

The complaint

Mr P is unhappy Mega Car Shop Ltd ('MCS') failed to clear an existing finance agreement when they supplied him with a car under a conditional sale agreement.

Mr P has been represented during the claim and complaint process by Mrs P. For ease of reference, I will refer to any comments made, or any action taken, by either Mr P or Mrs P as "Mr P" throughout the decision.

What happened

In May 2023, Mr P was supplied with a used car through a conditional sale agreement with a finance company I'll call 'M'. The agreement shows he paid an advance payment of £1,800, and the agreement was for £8,190 over 60 months, with monthly payments of £249.41. MCS acted as a credit broker in this transaction, sourcing the car and arranging the finance.

The invoice for the car, dated 4 May 2023, shows the retail price of the car was £9,990. MCS took Mr P's existing car in part-exchange, for which they gave him £3,300. The invoice also shows that MCS were to repay the existing £3,017 finance, with a company I'll call 'B', on the car being part-exchanged. So, with the £8,190 finance provided by M, this left Mr P with £1,517 to pay. It's not disputed that Mr P paid this to MCS as part of the overall transaction.

However, MCS didn't repay the finance with B. Despite multiple attempts by Mr P to chase them to pay this, the only response from MCS was in an email dated 10 July 2023, when MCS asked for another settlement letter "*[so] we can find [this] on the system for this to be cleared for you.*" While Mr P provided the settlement letter, MCS didn't clear the finance with B. As such, Mr P has remained liable for payments to both B and M, which has put a strain on his finances. And he's been unable to keep up the payments to B.

As MCS weren't responding to Mr P's complaint emails, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said MCS didn't dispute the payment to B needs to be paid, nor that they haven't paid this. She also said that Mr P's agreement with B is now in arrears, as he's been unable to maintain payments, which has affected his credit rating. So, the investigator said that MCS should repay the outstanding finance with B, including any arrears, and pay him an additional £300 compensation for what's happened. The investigator also said that MCS should contact B, explaining what had happened, and ask them to amend Mr P's credit file, as he's not responsible for what happened.

Mr P agreed with the investigator, but MCS didn't respond to the view. As such, this matter has been passed to me to make a final decision.

What I've decided – and why

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

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. MCS were repaying the finance with B as an ancillary action to their credit broking activities and arranging the finance with M. As such, we're able to investigate complaints about it.

The evidence, referred to above, clearly shows that MCS were to clear the outstanding finance with B as part of this transaction, and as part of the activities that are ancillary to their credit broking. Despite having had the settlement figure, they haven't done this. Nor have MCS provided anything to show that they were unable to make the payment, despite trying to do so. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think MCS should do to put things right.

Putting things right

As I've explained above, Mr P has provided evidence that MCS should've cleared the finance with B, but haven't done so. So, I'm satisfied they should do this. However, it's clear that Mr P has been inconvenienced by what's happened and has suffered unnecessary stress as a result of having to chase MCS to make the payment, and by the additional strain of having to make payments to both M and B has put on his finances. So, I think MCS should also compensate him for this.

The investigator has also recommended MCS pay Mr P £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, MCS should:

- within seven (7) calendar days of receiving an updated settlement figure from Mr P, clear the outstanding finance with B;
 - if the settlement figure is more than the £3,017 Mr P paid MCS to clear the finance, MCS are responsible for the shortfall;
 - if the settlement figure is less than the £3,017 Mr P paid MCS to clear the finance, MCS should refund the difference to Mr P, along with 8% simple yearly interest, calculated from the date they took Mr P's car in part-exchange to the date of the refund[†];
- contact B, explaining that they are responsible for the failure to clear the outstanding finance, not Mr P, and asking them to remove any adverse entries from Mr P's credit file; and
- pay Mr P an additional £300 to compensate him for the trouble and upset caused by their failure to clear the outstanding finance with B.

[†]If HM Revenue & Customs requires MCS to take off tax from this interest, MCS must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr P's complaint about Mega Car Shop Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 March 2024.

Andrew Burford
Ombudsman