

complaint

Mr and Mrs C complain about a hire purchase agreement taken out with Loans 2 Go Limited.

background

Mr and Mrs C entered into a loan agreement with Loans 2 Go in September 2017. They sold a vehicle they already owned to the finance provider for cash and signed a credit agreement for the loan.

The loan agreement was for £2,000 plus interest of £7920.16 payable at £275.58 for 35 months and a final repayment of £275.56. In order to make the payments Mr C signed a credit/debit card payment form.

Mr and Mrs C say they thought this was a logbook loan but later discovered it was a hire purchase agreement. They also say they told the finance provider they wanted to repay the loan within a few months. They say the finance provider said the interest on the loan would be accrued on a daily basis. They later found out it was front loaded interest.

Mr and Mrs C fell into arrears with the loan agreement, after the first few repayments had been made, and Loans 2 Go attempted to collect payment from their account. When it successfully collected an instalment, Mr and Mrs C say they did this without authorisation. They thought Loans 2 Go had misrepresented the agreement and as they didn't sign it on Loans 2 Go premises argue it's invalid. When Loans 2 Go repossessed the vehicle, Mr and Mrs C claim they didn't give consent, and Loans 2 Go did so without a court order.

Loans 2 Go say they followed the correct procedures when the loan was offered to Mr and Mrs C. They say it was clearly a Hire Purchase agreement, and that Mr and Mrs C's income and expenditure were fully assessed before the loan was offered. They go on to assert all loan payments received were due and payable. And that when Mr and Mrs C failed to maintain the agreement, they contacted them on numerous occasions in attempts to assist them to bring the account up to date. They offered Mr and Mrs C early settlement terms. But when they failed to agree to this, Loans 2 Go started repossession proceedings in accordance with the terms of the agreement. Although the vehicle has now been repossessed, they have offered a reduced settlement figure in an attempt to end the matter.

Our investigator looked into things for Mr and Mrs C. She looked carefully at all the information and found Loans 2 Go had acted in accordance the terms and conditions of the agreement. She also found they had followed their own procedures, and those required of them in law, before repossessing the vehicle. She felt in offering a reduced settlement figure Loans 2 Go had acted fairly and reasonably and so didn't ask them to do anything further.

Mr C disagreed. He maintains he didn't sign a 3-year agreement, it was only for 2 months. He feels there has been some fraud somewhere along the line. The agent with whom he signed the agreement has now left the company. He says he's asked a solicitor to look at the matter for him but in the meantime he asked for an ombudsman review.

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've looked at all the information provided by both parties afresh. Having done so I'm in agreement with our investigators view and for broadly the same reasons.

I'm aware Mr and Mrs C have raised a number of points and concerns that Loans 2 Go have treated them unfairly. While I don't specifically comment on each one, I hope they won't think me discourteous. I have considered each and every point carefully, but it's not always necessary for me to comment on each point to reach my decision.

I have considered relevant law, regulator's rules, guidance and industry standards, and best practice. My role is to look at the matter as a whole and determine whether Loans 2 Go have been fair and reasonable in this matter and, if not, what they should do to put things right.

There are a number of key issues that have been raised by Mr and Mrs C and so for ease I have addressed them individually.

misrepresentation of the agreement

In order for me to find Loans 2 Go have misrepresented the agreement to Mr and Mrs C, I would be looking for evidence to suggest a false statement of fact has been made, and this induced Mr and Mrs C into entering the agreement.

Mr and Mrs C say they thought they were taking out a logbook loan in order to secure £2,000 by taking a finance agreement secured against a vehicle they already owned. They intended the arrangement to be for a few months only.

Mr C has said subsequently that he didn't want a logbook loan, but argues the status of the agreement he signed didn't allow Loans 2 Go to repossess his vehicle without a court order.

I've looked carefully at the agreement and related documents Mr and Mrs C signed. The agreement is clearly a Hire Purchase (HP) agreement for £2,000 payable over 36 months. Mr and Mrs C took out a credit agreement for £2,000 secured against their existing vehicle. So although this is a HP agreement, in essence they ended up in the same position as they would have had they had a logbook loan. There are technical differences in the agreements, but the premise is the same.

Loans 2 Go can offer any type of loan agreement they want to but it's incumbent upon them to ensure there is sufficient information for Mr and Mrs C to make an informed decision and the loan is affordable.

The loan applications were signed on 5 September 2017. These detail the existing vehicle was to be used for security and I have checked the additional documents such as confirmation of insurance, the Sale Agreement and the HP agreement. They all detail the same Vehicle Registration Number (VPN). So I'm satisfied that in signing two documents and providing an insurance document, Mr and Mrs C understood their vehicle would be used as security for the loan. I'm further satisfied that they knew or ought reasonably to have known what type of agreement it was that they had entered into, that is a hire purchase agreement and not a log book loan. As I said, this is stated clearly on the document itself.

As the loan fell into arrears, I have also examined the Income and Expenditure Form both Mr and Mrs C completed and looked carefully at the bank statements they provided as evidence they could afford the repayments on the loan. I'm also satisfied after taking account of household expenditure and any other credit commitments, there was enough disposable income to repay the HP loan.

I understand Mr C has also questioned the validity of an agreement signed in his own home. I'm not aware of any regulatory requirement that says a loan agreement must be signed on the finance provider's premises, and so I'm unable to agree with Mr C that in doing so Loans 2 Go have invalidated the agreement. I'd also add that this is a legal point, and our service is an informal alternative to the courts.

was the interest rate and early settlement terms applied to the loan clear

I understand Mr and Mrs C have raised several times with Loans 2 Go, and this service, that they were unaware of the amount of interest applied to the loan and had they been aware they would not have taken it out.

The Pre-Contract signed by both Mr and Mrs C clearly states the interest rate to be applied to the loan, the term of the loan being 36 monthly repayments, and also the fact that non-payment could lead Loans 2 Go *"to take steps to recover the goods."*

The separate HP agreement was clearly defined as such on the top of the first page. The first section entitled *"Key Financial Information"* also details the amount of the payments, the term of the loan and the interest rate. The terms and conditions of the agreement also went on to detail the penalties for non-payment and *"your right to terminate the agreement"*, by returning the car to Loans 2 Go and paying half of the credit due.

The Customer Statement, also signed by Mr and Mrs C, confirmed the documents they had signed had been explained, they were aware of the APR, the payment details and their right to repay early.

I accept the Customer Statement has Logbook Loan within it but there are two other documents that all detail the repayments, the term of the loan and the APR applied. All of which Mr and Mrs C have signed and so agreed to the terms and conditions within. On balance, I'm satisfied Mr and Mrs C had sufficient information to make an informed decision and were aware of the terms and conditions they had agreed to.

With regard to the early settlement of the loan, the agreement clearly stated this can be requested at any time by Mr and Mrs C in writing, and sets out how any settlement figure will be reached. This is in accordance with the formula set out in the Consumer Credit Act 1974. I looked carefully at the settlement figure later requested by Mr and Mrs C and I'm satisfied it meets the regulatory requirements.

I'm not in disagreement that the interest rate applied to this loan is high, but this isn't a matter I'm able to comment on, except to say it was clearly detailed within the agreement and it's broadly at the same rate this type of loan agreement attracts.

loan repayments

I can see from the loan agreement that Mr C also signed a credit/debit payment form. The form gave permission for Loans 2 Go to debit payments from Mr C's debit card. The account was only in Mr C's name and so Mrs C wasn't required to sign this form.

The form detailed the monthly payment and Mr C signed the declaration, which read:

....."by providing your card details you authorise Loans 2 Go to take the agreed payment at the stated regular intervals. If the payment declines, you authorise Loans 2 Go to take smaller incremental payments up to the value of the payment on and/or after the agreed date. You can cancel this agreement at any time by providing us with written instructions to stop taking payments. Please only proceed if you agree and understand.

I'm satisfied Mr C was made aware of how the loan repayments should be made and that he agreed to do so in accordance with the terms and conditions of the agreement.

did Loans 2 Go have the right to repossess the vehicle?

I have looked carefully at the customer notes provided by Loans 2 Go and I have listened to the telephone call recordings provided.

There is no dispute here that Mr C's account had fallen into arrears. I can see from the customer contact records that Loans 2 Go tried on many occasions to contact Mr C in an attempt to bring his account up to date or make payment arrangements. Mr C has said he was advised as he was disputing the validity of the agreement; he didn't need to make the repayments on the loan agreement. I'm afraid this isn't the case from a legal standpoint, and although Loans 2 Go put the account on hold whilst they investigated his concerns, Mr C was still liable for the repayments under the terms of the agreement. I can see Loans 2 Go informed Mr C that if he failed to bring his account up to date they would take the necessary steps to recover the vehicle, which they were entitled to do.

Mr and Mrs C have argued that because of where they live the law says Loans 2 Go must obtain a court order to repossess the vehicle and as they didn't, they have done so unlawfully.

The credit agreement says:

"Repossession: Your Rights. If you do not keep your side of the agreement but you have paid at least one third of the Total Amount Payable under this agreement, that is £3,306.72, the creditor may not take back the Goods against your wishes unless he obtains a court order (in Scotland he may need a court order at any time). If he does take back the Goods without your consent or a court order, you have the right to get back any money that you have paid under this agreement"

Having looked at the Consumer Credit (Agreements) Regulations 2010 – Schedule 2, I'm satisfied the wording in the agreement meets the regulatory requirements.

I have considered Mr and Mrs C's point regarding the court order, but for several reasons I'm not persuaded by their argument. Firstly, Mr and Mrs C have paid less than a third of amount owed under the agreement. I'm satisfied Loans 2 Go were fair and reasonable in attempting to contact Mr C to make payment arrangements and repossession was the last resort after numerous telephone calls, texts and letters. The agreement refers to a possible need to obtain a court order in Scotland. But then there is the issue of consent. In both the CCA provisions, and the credit agreement itself, it says goods can be repossessed with consent.

I have listened to a telephone recording provided by Loans 2 Go, in which Mr C is arranging collection of the vehicle. He is heard to agree a time and date for the collection, he asks about the name of the agent who will collect it and if they will have authorisation from Loans 2 Go and says this will be fine. I appreciate Mr C says he later withdrew his consent as the agent couldn't make the time and date he requested. But I'm persuaded Mr C agreed in principle that the car would be repossessed – the date and time may have had to change for many reasons. I agree that under certain conditions it may be necessary to get a court order to repossess a car that is the subject of a hire purchase agreement. However, here I'm satisfied Mr C did give consent so there was no repossession. As repossession, broadly speaking, means taking possession of a something without consent. I see Mr C says he later withdrew his consent, but that is not clear from the information I have seen. In the circumstances, I don't think I can fairly and reasonably say that Loans 2 Go did act inappropriately.

reduced settlement offer

Loans 2 Go have provided information to show the total amount outstanding, after the vehicle was sold at auction, was £8,000.48. Mr and Mrs C have only paid £826.68 after originally borrowing £2,000 plus interest.

Loans 2 Go have offered to settle the outstanding balance for a full and final settlement of £1,000.

If Mr and Mrs C agree this will mean they will have paid £1,826.68 towards the original amount of £2,000.

This seems to me to be a fair and reasonable offer.

From what I've seen, I'm persuaded Mr and Mrs C ought to have been aware of the terms and conditions they agreed to and the implications if they didn't maintain their repayments under that agreement. I'm satisfied Loans 2 Go have been fair and reasonable in their actions, and so I'm not going to ask them to do anything further.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 24 May 2019.

Wendy Steele
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