

complaint

Mr M complains Sytner Limited (trading as Sytner Newport) gave him misleading information about a hire purchase agreement.

background

In May 2016 Mr M wanted to get a new car and went to a Sytner dealership. He says he intended to part exchange his existing car and acquire a new one on finance. He says he budgeted for about £250 to £300 a month but found a car he really liked which was more expensive at about £365 a month, with a balloon payment of about £12,000 after four years. He says he and his partner were concerned about whether he'd want to spend that much a month on a car in the long term but were assured he could return the car for a cheaper one if he wanted to. He says on this basis he entered into a hire purchase agreement for the more expensive car.

Mr M says about 18 months later he wanted to return the car for a cheaper one but was told he couldn't without paying £4,000 to end the hire purchase agreement. Mr M didn't think this was in line with what he'd been told so he complained to Sytner. Sytner didn't uphold Mr M's complaint. It said, in summary, that Mr M had signed the hire purchase agreement which set out his termination rights and that it didn't think Mr M has been told he could return the car for a cheaper one without any costs involved.

Mr M maintained that he had been told he could return the car for a cheaper one. He brought the complaint to this service. The investigator wasn't persuaded it was most likely Mr M had been misled so he didn't recommend that the complaint should be upheld. Mr M didn't agree as he felt he'd provided enough to show he had been misled by Sytner. As an agreement couldn't be reached the complaint was referred for an ombudsman's final decision.

I issued a provisional decision saying I intended to uphold this complaint. I said:

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

Since Mr M asked for an ombudsman's final decision he's raised (through a third party) a number of additional complaint points. As these are new points I think they should be considered separately. With this in mind, and with Mr M's consent, I will only consider the original complaint – whether Mr M was given misleading information about his ability to change cars part way through the term of the hire purchase agreement.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The hire purchase agreement in this case is a regulated consumer credit agreement, with Sytner credit brokering – a regulated activity. So I can consider a complaint relating to Sytner's actions in its capacity as the credit broker. As the credit broker Sytner was responsible for giving Mr M the information he needed to make an informed decision. This is set out in the Financial Conduct Authority (FCA) Consumer

Credit Sourcebook (CONC). Of particular relevance to this complaint is CONC 4.2.5 which says (but isn't limited to):

"(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;"

and;

"(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;"

Mr M says he was originally looking for a specific car which was within his car budget but that while at the dealership he saw a convertible car in the next model up which he really liked. Mr M has said it was more than he'd budgeted for but that he was led to believe he could return the car for a cheaper one if wanted to. I find his testimony to be credible as what he's said has been consistent and plausible throughout this complaint. It's also supported by a contemporaneous message exchange between Mr M and his sister, which includes, amongst other relevant messages, the following:

"Yeah. The pcg deal with them is awesome because you can change at anytime. He said you can change after 6months if you want!!X"

Sytner has provided a statement from the sales executive Mr M saw. He says he can't remember discussing how changing cars could work and says the retail manager (who no longer works there) dealt with the finance options. I don't think this directly refutes what Mr M has said, and in any case, I find Mr M's testimony more compelling. I say this because the sales executive has said Mr M was looking for the car he ended up getting – the model up from the one Mr M says he was originally interested in. I don't think this is right as the message exchange refers to the model Mr M says he was originally interested in, which makes me think his recollection of events is more likely accurate than that of the sales executive.

About 18 months into the agreement Mr M decided he wanted a cheaper car. Following being told he couldn't make the change without paying a lot of money to pay off his existing agreement, he complained. I think his actions here support his contention that he thought he could make the change without cost.

Overall, I think it's most likely Mr M and his partner asked questions about changing cars part way through the hire purchase agreement and that Sytner didn't make it clear that doing so could result in significant cost.

I've looked at the hire purchase agreement. It sets out Mr M's termination and early repayment rights. The rights give Mr M two main options to end the agreement early. One is to voluntarily terminate. This would require Mr M to have paid (or be willing to pay) half the total amount payable under the agreement – about £15,000. The other option would be for Mr M to repay the agreement early. This would require Mr M to settle the agreement with his own money or sell the car (with the finance providers agreement) and use the proceeds to settle the agreement, with him covering the difference. Neither of these options would allow Mr M (as he later found out) to return the car for a cheaper one at any time at no cost. As I think Sytner led Mr M to believe

he could, I don't think it properly explained how the hire purchase agreement worked to him.

I've gone on to think about whether Mr M ought reasonably to have known the information he'd been given wasn't right. I've reviewed the paperwork Mr M would have seen. Firstly, there's the agreement itself, which Mr M signed to say he'd read. As I've said, it sets out Mr M's termination and early repayment rights, but I don't think they're enough to override the assurances I'm persuaded Mr M was given about his ability to change cars.

Other documents I've seen include a factsheet about this type of agreement which includes statements like "[The agreement] *is ideal for customers who like the idea of changing their vehicle regularly, reducing the potential period of repayments, or simply wish to leave their options open for a period of time.*" There's another document which says something similar and there's a demands and needs document which says this type of agreement was most suitable for Mr M. Overall I'm not persuaded the documents mean Mr M ought to have known the assurances he was given weren't right.

Having established that I think it's most likely Sytner misled Mr M about his ability to change the car for a cheaper one, and that he ought not reasonably have known this was wrong, I've gone on to think about whether this wrong information induced him into entering into the hire purchase agreement. Mr M says if he'd known he couldn't change to a cheaper car he would have acquired a cheaper one from the start. Mr M's testimony and the message exchange he's provided suggest his intention at the point of sale was to get a cheaper car and he (and his partner) were concerned about spending so much on a car in the long term. Mr M later asked to change to a cheaper car, and once it became economical to do so returned the more expensive car and acquired a used one costing him about £230 a month. Mr M's testimony and actions make me think if he'd been properly informed about how changing cars would work he wouldn't have entered into this agreement. Instead, I think he would most likely have taken a hire purchase agreement for the cheaper car.

putting things right

If Mr M had taken a hire purchase agreement for the cheaper car, he would have been paying something like £100 less per month from May 2016 onwards. But he has had the benefit of the more expensive car. For the first 18 months Mr M was happy with the car (and the agreement) despite it costing him more than he would have liked to spend on a car. Nor did he know during this period that he couldn't make the change. I don't think during the first 18 months this matter caused Mr M any financial or non-financial loss.

From when Mr M asked to change cars (late 2017) until he returned it and settled the agreement, Mr M has had the benefit of the more expensive car and he could afford it, albeit he would have preferred to have had the money to spend on other things. I don't think it would be fair for Mr M to have the more expensive car at the cost of a cheaper one, so I don't intend to require Sytner to pay Mr M the difference in the cost of the car repayments.

Had Mr M taken a cheaper car, I think it's most likely, given his later actions, that he would have kept it. By having to voluntarily terminate this finance agreement Mr M

has therefore lost his deposit (£1,300). I intend to ask Sytner to refund the deposit, with simple interest at 8% a year from the date he paid it until the date it's returned to him.

I think Mr M deciding he wanted to reduce his outgoings, deciding on a cheaper car, and then finding out he couldn't make the change without major cost, would have come as a significant disappointment to Mr M, and been very frustrating. He's then had to make higher payments on a car than he would have liked for over two years. I'm satisfied this matter has had a considerable impact on his life over a two year period, such as the ability to do/buy things he would have otherwise been able to enjoy/benefit from. Taking all of this into account, I think £500 compensation fairly reflects the impact this matter has had on Mr M."

Mr M accepted my provisional decision. Sytner didn't accepted it. It said, in summary, that:

- it didn't think I should rely so much on Mr M's testimony (it provided some evidence it thought showed discrepancies);
- it didn't think a refund of the deposit was justified; and
- it would, as a gesture of goodwill, agree to pay Mr M £500 compensation.

my findings

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

Sytner has queried the dates of two screenshots Mr M has provided. One shows the message exchange between Mr M and his sister. The other shows a live chat Mr M had on Sytner's website. It says these took place weeks before the point of sale and so don't add any weight.

I think Sytner may have misinterpreted the dates. I'll explain why.

The screenshot showing the message exchange between Mr M and his sister is dated 21 April 2018 (about two years after the point of sale) but the message exchange itself has a time stamp of 28 May 2016 (three days before the hire purchase agreement was signed). It also refers to the car Mr M ended up getting. I think it's most likely the message exchange took place on 28 May 2016, but was saved as a screenshot on 21 April 2018, which was shortly after Sytner had sent Mr M its final response letter, and shortly before the complaint was referred to this service.

The screenshot showing a live chat is dated 15 April 2018. This is about two years after the point of sale, shortly after Sytner had sent Mr M its final response letter, and shortly before the complaint was referred to this service. I don't consider this screenshot to be material to what most likely happened at the point of sale.

Sytner has provided a call recording from June 2017. It says Mr M didn't mention he could swap cars in this call and has queried why Mr M didn't mentioned the call in his submissions to Sytner or this service. I've listened to the call and I agree swapping cars wasn't mentioned. But Mr M was calling as he was interested in selling the car back to Sytner. When asked if he wanted to part-exchange he said he didn't. I don't think Mr M was asking

to swap cars at this point. That request seems to have happened several months later. I don't think this call contradicts Mr M's testimony.

Overall, I'm still persuaded, on balance, that it's most likely Sytner misled Mr M about his ability to change the car for a cheaper one.

Sytner has queried why Mr M should get his deposit back, saying there would be no guarantee that he would have retained his deposit whatever vehicle he chose to purchase. I accept this is the case. But as I said in my provisional decision, I think it's most likely, given his later actions, that he would have kept a less expensive car. He therefore lost the deposit when he voluntarily terminated the agreement.

The goodwill gesture Sytner has agreed to is helpful as I think that fairly reflects the distress and inconvenience this matter has caused Mr M. But I don't think it reflects the financial loss he's incurred; namely, the loss of his deposit.

my final decision

I uphold this complaint and ask Sytner Limited (trading as Sytner Newport) to:

- refund Mr M's deposit (£1,300) plus simple interest* at 8% a year from the date he paid it until the date it's returned to him; and
- pay Mr M £500 compensation** in recognition of impact this matter has had on him.

*If Sytner Limited (trading as Sytner Newport) considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**Sytner Limited (trading as Sytner Newport) must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest* on the £500 compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 July 2020.

James Langford
ombudsman