

complaint

Ms S says Bank of Scotland Equipment Finance Limited is wrongly asking her to repay an outstanding balance from a hire agreement she took out for her business. Ms S holds Bank of Scotland responsible for misleading information she says she was given by the broker of the credit, and the debt collector appointed by Bank of Scotland.

background

In 2007 Ms S entered into a three year hire agreement for goods for her business. These goods were installed on her business premises.

Ms S says the credit broker led her to believe that if she made all the payments under the agreement, the goods would be owned by her business.

In 2009 Ms S stopped trading and her business premises closed. She left the goods on the business premises. She says she did this because the credit broker led her to believe they were the property of the business.

Ms S said she did not hear anything further until she was contacted by a debt collector working for Bank of Scotland in 2011. It informed her she was liable for an outstanding amount under the hire agreement. Ms S disputed this and complained to Bank of Scotland and the debt collector.

Our adjudicator considered Ms S' complaint. He concluded that as Ms S had taken out the credit and had not maintained her payments Bank of Scotland was entitled to pursue her for the outstanding balance. He said that Bank of Scotland was not responsible for any potentially misleading statements Ms S was told by the supplier when it brokered the credit. He was not persuaded representations made by the debt collector were made with the authority of Bank of Scotland and recommended that Ms S make a separate complaint against the debt collector.

Ms S disagreed. She believes Bank of Scotland is responsible for the information she received from the credit broker and debt collector. She also said the debt is unenforceable.

my findings

I have considered all that Ms S and Bank of Scotland have said and provided to decide what is fair and reasonable in the circumstances of this complaint.

It is clear that Ms S has strong feelings about Bank of Scotland's actions. She has provided detailed submissions to support her complaint. However, I will be focusing on the issues I consider to be central to this complaint.

Ms S suggested the credit agreement is unenforceable. The Consumer Credit Act 1974 gives the courts discretion to decide whether a credit agreement is enforceable, however no comparable power is given to an ombudsman. So, I cannot say whether the agreement is enforceable, this is more appropriately dealt with in court.

is Bank of Scotland responsible for what Ms S was told by the credit broker?

Section 56 of the Consumer Credit Act 1974 – which provides that in certain circumstances the finance provider is liable for misrepresentations made by the credit broker – does not apply in this case as it does not apply to hire agreements. In the individual circumstances of this complaint, the credit broker is not considered an agent of Bank of Scotland.

Ms S has brought a separate complaint about the credit broker. I will only be considering the responsibilities of Bank of Scotland in this decision.

is it reasonable for Bank of Scotland to pursue Ms S for the debt?

The agreement clearly states it is a hire agreement. Under a hire agreement the hirer will not own the goods, even if they make all the payments. Ms S was required to pay instalments for a period of three years, and she did not do so. Therefore I find that Ms S still owed instalments, and did not have any ownership in the goods under the agreement.

Ms S says she thought the goods were the property of the business so she left them on the premises when the business closed. However, Ms S signed her own name on the hire agreement 'trading as' the name of her business. While I agree that she was hiring the goods for her business there is no compelling evidence to suggest that Ms S was hiring the goods in any capacity other than as a sole trader. As a sole trader she would have personal responsibility for repayments.

It is unfortunate that Ms S's business stopped trading. However, as a sole trader Ms S remained liable for the unpaid instalments due under the hire agreement.

Ms S says she left the goods on the business premises because of what the terms of the hire agreement said about where the goods should be kept. However, the business premises were closing, and she still had hire repayments to make on goods that were not her property. In these circumstances I find it would have been reasonable for her to take the goods with her.

Ms S indicates that she has paid enough money for use of the goods already and therefore should not have to pay any more. I do not find this a reason for Bank of Scotland to stop pursuing her for the debt. The finance contract is clear on what Ms S owed under the agreement, and Ms S signed it to indicate she was happy to pay this amount. I understand Ms S says she was misled about what she was signing, but any complaint about the way the contract was sold is better dealt with against the credit broker.

For the reasons above I find Bank of Scotland acted reasonably in pursuing Ms S for this debt.

was the information given by the debt collector misleading?

Ms S complains that the debt collector gave her misleading information about her rights under the agreement.

The information she was given implied the agreement was not a 'consumer' agreement. However, I do not find this to be incorrect. I am persuaded that Ms S was acting in a business capacity (as a sole trader) when she signed the agreement.

It is worth clarifying that under the Consumer Credit Act 1974 hire agreements can cover commercial leasing. Under this Act an 'individual' can include a business such as a sole trader or small partnership. So a business to business agreement can be regulated by the Consumer Credit Act 1974.

I accept that Ms S was wrongly informed that the agreement was not regulated by the Consumer Credit Act 1974. However, I am not persuaded that this had any effect on her actions or liability under the agreement. This is because when the error occurred Ms S's account was already in arrears and a final demand had been issued. The matter was also clarified shortly afterwards.

I note Ms S's strength of feeling but I do not find Bank of Scotland has made an error here. If Ms S is unhappy with this decision she does not have to accept it and may pursue this matter by other means - including court - if she wishes to do so.

my final decision

My final decision is that I do not uphold this complaint.

Mark Lancod
ombudsman