

complaint

Mr J complains that he was mis-sold four fixed-sum loan agreements brokered by BIG Cars Ltd (Big Cars).

Big Cars has been represented by a solicitor. However, for simplicity, I refer to all submissions as though made by Big Cars.

background

Mr J took out a fixed-sum loan agreement brokered by Big Cars to allow him to acquire a new car. He said that Big Cars encouraged him to exchange his car with a new finance agreement on a further three occasions, despite the fact that the amount of negative equity was increasing with each exchange.

In addition, he said the previous agreements continued to run despite the fact that he had moved onto a new agreement. He also made other allegations about Big Cars' practices.

He asked us to look at his complaint. We directed his complaint in the first instance to Big Cars. It did not uphold his complaint.

Our adjudicator did not uphold the complaint. Mr J asked for an ombudsman's decision.

my findings

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

Mr J appears to have used Big Cars to acquire cars financed by fixed-sum loan agreements between July 2013 and August 2015. On each occasion, Mr J exchanged his car for another car provided by Big Cars. Mr J has said he subsequently discovered that the agreements were being mis-sold and he has set out why it is that he believes that and why the agreements were not beneficial to him.

Big Cars said that Mr J was aware that on exchanging the cars the negative equity was increasing, but he had wanted newer cars. It said that as Mr J had a private number registration mark there was a delay before Big Cars received a V5 vehicle registration document showing the latest registration mark and settlement could only be made once it was in possession of all of the paperwork. It said that on occasion and as a gesture of goodwill, Big Cars would refund finance payments as the final settlement figure was reduced. It also refuted several other assertions made by Mr J.

I cannot be certain what was discussed between the parties when the finance agreements were arranged. As I cannot be certain what was discussed I have therefore looked at the documentation that is available.

I have seen four fixed sum loan agreements signed by Mr J. These were entered into in July 2013, August 2013, March 2014 and July 2014. I think it is unusual that Mr J took out so many finance agreements and exchanged his cars in such a short period of time. I note in particular that there is only around one month between the first and second agreements.

However, the loan agreements themselves clearly set out the figures and costs involved in the exchanges. They are signed by Mr J. It is reasonable to expect someone to read the finance agreement before signing it as an agreement that they want to take out and one that they wish to be bound by. It would be reasonable to assume therefore that Mr J should have realised the nature of the agreement he entered into. I find it difficult to understand why Mr J would have agreed to exchange his car and take out new finance if it were not in some way beneficial to him, such as by providing a car enthusiast with different prestige cars to drive.

I have seen two emails from Mr J, one in March 2014 and one in July 2014, in which it is Mr J who is suggesting possible cars to the dealership. Again this demonstrates to me that he was a willing participant in the deals that were being struck.

I have looked at the loan statements. I can see the following:

- For the July 2013 loan, one direct debit payment is made in August 2013 and one in September 2013 is returned unpaid with the finance not being settled until December 2013;
- For the August 2013 loan, his direct debits continued until July 2014 with the majority of the outstanding finance being settled by a card payment in July 2014 with the car having been traded in presumably in March when he acquired his next car;
- For the March 2014 loan, his direct debits continue until July 2014 when they stop and default fees are applied with the outstanding finance being settled by way of a payment in September 2014; and
- For the July 2014 loan the direct debit continues until the account is cleared by a cheque paid in August 2015.

Where Big Cars undertook to settle such loans it said that it did so quickly. I note in particular the apparent four month delay in settling the second loan. That said, there was a rebate of around £1,600 which equates to around two months payments. I have also seen an email exchange between Mr J and Big Cars in which he refers to them offering to refund payments when there was a delay in settling the finance agreement.

Ultimately, these were fixed sum loan agreements and Mr J's liability under them existed independent of what happened to the cars. Mr J signed agreements which clearly set out the terms and the figures involved.

On the information available to me, I cannot be satisfied that the agreements were mis-sold to Mr J. Although I do have some concern about one agreement running beyond when it should have I do not have sufficient evidence to conclude that this was a result of bad practice on the part of Big Cars. Nor can I be sure that any apparent overpayments were not somehow offset elsewhere. I think there was some responsibility on Mr J's part to monitor what happened with the finance agreements and to take action, such as contacting the finance provider, at the time of the issue. Instead he went on to purchase other cars from Big Cars by way of further loans.

Mr J makes other serious allegations as to Big Cars practices. However, I have not been provided with any statements or other evidence to support those allegations.

I understand this is not the outcome that Mr J wanted. However, he does not have to accept this decision and may pursue his complaint by alternative means, such as court. Indeed, given the overall nature of the allegations made by Mr J then it seems to me that a court may be better suited to consider this complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 March 2016.

Siobhan Kelly
ombudsman