarantee as she wouldn't benefit from it.

Unhappy with this, Miss S referred a complaint to this service. She reiterated her complaint and said she didn't know if the agreement had been settled. She also detailed the impact of her physical health issues. Miss S said to put things right she wanted PFIS to pay her the outstanding £2,200 that she was out of pocket and to consider paying her son's expenses for assisting her with her complaint. She said his expenses amounted to £90.24.

Our investigator looked into the complaint and said she didn't think it was a fair recommendation for Miss S to take out a car for 60 months if she only needed it for six months. She said she didn't think Miss S was fully aware of the financial implications this could have, as she cancelled the agreement as soon as she was made aware of this by her son. She said the product didn't meet Miss S's specific needs and wasn't beneficial to her in the long term. She also said PFIS hadn't provided any supporting information to show what Miss S was told about the agreement. Our investigator recommended Miss S's complaint was upheld and said PFIS should refund Miss S the deposit she paid and the £319 she was asked to settle the agreement, with applicable interest. She also said it should pay Miss S £150 for the distress and inconvenience caused.

PFIS disagreed. It said Miss S could have returned the car under the 14 day money back guarantee and it was important to consider why Miss S didn't find it necessary to consult her son whilst she made a decision to acquire the car. It said Miss S had travelled 363 miles in the car by the time she returned it and she wasn't entitled to free use of the car for a month. It said Miss S was fully informed about the agreement at the time she was supplied the car and although Miss S changed her mind outside the 14 day money back guarantee, D agreed to facilitate Miss S's wishes and buy the car back. PFIS also said Miss S rejected D's offer to

part exchange her existing car saying she could get a better price elsewhere and this didn't support that she was vulnerable or that she didn't understand the financial implications of the agreement. It said D had clearly told Miss S, a 60-month loan was required to ensure monthly payments were at an amount which she was happy to pay.

As PFIS remains unhappy, the complaint has been passed to me to decide.

What I've provisionally 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.

Miss S complains about a hire purchase agreement. This complaint concerns the regulated activity of credit broking, so I'm satisfied I can consider Miss S's complaint against PFIS.

I've read and considered the whole file and acknowledge that Miss S has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

What I need to decide in this case is whether PFIS acted unfairly when arranging the hire purchase agreement for Miss S. If I don't think it did, I'll need to think about what's fair, if anything, to put things right.

In this case, there are two very conflicting statements about what happened when the finance was arranged. In light of this, I've considered both version of events and have made a provisional decision on what I think most likely happened, on the balance of probability.

Miss S says the first time she became aware of the agreement being 60 months was when she received a response from PFIS to her complaint. She said prior to this she thought she had entered into a loan agreement with D's finance provider.

The Financial Conduct Authority's Consumer Credit Sourcebook ("CONC") provides rules and guidance about what pre-contract disclosure and adequate explanations a lender needs to provide. I've taken this into consideration. It says:

"CONC 4.2.5

(1) Before making a regulated credit agreement the firm must:

(a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation;

(b) advise the customer:

(i) to consider the information which is required to be disclosed under section 55 of the CCA; and

(ii) where the information is disclosed in person, that the customer is able to take it away;

(c) provide the customer with an opportunity to ask questions about the agreement; and

(d) advise the customer how to ask the firm for further information and explanation.

(2) The matters referred to in (1)(a) are:

(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;

(b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;

(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee;

(d) the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of credit and the circumstances of the customer:

- (i) the total cost of the debt growing;*
- (ii) incurring any default charges or interest for late or missed payment or under-payment;*
- (iii) impaired credit rating and its effect on future access to or cost of credit;*
- (iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;*
- (v) repossession of the customer's home or other property; and*
- (vi) where an article is taken in pawn, that the article might be sold, if not redeemed; and*

(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised."

I've reviewed a copy of the hire purchase agreement provided to Miss S by PFIS when it brokered the agreement. I can see on page one that the agreement clearly confirms that the duration of the agreement is 60 months. It also states that the interest rate is 12.18%, the APR is 12.9%, the interest is £4,359.40 and the total amount payable is £19,599.40. Page two of the hire purchase agreement explains that Miss S needs to pay one payment of £307.15, followed by 58 monthly repayments of £307.15, followed by a final payment of £307.15, which includes a purchase fee. It also lists that a warranty and GAP insurance have been purchased for a total of £918. Miss S signed the agreement. I think this information is consistent with what CONC 4.2.5 requires in section 2(b).

The welcome letter sent to Miss S from the lender a couple of days after the agreement was entered into reiterated that the agreement was for 60 months and it was due to end in April 2028, with monthly repayments of £307.15. Miss S says she got this letter in May 2023 and the letter didn't register with her when she read it. However, the letter clearly sets out the repayments and loan term.

There is also a written record of the fact checking process that PFIS went through before deciding to lend to Miss S. Two fact finds were carried out. One of the questions in each of the fact finds is, *"How long would you like to keep your vehicle for? (Months)"*. For C1, Miss S answered 36 months. This was signed by Miss S at 13:50. A further fact find was carried out for the second car. During this fact find, Miss S said she wanted to keep the vehicle for 60 months. The product is confirmed as a hire purchase and the fact find was signed by Miss S at 15:08.

I think this suggests that Miss S was, or at the very least ought to have been, aware that the agreement was for 60 months. If PFIS had approved Miss S for a 36 month agreement, her monthly repayments would have likely been substantially higher. This may have been a deciding factor to explain why the finance term was longer for the second car.

In addition, Miss S said she thought the agreement was for 36 months, but she also said she was only looking for a temporary bridge until C1 was delivered. Given Miss S said she thought the agreement was for 36 months, it's clear that she knew that the term of the finance was longer than she intended to keep the vehicle. I also have to question why she entered into an agreement thinking it was for 36 months if she only intended to stay in the agreement for six months.

I think the agreement clearly explains the duration of the term, as well as the monthly payments that Miss S would need to pay during the five year agreement. The agreement makes no mention of PFIS formally agreeing to take the car back from Miss S when C1 was

delivered (although I accept that there might have been a suggestion something could be done when C1 was delivered) and instead it explains that Miss S, at the minimum, would be liable to pay half the total amount payable if she wanted to return the car. It also mentions that the agreement is a hire purchase on four occasions on the first page.

Having carefully considered all of this, I think PFIS provided Miss S with an adequate explanation of the regulated credit agreement and the features of the agreement. I think Miss S had an opportunity to ask questions about the agreement and that PFIS assessed whether the agreement was adapted to Miss S's needs and financial situation. I also think PFIS reasonably made Miss S aware that she was entering into a 60 month hire purchase agreement and that she would be required to pay a monthly amount until she terminated the agreement or the agreement ended.

I've gone on to consider what Miss S has told us about the circumstances surrounding her taking out the hire purchase agreement.

Miss S says she only enquired about a short term lease of a car whilst waiting for C1 to be delivered. She said she chose the car that she wanted to lease and D told her that car wasn't eligible to receive funding under the Government scheme. She says D told her it could sell her the car and buy it back from her after six months. Miss S said if she hadn't gone through and cancelled both orders, she would have been held captive to the companies buy back offer when C1 was delivered.

I've thought about this carefully and considered the details of the car Miss S agreed to acquire under the hire purchase agreement. I've seen the order form for the car and I note the car Miss S enquired about leasing was the same model as C1. However, instead of being brand new, the car was around four years old at the time. Miss S also said that she had an existing car that she could have continued using instead of taking out a five year hire purchase agreement. However, what's not in dispute is that Miss S approached D to enquire about the second car. D didn't approach Miss S about this.

On balance, I'm persuaded that Miss S intended to hire a car from D and that it's more likely than not that she hired the same model as C1, because she wanted to get used to the features of it before C1 was delivered. I say this because if Miss S wanted to continue using her existing car, I don't think it is reasonable that she would approach D to enquire about leasing a car that was the same model as the one she had order for six months until C1 was delivered.

I accept that there was some kind of informal agreement for PFIS to purchase the car back from Miss S after six months. Although as I've explained, there isn't anything on the finance agreement, or any of the other formal documentation, about it doing this. However, I find its explanation plausible in that the price of the car is dictated by market conditions and the price of the car could fluctuate, and so this is why it didn't list this on the agreement. The amount PFIS would be willing to purchase the car back for would only be determined at the point it agreed to buy the car back from Miss S

I'm also mindful that this was an informal agreement between PFIS and Miss S, rather than a formal agreement that the lender had consented to. It isn't a general term of a lender issued finance agreement that the broker would agree to purchase the car after six months. Particularly as the lender and the broker are completely separate businesses.

I'm persuaded that PFIS agreed to buy the car back because it did this when Miss S approached it the month after the car was supplied to her. I can see that the car was sold to D for £13,787.31. This is the price that Miss S agreed to sell the car back to D for. It's unclear what D would have been willing to buy the car back for from Miss S had she waited six months. However at the six month point, Miss S would have had a lower amount left to pay on her finance agreement and so, it may have been that the offer to Miss S by D at that time would have meant she had less of a loss or she may have gained some funds.

Having thought about this carefully, I'm not persuaded that PFIS made any misstatements when it said it would agree to buy the car back from Miss S, as it did buy the car back from her. I appreciate this was at a loss to Miss S, but as Miss S has pointed out, no price was agreed for the resale at the point she acquired the car and the resale was agreed on the assumption that Miss S kept the car for six months.

I move on to consider what Miss S has said about her understanding of the loan agreement she entered into. Miss S said she didn't believe that D had sufficiently checked her understanding of the finance agreement or whether she could weigh up the information provided to her.

CONC also provides guidance on things a firm needs to consider when thinking about whether a customer has the mental capacity to enter into an agreement. CONC 2.10.4 says:

"A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity."

In this case, Miss S said, *"I'd spoken to my cousin previously and she had said that I would not get a [name] car straight away as it would have to be ordered and she suggested that I ask about a short term lease to bridge over to the [name] order being fulfilled. She said the scheme is called PCP.... I then went back to [D representative] in pursuit of a short term PCP lease deal."*

Having read Miss S's statements and D's statements, I don't think that there was anything to suggest to PFIS that Miss S didn't understand the agreement that she entered into. Miss S approached PFIS and asked it for a PCP deal. She said this was on the advice of her cousin. Given Miss S approached D about acquiring a new car and she told D what kind of finance agreement she wanted, I don't think D would have had reason to suspect anything. Miss S had spoken to her cousin about the agreement and so, I think this would have suggested she already had some understanding of the agreement she entered into.

In relation to the guarantee and GAP insurance, PFIS has refunded the cost of the guarantee and asked D to refund the cost of the GAP insurance, as Miss S will not benefit from it. I think this is fair and reasonable in the circumstances.

Overall, I understand that Miss S was left with a loss as a result of the sale back to PFIS so soon after she entered into the agreement. I appreciate Miss S feels she was mis-sold the agreement, but I'm not currently minded to decide that the agreement was mis-sold for the reasons I've mentioned above.

My provisional decision

My provisional decision is that I do not intend to uphold Miss S's complaint.

Sonia Ahmed
Ombudsman