

complaint

Mrs H complains that Toyota Financial Services (UK) Pic ("Toyota Finance") unfairly charged her interest when she made an early repayment of the amount financed under a hire purchase agreement for a new car.

background

In January 2018 Mrs H entered into a 42 month hire purchase agreement for a new car with Toyota Finance. There was a Finance Deposit Allowance of £1,500 put towards the car by the dealership as Mrs H was purchasing the car via a finance agreement.

Mrs H says at the time she entered into the agreement she made it clear that she intended to settle the agreement early.

One week after entering into the agreement Mrs H contacted Toyota Finance and asked for the early settlement figure. Mrs H said she intended to make a payment at the start of February 2018.

Toyota Finance provided a figure to Mrs H and advised her that this included 56 days interest. It also said that the settlement figure was valid for 28 days (which ended mid February).

Mrs H asked if the amount could be paid by her husband's card but was told by Toyota Finance that this wasn't possible and any final payment would need to be made either on a card belonging to Mrs H or by BACS transfer. She also queried the 56 days interest being added to the settlement figure.

Mrs H paid the settlement figure at the start of February 2018. She then wrote to Toyota Finance and requested that she receive a rebate on the amount paid as she'd settled within 16 days of the agreement being taken out and felt 40 days of interest should be repaid to her. She said Toyota Finance had provided a number of different figures for the settlement amount and she'd found the process confusing and unclear. Mrs H also said that the agreement had made no mention of paying 56 days interest when settling the agreement early and disputed this was in line with the terms of the Consumer Credit Act as stated by Toyota Finance.

Toyota Finance didn't respond within 10 weeks of Mrs H making her complaint and so she made a complaint to this service. However, it then did provide its final response to Mrs H before her complaint had been fully investigated by our adjudicator.

Toyota Finance said that under the terms of the finance agreement if Mrs H settled the agreement early she was entitled to a rebate on the interest she would've paid had the agreement lasted its full term. The method used to calculate this rebate was set out under the Consumer Credit Act and interest is calculated in advance. It said that the 56 days interest was part of the statutory calculation and wasn't a fee or penalty.

Toyota Finance said Mrs H hadn't been provided with misleading information nor had she'd paid too much interest under the agreement when settling it early.

Our adjudicator didn't recommend Mrs H's complaint should be upheld. She said that the hire purchase agreement Mrs H entered into with Toyota Finance was regulated by the Consumer Credit Act 1974 and this Act sets out the procedure to be followed for early settlement. It says that settlement figures should be calculated using the rules set out in the Consumer Credit (Early Settlement) Regulations 2004. And although the agreement didn't refer specifically to 56 days interest being applied to an early settlement figure, it did refer to the "compensatory amount". The adjudicator said she was satisfied Toyota Finance was allowed to charge this amount of interest under the Consumer Credit Act.

Our adjudicator also said she appreciated that Mrs H had found the settlement figures provided by Toyota Finance confusing, as there were differences in the amounts. But Toyota Finance had explained that the manual calculations would probably differ to the computer calculations due to the complexity of the formula that's applied in calculating early settlement rebates.

She said that the settlement figure provided to Mrs H was valid for 28 days and early payment would make no difference to that figure. So although Mrs H paid the amount at the start of that period there was no refund due to her.

She also noted it was Toyota Finance's policy not to accept settlement payments on someone else's credit card as this could raise issues over ownership. And said she didn't think Toyota Finance had been obstructive towards Mrs H when she had tried to settle the agreement early.

Mrs H said that she'd been told by the dealership that no fees or minimum interest would be charged when she'd explained she would be settling the agreement early. She said she was provided with incorrect pre-sale information which led her to enter into the agreement. She also didn't accept that Toyota Finance wasn't able to provide accurate figures when requested.

Mrs H disputed it was Toyota Finance's policy not to take payments from someone other than the person named in the agreement ,as the deposit for the car had been paid with her husband's card.

Mrs H said she was only seeking a repayment of 28 days interest, with compensation for the distress and inconvenience caused as she believed this was fair.

Our adjudicator responded that she didn't agree the dealership had misled Mrs H as the 56 days interest wasn't a penalty nor was it a minimum months' interest charge. The 56 days interest would've been applied at any point during the agreement if it had been settled before the set end date.

She also said she wasn't persuaded Mrs H wouldn't have entered into the agreement if she'd been aware of the 56 days interest as she'd received the £1,500 deposit allowance when she'd taken out the finance agreement. If Mrs H had withdrawn from

the agreement within the first 14 days, although she wouldn't have incurred interest charges, she would've had to repay the £1,500 contribution.

She said that Mrs H had been provided with an accurate repayment figure that had been calculated by the computer, and Toyota Finance hadn't done anything wrong in trying to simplify the calculation when they did it manually for her.

Our adjudicator also explained that it was Toyota Finance's policy not to accept settlement payments from cards belonging to third parties, though they did allow partial payments. Its concern being the transfer of ownership from Toyota Finance once the agreement was settled.

Mrs H disagreed with our adjudicator's view. She said that she'd been told there would be no penalties and as she'd paid off the agreement within 2 to 3 weeks of taking it out only one month's interest should be charged. She disagreed that it was acceptable that Toyota Finance couldn't provide accurate interest amounts when asked to do so. And that the multiple settlement figures had caused her confusion. She said that Toyota Finance had provided a settlement date in excess of what was required, therefore justifying why more than one month's interest was due. But as the settlement had been made within the first month the full two months of interest couldn't be justified.

Mrs H also said she believed Toyota Finance had changed its story about the payment with a third party's card and this had been barrier to her repaying the agreement early. She added that the £1,500 contribution had no bearing on how much interest was charged or on the fairness of the early settlement process. Finally, she observed that Toyota Finance had only issued its final decision after she'd complained to this service, which was poor.

As the parties weren't able to agree the complaint was passed to me. I issued a provisional decision along the following lines.

Mrs H had acquired a new car via a hire purchase agreement, and by taking out this agreement she was able to take advantage of the deposit allowance of £1,500 and put this towards the cost of the car.

I accepted Mrs H had always intended to settle the agreement earlier, and so there would've been a discussion with the dealership about the impact of early settlement. Mrs H said it was never raised with her by the dealership that she would incur 56 days interest being added to any settlement figure. She said she was told that there would be no penalty imposed. Section 56 of the Consumer Credit Act 1974 (CCA) says a lender like Toyota Finance may be liable for what's said in pre-contract discussions by the dealer. Mrs H said that the dealer had misrepresented the amount she'd have to pay on early settlement and it wasn't set out clearly in the agreement.

Looking at this part of Mrs H's complaint, I'd needed to be satisfied that the dealer probably told Mrs H something that wasn't true *and* that the untrue statement on its own had induced her to take out this hire purchase agreement. But I needed to make it clear at the outset that, even if I'd accepted there'd been a misrepresentation, the appropriate remedy would have been to put Mrs H back in the position she would've been in if the misrepresentation hadn't been made.

Taking into account the evidence I accepted that it was likely there'd been an untrue statement by the dealership as to the effect of settling the agreement early. And I was reasonably sure that the statement from the dealer about there not being any early settlement fees would have been an important factor in Mrs H taking out the hire purchase agreement. But I wasn't sure it was the only one.

If she hadn't taken out the agreement then the deposit allowance of £1,500 wouldn't have been paid towards the car. Mrs H said this contribution wasn't relevant to her complaint. But I disagreed as it was something I needed to consider when deciding whether the inducement to take out the agreement was *only* due to what had been said about the early settlement, or whether there'd been other factors involved.

I could see there was the (statutory) opportunity for Mrs H to withdraw from the finance agreement within the first 14 days. But, had she done so, although there would've been no interest charges the dealer contribution of £1,500 wouldn't have applied- and would have had to be repaid.

So, I thought it was possible that even if Mrs H had been explicitly aware of the early settlement position, she would've still entered into the hire purchase agreement as the interest Mrs H said she was overcharged amounted to £114.36, which was substantially less than the deposit contribution she benefitted from.

The HPA signed by Mrs H included the following terms:

"The amount repayable under this Agreement may then be reduced by a rebate of charges."

and

"We may charge a compensatory amount in accordance with laws and regulations ..."

So, I was satisfied Toyota Finance had the ability to include any such charges in the event of early settlement. But it was important I set out the position in this particular case- as I must have regard to the relevant law when reaching my decision.

The early settlement figure had been calculated in line with the Consumer Credit (Early Settlement) Regulations 2004. The regulations require lenders to work out the total interest payable as if the loan had remained outstanding for the remainder of the term. That amount is then reduced by giving an interest rebate to reflect that the loan is being repaid early. But the regulations do allow lenders to defer the date of the calculation – in this case by a sum equivalent to 56 days' interest- where the loan is for more than a year.

Mrs H felt strongly that Toyota Finance had been misleading and obstructive in its dealings with her. However, I was aware that the formula that is set by the Consumer Credit (Early Settlement) Regulations 2004 ("The Regulations") is complex and a computer is used to calculate the settlement figure. I thought Toyota was clear with Mrs H that the manual figures may not be accurate, and it had provided the correct settlement figure in writing as it had been required to do.

Mrs H queried the settlement date. But under the Regulations the credit provider, after receiving notice from the debtor that they wish to settle, sets the date for that resettlement *"28 days after the date on which the notice was received"*. I appreciated Mrs H said she wanted to make the settlement payment at the beginning of February, but Toyota Finance was entitled to give a settlement date of mid-February. I didn't agree this was a tactic to enable it to charge a larger sum of interest

I appreciated Mrs H paid the settlement in advance of the 28 days limit, but I thought it was clear that this figure stands for the full 28 days and so it wouldn't alter if it was paid at the start or end of the 28 day period. I disagreed that it would be fair for Mrs H to receive a rebate because she'd chosen to pay the settlement figure early on in the 28-day period.

Mrs H said that Toyota Finance had been difficult about her making an early settlement and that its dealings with her were confusing and unclear. She was also unhappy about its delay in sending out its final response letter.

Looking at the email correspondence, I thought Toyota Finance had explained things to Mrs H and answered her queries. I also thought its stance on third party cards not being allowed to be used to pay final or settlement payments was reasonable, as it's this payment that transfers the ownership of the vehicle over. I'd no evidence to suggest that Toyota Finance applied this rule to block Mrs H making her settlement payment.

And although I appreciated the final response letter was late, and triggered by our services' involvement, that hadn't affected Mrs H's rights to complain to us. It had also set out what Toyota Finance had already said about the complaint. So, although this would've been frustrating for Mrs H, I didn't accept that it should've caused her undue distress and inconvenience and I didn't think this alone merited compensation.

So for the reasons given above, I didn't intend to uphold Mrs H's complaint.

Neither Mrs H nor Toyota finance have asked me to look again at the points I made in my provisional decision.

my findings

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

I haven't been asked to look again at my view by either of the parties and so I haven't changed my view.

For the reasons set out above I'm not upholding Mrs H's complaint.

my final decision

For the reasons given above I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 September 2019.

Jocelyn Griffith
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