complaint

Mr B is unhappy with the way Clydesdale Financial Services Limited (CFS) has handled the voluntary termination (VT) of his car finance agreement.

Mr B has said CFS issued him with paperwork showing he doesn't owe any more money under the terms of the agreement. And he thinks CFS should honour this.

Mr B also said he was unhappy with CFS's poor communication – not only to do with what he did or didn't owe under the agreement, but also in terms of any payment relating to wear and tear of the car when it was returned.

background

On 21 February 2015, Mr B bought a car by way of a conditional sale agreement. On 27 February 2017, Mr B contacted CFS to say he was struggling financially and to enquire about ending his agreement. Screenshots from CFS's system show that voluntarily terminating the agreement (and returning the car) was discussed and that Mr B was told he would have to pay £2,400 in order to VT. At the end of March, Mr B signed a request to VT and returned the car.

CFS rejected Mr B's complaint, admitting there had been mistakes along the way but said ultimately Mr B was still liable for the outstanding balance.

Our investigator agreed Mr B should be liable for the outstanding balance but felt CFS should pay Mr B £500 for the distress and inconvenience the matter had caused and reminded CFS to help Mr B find a way of paying back the outstanding sum. The investigator also said CFS's handling of whether the car had been returned in a good condition was poor and said because of this CFS should remove the wear and tear costs from Mr B's outstanding sum owed.

Mr B didn't accept the investigator's opinion.

CFS agreed to waive the costs of the wear and tear (£325) but said £500 was too high in the circumstances to recognise the distress and inconvenience this had caused Mr B. CFS felt £250 was more appropriate. Mr B was made aware of CFS's response – but this didn't alter his request for an ombudsman to review the file.

I issued my provisional findings to Mr B and CFS. I've summarised those provisional findings below.

- I concluded Mr B still owed money under the agreement;
- Initially, neither Mr B nor CFS disputed this;
- However, Mr B then challenged the debt on the basis he had received documents from CFS that showed a zero balance for the agreement. But I said that didn't automatically mean the debt should be written off as the documents were referencing the sale of the debt only. And there was nothing to show CFS had explicitly said Mr B had no further liability with regard to this debt;
- I proposed CFS should pay Mr B £250 in recognition of the distress and inconvenience they had caused him due to the confusion.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. CFS didn't have any additional submissions or evidence for me to consider, but Mr B did submit further points.

Mr B told me he did *not* tell CFS he was struggling to make payments. And that he returned the car because he wanted to upgrade. He said CFS had told him the remaining balance would transfer to a loan and he would then be told how much he would have to pay and over what period. He expected to receive new paperwork for the loan agreement.

Mr B made further references to the zero balance documents, saying it is not a mistake when those documents have been issued three times. Mr B also raised points about CFS's failings in handling the return and inspection of the car and the subsequent notification of the wear and tear charges.

While I note Mr B's points regarding return of the vehicle and notification of wear and tear costs, CFS has agreed to waive the charges. As such, what remains for me to consider is whether or not it is fair and reasonable for Mr B to have to make further payments under the terms of the agreement.

None of the points Mr B raises change my decision on his complaint. I have not seen anything to support the suggestion that CFS told Mr B the debt would be converted to a loan. But in any event, that would not alter my decision. Mr B's contract does not provide for the debt to convert to a loan: on voluntary termination, the balance due becomes payable immediately. In these circumstances, I think it is unlikely that a mistake in communication like that would give rise to such a significant change to the terms of the contract.

Nor do I agree CFS led Mr B to believe his debt had been written off with the meaning Mr B has attached to this. In my provisional decision, I referred to an automated statement dated 21 September 2017, a '*transaction statement'* and an '*account summary'* that refer all to "*Write Off Debt Sale*" and show a zero balance. Mr B explained that he took these to mean his debt had been written off. He said this contention was supported by the fact he received three separate documents, so it could not just be a mistake.

I gave my thoughts on this point in my provisional decision and these have not changed. Mr B entered into an agreement which set out what would happen in the event of termination. And when Mr B spoke with CFS directly, the message was that there would be something to pay which Mr B did not dispute at the time. Mr B also received letters shortly after, in April and May advising him there was an outstanding debt.

That Mr B received three documents appearing to suggest the debt had been written off does not automatically extinguish Mr B's liability in this case. When looking at cases involving an alleged false representation, our usual approach is to put the consumer back in the position they would have been in, had things happened as they should have done (i.e. that Mr B would have only had confirmation of the outstanding sum he was expected to pay). Not the position they would have been in, had the misrepresentation been true.

I do understand how some of the correspondence/documents Mr B received might have been confusing and contradictory to him. But for the reasons above, I do not think that alters Mr B's liability to CFS. However, I do think that should give rise to a payment to recognise the distress and inconvenience Mr B experienced.

In my provisional decision, I agreed CFS had made errors when handling the termination of the agreement, but I felt Mr B could have helped himself. I think he knew the money was owing and if he had taken steps to repay his debt in part or in full, CFS may not have issued the subsequent letters so the confusion may have been avoided. And I have seen nothing since my provisional decision to change that.

With regard to Mr B's financial situation when he VT'd, I remain uncertain as to the true position. Mr B has previously expressly told us he was struggling financially when he first sought to terminate his agreement. So, despite his more recent representations to the contrary, it is still not clear to me whether or not Mr B had financial difficulties at the time.

However, I noted in my provisional decision that CFS had sent a debt-counselling leaflet to Mr B and offered to help Mr B overcome any financial difficulties. CFS had also asked Mr B to contact their collections department to discuss the matter further. As far as I am aware, Mr B has not taken CFS up on that offer.

Taking everything into account I think Mr B still owes CFS payments under his agreement and I think Mr B was most likely aware of this. However, given CFS's overall handling of the termination I am asking CFS to pay Mr B £250 to recognise the upset this caused Mr B. As I noted earlier, CFS has already agreed to waive the wear and tear charges.

my final decision

For the reasons above, my final decision is that Mr B's complaint should be upheld in part. I am not going to make any adjustments to the debt – Mr B will need to discuss with Clydesdale Financial Services Limited how he can arrange to repay the outstanding sum under the agreement. But Clydesdale Financial Services Limited should pay Mr B £250 in recognition of the distress and inconvenience he has experienced due to the way they've handled the termination of the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 July 2018.

Alex Brooke-Smith
ombudsman