

complaint

Mrs Q has complained that Glyn Hopkin Limited mis-sold her a finance agreement for a car.

background

facts

In total, Mrs Q has had three finance agreements, arranged by Glyn Hopkin.

The first was taken out in September 2014, for Car 1. The monthly repayments were £237. Then, in August 2015, Mrs Q saw there was a promotion being run, that she'd like to take advantage of. She's explained that she told Glyn Hopkin she couldn't afford more than the £237 she was currently paying.

At this point, a second finance agreement was entered into for Car 2, with monthly repayments of £150. This involved paying a £500 deposit and part-exchanging Car 1. Car 1 was then sold on to someone else.

However, Mrs Q was later contacted about an admin fee for transferring her number plate. During this call, she found out that the finance for Car 1 hadn't been settled and that £9,851.56 was still outstanding.

Mrs Q spoke to Glyn Hopkin the next day. It explained it hadn't known there was outstanding finance on Car 1, as it hadn't shown on an HPI (hire purchase information) check. Also, Mrs Q had signed a document to say there wasn't.

It was then agreed that Mrs Q would:

- pay £1,600 towards the outstanding balance on Car 1;
- return Car 2; and
- enter into an agreement for another car, Car 3.
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The new agreement for Car 3 meant Mrs Q would pay £280 a month for three years.

Mrs Q complained to Glyn Hopkin, as the £280 she was now paying for Car 3 was costing her £43 a month more than she'd been paying for Car 1. Car 3 was the same make and model as Car 1.

our adjudicator's recommendation

Our adjudicator recommended that the complaint should be upheld. She thought that Glyn Hopkin should:

- bring Mrs Q's monthly repayments back down to £237, and refund her the 'extra' repayments made so far;
- liaise with the finance provider of Car 2, to amend her credit file; and
- pay her £350 for the trouble and upset caused.

Glyn Hopkin disagreed. It said it accepted it was partly its responsibility to check for outstanding finance, but the problem happened because of a private registration number being transferred. It feels Mrs Q should also accept responsibility, as she signed a binding agreement to say there wasn't any outstanding finance, so gave incorrect information.

It added that it had already contributed a total of £3,829 to the outstanding finance, and that it would be unfair to ask it to pay more.

Mrs Q said that she'd queried the issue of the outstanding finance when she entered into the agreement for Car 2. She said she'd been told there wouldn't be any, as it would be settled as part of the new deal. She also said that when she later arranged for a HPI check herself, the finance showed clearly, including both number plates.

my provisional decision

I was minded to agree that the complaint should be upheld, but I thought the redress should differ from that proposed by the adjudicator. So I issued a provisional decision, to give both parties a chance to respond to my thoughts.

In my provisional decision, I said the following.

I feel that the main issue is whether the agreement for Car 2 should have been entered into. If not, should Glyn Hopkin be held responsible for this?

When Mrs Q went to Glyn Hopkin 11 months after she entered into her first agreement, it was to see if she could benefit from a new promotion. I'm satisfied she did this, as she hoped to reduce her monthly outgoings, and that she couldn't afford an increase.

On the face of it, it looked like entering into the agreement for Car 2 would be beneficial financially. She'd been paying £237 a month, and this would then go down to £150. But unfortunately that didn't tell the whole story. What hadn't been factored in was the outstanding finance on Car 1.

This is where there seems to have been a misunderstanding. There's disagreement about what would have shown on an HPI check, and Mrs Q did sign a document to say there was no outstanding finance on Car 1. But I accept her explanation that this is because she believed it would essentially be 'extinguished' by entering into the second agreement. Essentially, substituting one for the other.

Further, it was Glyn Hopkin which had arranged the finance for Car 1 under a year before. So regardless of any issues with what an HPI check showed, Glyn Hopkin should have known – and I think had actual knowledge – that Car 1 was subject to finance. Because of this, it should have known that Mrs Q actually wouldn't be reducing her outgoings, as I believe she'd said she wanted to do. This means I think Glyn Hopkin arranged an unsuitable finance agreement for her for Car 2.

Because of this, I don't think this second agreement should have been entered into. This means I'm minded to put Mrs Q back into the position she'd have been in if it hadn't – as far as possible. This has partially been done through the agreement for Car 3 being set up. But this doesn't go far enough, as Mrs Q is still left out-of-pocket.

On this basis, I think the following should happen. As I understand it, there's no longer any outstanding finance in respect of Cars 1 and 2. So this leaves the £1,600 Mrs Q paid towards the outstanding finance, the £500 deposit she paid for Car 2, and the fees she paid to move her licence plate to Cars 2 and 3 (on the assumption she did so – which I'd

appreciate it if the parties would confirm). So I think Glyn Hopkin should refund her these amounts, with interest.

Glyn Hopkin should also refund her the extra £43 she's paid a month on Car 3 (as opposed to what she was paying on Car 1), with interest. I understand that the finance provider for Car 3 has said it will accept a lump sum for the 'overpayments' not yet made, from Glyn Hopkin directly. It should also liaise with this finance provider, to ask it to ensure Mrs Q's credit file reflects that her monthly repayments are £237 and what the new outstanding balance is (if this information is showing on her file).

I don't think it necessary for Glyn Hopkin to liaise with the second finance provider, to try to remove records of the agreement for Car 2 from Mrs Q's credit file. This is because it should be showing as settled, so wouldn't be seen as Mrs Q still owing any money.

I'm also satisfied that this matter has caused Mrs Q trouble and upset, as it led to her having two finance agreements that I think were unnecessary, and the worry of the outstanding finance and higher monthly repayments. I'm minded to agree that £350 compensation is fair to address this.

responses to my provisional decision

Mrs Q agreed with my provisional decision. She also confirmed she'd moved her number plate to Cars 2 and 3.

Glyn Hopkin disagreed with my provisional decision. In summary, it said:

- my decision would mean Mrs Q would be getting a year's use of a car free of charge (and substantially more), particularly given that Car 3 is financed over a shorter term;
- it was only partially responsible for the misunderstanding about the finance, and has already largely negated this by making a payment towards Car 3;
- even if Mrs Q had assumed it'd be settling her finance, she should've declared it on the order form, and should have been aware of her own financial position; and
- Mrs Q initially said there'd never been a discussion about the outstanding finance.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although I've taken Glyn Hopkin's further submissions into account, they don't change my decision. I'll explain why.

I don't agree that Mrs Q will have use of a car for a year for free. Glyn Hopkin has said the first agreement was due to end in September 2018. It's also said the third is due to end in September 2018. So whilst I accept that Car 3 is now being financed over a shorter term than Car 1, taking into account the time she paid for Cars 1, 2 and 3 overall, she'll have been making consistent monthly repayments, ever since she first entered into the agreement for Car 1, until the date this agreement would have ended. These were rightly lower for the time she was driving the cheaper car. They are for the amounts set out in the finance agreements, save for the deduction for Car 3 - which I've explained is to put her back in the position she'd have been in had she kept Car 1. So I don't agree she's received any

significant benefit here. As explained, I don't think that Glyn Hopkin's contribution to the outstanding finance was sufficient to put Mrs Q back in the position I think she should have been in. I think my award does, as far as it possible.

I've already explained why I think Glyn Hopkin is responsible overall for the issue with the finance for Car 2. As regards Mrs Q initially saying it wasn't discussed, this is because she says the issue was dismissed when raised. I accept this would have been why she didn't feel it necessary to mention it on the order form. While Glyn Hopkin deals with many customers, so may not remember each one, I don't think there's any doubt that when setting up the agreement for Car 2, it would have been clear it did so for Car 1.

For these reasons, my provisional decision hasn't changed.

my final decision

For the reasons given above, it's my final decision to uphold this complaint. I require Glyn Hopkin Limited to:

- refund Mrs Q the £1,600 she paid towards the outstanding finance on Car 1, adding 8% simple interest a year, from the date she paid it to the date of settlement;
- refund Mrs Q the £500 deposit she paid for Car 2, adding 8% simple interest a year, from the date she paid it to the date of settlement;
- refund Mrs Q the two sets of fees she paid for transferring her licence plate, adding 8% simple interest a year, from the date she paid each to the date of settlement;
- refund Mrs Q the £43 extra she's paid a month for Car 3, adding 8% simple interest a year, from the date of each payment to the date of settlement;
- pay the future 'excess' payments to the current finance provider in one lump sum;
- liaise with that finance provider to ask it to ensure Mrs Q's monthly repayments are reflected on her credit file as being £237, and what the new outstanding balance is, if her file shows this information; and
- pay Mrs Q £350 compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Q to accept or reject my decision before 13 October 2016.

Elspeth Wood
ombudsman