

complaint

Mr P complains that Paynes Garages Limited made administrative errors when setting up a hire purchase agreement.

background

In 2017, Mr P approached Paynes about acquiring a van. The cash price of the van was £36,591. Mr P part exchanged a previous vehicle for £6,500 and the remainder was financed by a hire purchase agreement. Paynes acted as a credit broker to arrange the finance agreement with a lender, who I will refer to as F. The hire purchase agreement was for 48 months with a total amount repayable of around £40,000, the monthly repayments were around £700.

Mr P asked for the paperwork to be sent to him as he lived far away from the dealership. Paynes emailed the documentation to him to complete. Mr P told Paynes that the wrong vehicle registration had been recorded on the hire purchase agreement and asked for it to be amended. Paynes sent him a new agreement with the updated details which Mr P signed.

Mr P says he noticed on the day of collecting the van that the agreement was in the name of his business, but he says Paynes told him it couldn't be changed. He says after he complained a few days later, Paynes sent him a new agreement to sign, this time in his personal name. He says this was only done because F's zone manager got involved. Mr P returned the third agreement and had written '*signed under duress*' on it. Paynes advised F wouldn't accept it with this wording so asked him to complete a new copy of the agreement, which he did.

Mr P complained to Paynes because he says he was unhappy with the number of administrative errors it made. In summary he says these were:

- He had to sign four different finance agreements because Paynes kept making mistakes with the paperwork. Because the agreement was initially put in the name of his business it meant the DVLA was showing as the van having had a previous owner (his business) despite him being the only registered owner. He says this will cause him a loss when he comes to sell the van;
- Paynes hadn't explained any of the finance agreements to him and they were required to do so. These explanations needed to happen face to face but the finance documents were sent to him by email with no explanations;
- No assessment on his ability to afford the repayments under the finance agreement was carried out by Paynes; and
- He wasn't offered any income protection insurance policies, such as payment protection insurance. He later had cause to claim under a policy like that so Payne's failure to offer him a policy has caused him a loss.

In response to the complaint, Paynes didn't think it had done anything wrong. It said Mr P didn't want to attend the dealership in person until he was due to pick up the van so all the finance documents were emailed to him. It said Mr P was given the opportunity to read through the finance agreements. It said only three sets of finance agreements were sent to him – not four. It said the first agreement had to be amended because Mr P wasn't happy with the registration number given to the van.

Paynes said that it didn't think it had made a mistake with the paperwork as it had only carried out amendments in line with Mr P's instructions. It said in order to assist Mr P, it had written to the DVLA to ask for Mr P's business to be removed from the list of previous registered keepers.

I sent Mr P and Paynes my provisional decision on 13 August 2020. I explained why I didn't think the complaint should be upheld. I said:

Adequate explanations of the finance agreements

Mr P says Paynes failed to adequately explain the finance agreements to him and it breached its requirements to do this in a face to face environment. CONC 4.2 sets out the pre-contract disclosure requirements for credit brokers. The rules don't set out that information and explanations have to be given face to face. Instead, the rules say, apart from certain limited circumstances (none of which apply in Mr P's case as they relate to different types of finance and situations where some information is given orally) credit brokers can choose to give explanations in writing, orally, in person or a mixture of all three. I'm satisfied that in the circumstances of this case, Paynes weren't required to explain the finance agreements to Mr P in person as it has given all the relevant information to him in a durable medium, which CONC says is acceptable.

In any event, Mr P has told us that he didn't want to have a face to face meeting with Paynes prior to picking up the van because of the distance he would have to travel. So, it was Mr P's choice not to receive information about the agreements in person. For all these reasons I don't think Paynes acted unfairly in not discussing the finance agreements in person with Mr P.

The rules under CONC do however require Paynes to provide an explanation of the key features of the finance agreement either orally or in a durable medium. It's not clear whether an oral conversation took place, although Mr P says it didn't. But Paynes has provided us with the documentation it sent to Mr P by email which cover the necessary information about the agreements. The email also asks Mr P to call Paynes if he has any questions about any of the documentation.

Included was the copy of the finance agreement, the pre-contract credit information which listed the key features of the finance and an explanatory leaflet. The leaflet explained some of the key features, what Mr P's rights were under the agreement and in what circumstances the finance agreement might not be suitable for him. So overall I think Paynes did meet its requirements under CONC to provide adequate information and explanations about the finance agreements to Mr P.

This information and the agreements were emailed to Mr P. This meant he had time to read them in private and in the comfort of his own home, which was outside of a traditional 'sales' environment. Mr P also could have asked questions about the agreement before signing them if he didn't understand what he was agreeing to.

It appears he did scrutinise the agreements in some detail as he spotted that the registration number for the van wasn't what he had requested. This information was available on the same page which contained the key financial information about the cost of the agreement, as well as whether it was in his personal name or his business name. Further, Mr P did spot at a later date that the agreement was in the name of

his business instead of his personal name. He did this without any intervention from Paynes. So I think he ought to have been able to notice this before signing the agreement too.

Further, Mr P hasn't said what the impact of not having the agreements explained to him was, other than he considers the issue about his business name being present on the agreement would have been spotted earlier. But I'm not persuaded that's the case. Any explanation Paynes might have given to him in person or orally was unlikely to involve reading through the agreement for him. Instead it would likely have been limited to explaining the pre-contract information and key features – which he had already received in writing. This wouldn't necessarily have involved discussing who was taking out the agreement.

Even if I'm wrong about Paynes meeting the requirements under CONC, I'm not persuaded (for the reasons given above) that Mr P was disadvantaged in any way by not having a face to face discussion about the agreement with Paynes. For that reason, I don't think it would be fair and reasonable to make any direction or award against Paynes in relation to this issue.

Assessing affordability

As Paynes weren't the lender under the finance agreement, the requirements it needed to meet were significantly different to what the lender was required to do in relation to assessing affordability. In assessing whether the agreement was suitable and affordable, Paynes needed to be mindful of Mr P's needs and circumstances. And if it knew or ought to have known that the finance agreement was unlikely to be affordable or suitable, it shouldn't have brokered it to him.

It appears Mr P has only fallen into difficulty repaying as a result of a significant change to his personal circumstances many months after the borrowing was taken out and unconnected with the borrowing. This appears to have been caused by something Paynes could not have predicted and was not apparent at the time. Taking this into account and the wider evidence and circumstances of this case, I've not seen anything to make me think Paynes acted unfairly or unreasonably when assessing the affordability or suitability of the finance.

Not offering insurance policies

Mr P says Paynes ought to have tried to sell him some form of income protection insurance, such as PPI (payment protection insurance). He says its failure to do this means it wasn't acting in the best interests of the customer.

I realise with the benefit of hindsight Mr P may have benefitted from taking out some form of insurance to cover his monthly repayments or his regular income. But Paynes weren't obliged to sell him insurance policies. If Mr P felt he needed additional protection at the time he entered into the agreement, he could have sought to get insurance from elsewhere. I don't think Paynes acted unfairly or unreasonably towards him by not offering to sell him insurance.

Mistakes with finance agreements

Mr P says his business appeared on the initial finance agreements due solely to a mistake by Paynes. He says he mentioned his business only in passing but it was added to the finance agreement without his consent. Paynes disagrees and says Mr P told them he would be using the van for his business. I can't be sure exactly what was discussed or who suggested Mr P's business should be put on the finance agreement. But in any event, I think by writing to the DVLA requesting the number of registered keepers be amended, Paynes has acted fairly as the mistake, however it arose, has been corrected.

I say this because I think Mr P had several opportunities to mitigate any loss he says he incurred due to the mistake on the finance agreement. He had time to read and scrutinise the finance agreement in advance, in private and at home. The fact it was made out in the name of his business was clear on the first page – not far from the information he previously highlighted as being wrong (the registration of the van). So, I think Mr P ought to have been able to see his business name was listed on the agreement too.

Mr P has said that his name also featured on the finance agreement so it wouldn't necessarily have occurred to him this meant the agreement was taken out for the business. But if Mr P only mentioned his business in passing and didn't consent to Paynes using his business details at all, I would have expected him to have questioned its inclusion on the finance agreement.

Further, when collecting the van Mr P signed a one page form intended for the DVLA for recording who the registered keeper of the van was. It was prominent and clear the registered keeper that would be recorded with the DVLA would be Mr P's business. As Mr P signed this document separately and its sole purpose was to confirm who the registered keeper would be, I don't think it would be fair to say Paynes were solely to blame for the finance agreement being incepted in Mr P's business' name.

Mr P ought to have realised much sooner if he felt the information on the agreement was incorrect. It was after all his responsibility to ensure he had read and understood what it was he was agreeing to.

Mr P says that F's zone manager had to get involved to sort out the issues with the finance agreement and that proves Paynes made the original mistake. But I don't agree. Mr P was at the time in possession of the van and rescinding the previous agreement and constructing a new one could only be done by F – not Paynes. So regardless of where the error originated from, F would have needed to be closely involved in the process to set up the new agreement.

Lastly, Mr P says he was provided with an internal copy of the order invoice between Paynes and F. This copy of the invoice shows the customer as Mr P's business. But the order form Mr P received originally shows Mr P as the customer. He says this demonstrates Paynes made changes to the invoice and agreement at a later date without his consent. But I'm not persuaded it does demonstrate that.

This is because the invoice date is after Mr P returned the signed finance agreement in the name of his business. The invoice is addressed to F, so it seems likely it needed to match what was on the signed finance agreement. Therefore I don't think

this means it shows Paynes made any mistake, it was simply sending to F the details of the customer as already listed on the finance agreement, and approved by Mr P.

I accept it is still possible that Paynes did make a mistake. But in any event it has written to the DVLA asking it to correct the number of registered keepers. I think this was fair and reasonable in the circumstances. And even if it had caused the initial error, I think this is enough to put things right.

Paynes accepted my provisional decision and had nothing further to add. Mr P didn't accept and in summary he said:

- The zone manager didn't work for F, he was employed by the vehicle manufacturer. They are only required to get involved when serious mistakes are made. This shows Paynes were at fault.
- Paynes never offered him a meeting, all the documents were emailed to him and no explanations were provided.
- If Paynes didn't have an oral conversation with him, how did it meet its obligations under CONC?
- He didn't know having the business name on the agreement was going to be an issue until Paynes pointed it out to him on the day of collecting the van. Paynes therefore didn't show a duty of care.
- Paynes were aware that he only worked for six months of the year and they should have passed this information onto F.
- The DVLA has refused to amend the registered keeper details because Payne's had requested it too late.

Mr P also provided a letter from his partner who was present during the sales process. She said it was Paynes that pointed out that the agreement was in the name of Mr P's business but said it couldn't be changed. She said Mr P wanted to back out of the sale and take back his old car but Paynes wouldn't allow it. She said no financial issues were discussed with Mr P during the sales process or afterwards.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same conclusion I reached in my provisional decision and for broadly the same reasons. I'll address the additional points Mr P has raised.

Mr P says the zone manager didn't work for F. But from everything I've seen, he did or at the very least was working on behalf of F. In any event, I don't think it matters who the zone manager was employed by. This is because who he was employed by doesn't help in determining whether Paynes made errors during the sales process. The zone manager was required to get involved in arranging new finance documents, as I mentioned in my provisional decision, that doesn't mean Payne's made a mistake with the documents. Instead, it just shows the zone manager was required to be involved in order to reissue a new agreement.

As I set out in my provisional decision, Paynes weren't required under CONC in these circumstances to give Mr P an oral explanation of the agreement. It provided this information to him in a durable medium and Mr P has confirmed this by saying he received the documents Paynes sent. I'm therefore satisfied Paynes met its requirements under CONC.

I can see Paynes offered Mr P the opportunity to call them to discuss anything he was unsure of. Further, I haven't seen that Mr P suffered any loss anyway as a result of how the agreements were (or weren't) explained to him.

I accept its possible Paynes were at fault for initially putting Mr P's business on the finance agreement. But how this error occurred, and which party caused the error is far from clear. Given all the circumstances and evidence available, I'm not sufficiently persuaded that Paynes did make a mistake with how the agreement was set up.

I say this because Mr P had previously reviewed the agreement in detail at home without raising any concern. The agreement listed his business at the top of the first page, and he told this service he hadn't authorised Paynes to use his business name in any way. This leads me to conclude that Mr P ought to have reasonably questioned the inclusion of his business name on the agreement much sooner, and it's likely he would have spotted this straight away as it's listed on the top of the first page. Lastly, Mr P signed a separate form indicating the registered keeper of the vehicle would be his business.

Mr P says Paynes ought to have told F he only worked for six months each year. He says he told Paynes this before entering into the agreement. But Mr P's partner has said no financial information was discussed at all. As this appears to contradict what Mr P says, I'm unable to place much weight on what either he or his partner have said about what financial discussions were had with Paynes. In any event, it was ultimately F's decision, not Paynes', as to whether to approve Mr P's application for finance.

Lastly, Mr P says the DVLA refused to amend the registered keeper details after Paynes asked it to. Paynes has also agreed that the DVLA hasn't removed Mr P's business from the list of registered keepers. However, Paynes don't have any control over the actions of the DVLA. I can understand why this will be disappointing for Mr P, but this doesn't change the outcome I reached in my provisional decision. This is because I haven't seen anything to persuade me the initial DVLA registration was caused by a mistake made by Paynes. If I don't think Paynes has made any error, it wouldn't be fair or reasonable for me to make any direction or award against Paynes.

As I said in my provisional decision, Mr P signed a separate document at the point he collected the van. It was clear and prominent on the document that Mr P would be signing to agree for his business to be recorded as the registered keeper with the DVLA. Mr P has also said in response to my provisional decision that Paynes pointed out to him prior to him signing the documents that it was in the name of his business. If Mr P didn't wish for this to happen, he shouldn't have signed the documents.

I note Mr P says he felt he was left with no choice but to sign the documents. However, taking everything into account, I haven't been able to place as much weight on what Mr P has told us. This is because he has at times been inconsistent with what he says happened or what was (or wasn't discussed). He's told us Paynes didn't discuss the finance documents with him at all and told him just to sign them, but as I've mentioned above, he's also said they did highlight to him the finance was in the name of his business. Further, he's said *"I did not know that having the business name in place was going to be an issue until it was pointed out to me on collection day"* so it seems Mr P accepts Paynes did explain the implications of what he'd be signing.

For all the reasons given above, I'm not persuaded that the actions of Paynes have caused any loss to Mr P and therefore I make no direction or award.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 November 2020.

Tero Hiltunen
ombudsman