

complaint

Mr J complains that Everest Limited has misrepresented the terms of a third party finance agreement he took to pay for its products.

background

Mr J wanted to buy new windows and doors for his property from Everest. It acted as a broker for a fixed sum finance agreement with a third party. The staff member that dealt with Mr J provided him an illustration of the difference in him paying cash or in taking the finance. This showed that the “*average annual interest rate*” he would pay if he took the finance and settled the agreement after 22 months was “0.30%” based on a “*net cost*” of £53.13. Mr J entered into the finance agreement. He says he expected to pay little interest but, when he asked to settle early, believed that he had been charged significantly more interest. Everest told him that the finance agreement he had signed had quoted an annual percentage rate of 25.2% and that the difference to its illustration was accounted for by an initial 10% discount to the cash price, available only if he took the finance, and a cash back amount credited to the loan of 10% after six months. Mr J said he was told he could use the cash back as he pleased and that it did not have to be paid to the loan account to achieve the net cost quoted.

The adjudicator recommended that this complaint should be upheld. She reached that view because:

- Mr J had provided evidence to show that he had funds to make the purchase in cash.
- Mr J had made payments in line with those suggested in the illustration but had paid more interest than was shown.
- As a result she was not persuaded that the calculations provided to Mr J showing the net cost were representative.
- She considered it unlikely that Mr J would have entered into the agreement had he known the interest he would pay would be more than £53.13.

She recommended that a refund be provided to Mr J. He had paid a total of £12,131.52 on the finance including a settlement amount. He had received cash back of £864.90 making a net payment of £11,266.62. He expected to pay £9,610 for the windows plus a documentation fee of £110 and interest of £53.13 making a total of £9,773.13.

The difference is £1,493.49 and the adjudicator said that this should be refunded, plus simple interest of 8% per annum from 3 July 2013 when he settled the loan. She also said that he should be paid £50 for distress and inconvenience.

Everest did not agree. It offered to put Mr J in the position he would have been had he not taken the finance and instead paid in cash. It said that the net cost of the finance to him had been £474.80 and it said it would refund this. It said that it offers the finance option as it often represents a saving when compared to paying by cash. Mr J did not accept this suggested offer.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have carefully reviewed the illustrations provided by Everest. There are standard sheets headed up “*why choose the account*” meaning, in this context, taking finance and a specific illustration that was provided to Mr J broadly in line with his purchase and which has already been quoted from above.

I cannot see that the illustration for Mr J has been calculated in the same way as the standard illustration. I consider that there is a difference in the way the payments have been aggregated. Based on the figures quoted, the figure for the “*total inc deposit*” on his illustration ought to have been reduced by the amount of the cashback, to be consistent with the standard illustrations. Instead it appears to be the sum of the monthly payments and the deposit paid. As a result I can see one explanation why Mr J could reasonably have thought that the cashback had not been taken into account in his interest calculation. But, that aside I find that his illustration, which quotes an average annual interest rate of 0.20%, is entirely consistent with Mr J believing that there was minimal interest on the finance and what he says he was told by the staff member.

I can see, based on the sales invoice, that there were multiple discounts applied to the order and I do not consider there is evidence that it was made clear to Mr J that there were further discounts that only needed to be taken into account when evaluating the finance. I accept, on balance, that Mr J believed when he was signing the finance agreement that he would pay very little interest if he repaid it early, despite what the loan documentation said. The finance agreement was structured on a different basis to the illustration and I accept that Mr J reasonably relied on his understanding of the illustration and what the staff member had said when he decided to sign this and take the finance, rather than pay in cash.

My assessment of a fair settlement in this complaint is based on putting Mr J in the position he was told he would be in by taking the finance. The alternative calculation by Everest says that this puts him in the position he should have been in had he not taken the finance. It seems that the majority of the difference in the refund the adjudicator proposed is in the treatment of the cashback. I am satisfied that Mr J did not consider this part of the finance calculation and, as I have said above, this did not seem to be shown in the way Everest says it should have been in his illustration. I find that the compensation recommended by the adjudicator is fair.

my final decision

In light of the above my decision is that I uphold this complaint. In full and final settlement, I order Everest Limited to:

- 1) Pay Mr J £1,493.49.
- 2) Pay Mr J interest at a simple rate of 8% per annum on 1) calculated from 3 July 2013 to the date of settlement.
- 3) Pay Mr J £50.

If Everest considers that it has to deduct tax from the interest element of my award, it should send Mr J a tax deduction certificate when making payment. Mr J can then use that certificate to reclaim tax, if he is entitled to do so.

Michael Crewe
ombudsman