

## **complaint**

Ms S is unhappy that Honeycomb Finance Limited won't let her unwind a fixed sum loan that she took out to buy a number plate.

## **background**

I recently issued my provisional conclusions setting out this complaint and why I was minded to think it would be fair to allow Ms S to unwind the finance agreement that she'd entered into.

I've attached a copy of my provisional decision below, which forms part of this final decision. I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

### *response to my provisional findings*

Honeycomb didn't respond.

Ms S raised some concerns around the cost of the number plate. She pointed out the actual cost of the number plate was £159. She confirmed the total cash price stated on the credit agreement is correct and included a service charge.

She explained that she chose the number plate from a list of number plates and didn't ask for it to be specifically made for herself. Ms S also pointed out that supplier A could've returned the number plate at no cost to them whatsoever but were only willing to cancel if she paid a £159 cancellation fee.

## **my findings**

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

Having done so, I've reached the same position as I did in my provisional decision and for the same reasons.

I'm still of the opinion that the number plate can't fairly be considered to be clearly personalised goods. So as I'm not persuaded that the number plate falls within the exception set out in the relevant regulations, I think Ms S was entitled to return it when she tried to.

It's unfortunate that supplier A was unwilling to take the pragmatic steps Ms S identified at the time. But as I consider that Section 75 applies to this purchase and that there's been a breach of contract due to A not following the requirements of the 2013 regulations, it would be fair and reasonable for Honeycomb to allow Ms S to return the number plate.

**my final decision**

Having considered everything afresh, including all that's been said following my provisional findings, I've no reason to reach a different conclusion.

My final decision is that Honeycomb Finance Limited should unwind the finance agreement and return any money Ms S has paid, subject to her returning the relevant registration documents to either Honeycomb Finance Limited or to A.

Honeycomb Finance Limited should also remove any reference to the finance agreement from Ms S's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 6 March 2018.

Claire Marsh  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Ms S is unhappy that Honeycomb Finance Limited won't let her unwind a fixed sum loan that she took out to buy a number plate.

### **background**

In April 2017, Ms S entered into a contract to buy a number plate from an online supplier, who I'll call A. The cash price of the number plate was just over £330. Ms S paid a deposit and took out a loan from Honeycomb to pay the rest of the balance.

Very shortly after, Ms S discovered that the number plate she'd selected couldn't be used on her vehicle. She contacted A to try and change the number plate for a similar one that would've been allowed. A wasn't willing to allow Ms S to change the plate without administration costs. Ms S contacted the DVLA to understand more about the registration process. She pointed out A's administration costs were disproportionate as ownership of the number plate hadn't actually been transferred to her at the time she realised her mistake.

Ms S also contacted Honeycomb and told it she wanted to withdraw from the finance agreement. But Honeycomb's final response said that as Ms S wanted to cancel the loan due to a problem with the supplier, she needed to contact A instead. Ms S points out that the finance agreement says it could be cancelled within 14 days and she'd tried to cancel it within hours.

One of our investigators looked into things. He said the complaint should be upheld and that Ms S had the right to return the number plate within 14 days because of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

Ms S agreed with what our investigator said. But Honeycomb didn't. It said that A had spoken to Trading Standards who had advised the number plate would be considered personalised goods. It pointed out that the DVLA also refer to personalised registrations and that the number plate had been assigned to Ms S by the DVLA. It added that A's terms and conditions referred to distance selling rules and that Ms S didn't have the right to cancel the contract because it started immediately.

As no agreement could be reached, the complaint has been passed to me for a final decision.

### **my provisional findings**

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

I'm required to decide what, if anything, Honeycomb should do to resolve this complaint. To do that, I must decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law in this complaint includes Section 75 of the Consumer Credit Act 1974 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

Having looked at everything, I broadly agree with the conclusion that our investigator reached. But there's considerable confusion about what consumer regulations are relevant and how they apply here. So I'll explain how I've arrived at my decision.

Ms S pointed out that that she had 14 days to cancel the finance and that she contacted Honeycomb within hours. And I've listened to the initial phone call Ms S had with our investigator where she describes her contract with A and the arrangement for the finance as two different things. So I think when Ms S contacted Honeycomb, she was probably discussing her right to withdraw from the finance agreement under Section 66A of the Consumer Credit Act 1974.

Section 66A gives Ms S the right to withdraw from the finance agreement without giving any reason within 14 days. But if Ms S had gone ahead to do this, she would've still been responsible for the amount Honeycomb had paid to A to enable the purchase of the number plate to go ahead as she'd entered into a contract with A. So I'm not persuaded that Ms S would've been in a vastly different position now if Honeycomb had allowed her to withdraw from the agreement in this way.

Ms S used a type of finance to contribute towards the cost of the number plate that is covered by Section 75 of the Consumer Credit Act 1974. Section 75 says that in certain circumstances, a finance provider can be responsible for a breach of contract or a misrepresentation made by the supplier. So if A's actions amount to a breach of contract, then Ms S has the right to seek redress for the consequences of that breach. And because of Section 75, she can pursue that claim against Honeycomb.

I think the circumstances when a Section 75 claim can be considered have been met here. The cash price of the number plate is within the monetary limits and there's the relevant link between Honeycomb, A and Ms S. So the next question is whether there has been a breach of contract or a misrepresentation.

Ms S accepts that the mistake when buying the number plate was hers. She didn't realise exactly how the system worked. So I don't think Ms S has a claim for a misrepresentation against Honeycomb or A – she hasn't decided to buy the number plate because of something A told her that later turned out not to be true.

So I've gone on to consider whether Ms S has a claim for breach of contract. Honeycomb has pointed to A's terms and conditions on its website to support the stance that the number plate couldn't be returned and is exempt from any right to cancel.

A's terms and conditions say:

*"Under the distance selling act 2000, all rights are lost when agreeing to the terms and conditions, no cancellation or returns can be granted, and the process will begin immediately. However, where possible and valid reason given, A will try their upmost to grant a cancellation or refund (within 7 working days, charges may apply). If you require any more information or would like to request a cancellation or refund please contact us. Please note if an order has been processed A are unable to grant a cancellation."*

However I don't feel A's terms and conditions reflect current law. The Consumer Protection (Distance Selling) Regulations 2000 have been superseded by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which for ease I'll call the 2013 regulations.

The terms and conditions on A's website don't specify under which law they were written. But given that Ms S entered into the contract in England, I think it's fair to say that it would be the law of England and Wales that applies to that agreement. Regulation 34 of the 2013 regulations says that *"where the provisions of this regulation apply to cancellation of a contract, the contract is to be treated as including those provisions as terms."* This means that the 2013 regulations are implied as contractual terms even if a supplier's terms and conditions don't make any specific mention of them.

The 2013 regulations have been in force since June 2014. They cover consumer rights when goods are purchased at a distance, such as when Ms S purchased the number plate online. The 2013 regulations allow for goods to be returned within 14 days of purchase. But the relevant section of these regulations also say that the 14 day return rule doesn't apply to *"the supply of goods that are made to the consumer's specifications or are clearly personalised."*

The next thing I need to think about is whether the 2013 regulations apply to what Ms S bought. Ms S purchased a number plate. But the value of the physical plates themselves is nominal. What Ms S acquired is the right to use a particular number and letter sequence on her vehicle. I'd consider this to be an intangible asset.

I've thought about whether the regulations apply to intangibles and I'm satisfied they do. Although the wording of the regulations doesn't specify what is considered to be intangible, it's clear from the wording of the legislation that computer software is included and this includes a significant intangible element. So I think the sale of number plates online would in principle be covered by the 14 day return rule.

I've then gone on to consider if the number plates Ms S bought are exempted from the 14 day return rule because they have been made to Ms S's specification or are clearly personalised.

Honeycomb thought the number plates were personalised. It pointed to what Trading Standards told A and the fact that the DVLA describe this type of number plate as being a personalised registration.

I don't think anyone is arguing that this number plate was made for Ms S's specification. The last three digits of the private number plate contained Ms S's initials and Ms S chose the number plate from a list of similar marques. It already existed and it wasn't made especially for her.

So I've gone on to think about whether it is clearly personalised. This isn't very easy to define and is very much dependent on individual circumstances.

I think the likely reason why this exception was included in the regulations was to protect suppliers who wouldn't be able to sell the goods that were being returned because they were so bespoke. For instance, a jumper with a photograph of the customer printed on is unlikely to be saleable to anyone else.

I don't agree that because Trading Standards told A this type of number plate is considered to be personalised goods or because the DVLA describes this type of number plate as a personalised registration is enough to show that this particular registration number was clearly personalised to Ms S.

The number plate is personal to the extent that Ms S has selected one that has a combination of letters that have a particular meaning or significance for her. But there were a list of other very similar number plates that Ms S could've chosen from. And Ms S initially wanted to exchange the number plate to another very similar one from the selection that A had with the same combination of letters, which I think in and of itself shows that this particular registration wasn't clearly personalised only to Ms S. In reality, I believe the number plate is resalable and that A would be able to sell it on again in time.

For the reasons I've explained, I don't think the number plate can fairly be considered clearly personalised goods. This means the sale doesn't fall within the personal goods exemption of the 2013 regulations.

As I think the number plate doesn't fall within the exception set out in the regulations, it follows that I think Ms S was entitled to return it when she tried to. That leads me to conclude there has been a breach of contract as I don't consider A's terms and conditions are valid.

In summary, I consider that Section 75 would apply to this purchase and I believe there has been a breach of contract due to A not following the requirements of the 2013 regulations. So I think it would be fair and reasonable for Honeycomb to allow Ms S to return the number plate.

**my provisional decision**

From what I've seen so far, my provisional decision is that I should uphold this complaint.

This would mean that Honeycomb Finance Limited would need to unwind the finance agreement and return any money Ms S has paid, subject to her returning the relevant registration documents to either Honeycomb Finance Limited or to A.

Honeycomb Finance Limited would also need to remove any reference to the finance agreement from Ms S's credit file.

Claire Marsh  
**ombudsman**