

The complaint

Mrs A is unhappy that, when she was supplied with a car under a hire purchase agreement with N.I.I.B. Group Limited trading as Northridge Finance ('Northridge'), they failed to clear the finance on the car she traded in.

What happened

In May 2023, Mrs A was supplied with a used car through a hire purchase agreement with Northridge. The cash price of the vehicle was £18,995 and Mrs S put down a £384.70 cash deposit, part-exchanging her existing car for £6,520. She had £6,520 outstanding finance on the existing car, which was to be cleared as part of the deal, and the agreement with Northridge was for £18,610.03 over 60 months, with 59 payments of £398.88 and a final payment of £408.88.

The supplying dealership failed to clear the outstanding finance on the existing car and stopped corresponding with Mrs A about this. Although Mrs A made three more payments to the existing car finance company, she was unable to maintain both payments to this agreement and to Northridge. This has had an impact on Mrs A's health and her credit file.

Mrs A complained to Northridge about what had happened, but they said they weren't liable for this, and it's something Mrs A needs to raise with the dealership. Unhappy with this response, Mrs A brought her complaint to us for investigation.

Our investigator explained that, under section 56 of the Consumer Credit Act 1974 ('CCA'), Northridge were responsible for the actions of the dealership. The investigator also explained that the Court of Appeal judgement for *Forthright Finance Ltd v Ingate (1997)*¹ ('Forthright') meant that Northridge were liable for the dealership's actions in this matter.

The investigator said it was unlikely Mrs A would've proceeded with the transaction had it not been for the part-exchange, and the outstanding finance on the existing car should've been cleared promptly. So, they said Northridge should clear the outstanding finance, refund the additional payments Mrs A made to the second finance company, and pay her £750 compensation for the significant distress and inconvenience she'd been caused.

Northridge didn't respond to the investigator's opinion, so 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

¹ *Forthright Finance Ltd v Ingate [1997] 4 All ER 99*

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. Mrs A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen a copy of the dealership's invoice, dated 30 May 2023. This clearly states that, in addition to putting down a cash deposit of £384.70, Mrs A was part-exchanging her existing car for £6,520 and the dealership were settling the £6,520 outstanding finance on this car.

Section 56 of the CCA states:

Antecedent negotiations

1. *In this Act "antecedent negotiations" means any negotiations with the debtor or hirer –
 - a. *conducted by the creditor or owner in relation to the making of any regulated agreement,*
 - b. *conducted by the credit-broker in relations to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or*
 - c. *conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier arrangement within section 12(b) or (c),**

and "negotiator" means the person by whom negotiations are so conducted by the debtor or hirer.

2. *Negotiations with the debtor in a case falling within subsection 1(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of the agent of the creditor as well as in his actual capacity ...*
4. *For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.*

In these circumstances, the dealership was acting as a credit broker, as they were arranging the finance between Mrs A and Northridge. As such, under section 56 of the CCA, the dealership was acting as an agent of Northridge in their negotiations with Mrs A, which included the agreement to clear the outstanding finance on the car Mrs A part exchanged.

The facts of Forthright are:

a buyer entered into an agreement with a dealer A to purchase car A, a transaction which was to be financed by finance company A. About a year later, the buyer entered into a second agreement with dealer B to purchase car B, a transaction which was to be financed by finance company B.

As part of the second transaction, dealer B agreed to take car A in part-exchange and clear the outstanding finance with finance company A. However, dealer B didn't clear the finance. After considering the facts, the Court of Appeal found that section 56 of the CCA applied, and finance company B was bound by dealer B's promise to clear the outstanding finance with finance company A; with the buyer having no liability.

It's clear from Mrs A's complaint, and by her subsequent action, that she was unable to afford the finance on both cars. Given this, I'm satisfied that the part-exchange was a key element in this overall transaction, and that Mrs A would not have proceeded without this. It's also the case that the part-exchange includes the settlement of the existing finance and, as I've said above, the dealership was acting as Northridge's agent in this matter.

I've considered the facts of Forthright, and I find them to be essentially the same as the facts in this matter. Northridge haven't provided me with any evidence that would indicate that Forthright shouldn't apply in this matter, and I'm therefore satisfied it does. As such, Northridge are liable for the failure to clear the outstanding finance and should do something to put things right.

Putting things right

As I've explained above, given section 56 of the CCA, and the Court of Appeal judgment in Forthright, Northridge are liable for the outstanding balance on the finance on the car that was part-exchanged, and they should arrange to clear this without undue delay.

While Northridge can't correct Mrs A's credit file, I would also expect them to fully explain the situation to the existing finance company, including their liability for the failure to clear the outstanding balance; and to ask the existing finance company to correct Mrs A's credit file, showing the agreement as being settled in May 2023, and removing all adverse entries after this date. If the existing finance company are not prepared to do this, I would then expect Northridge to explain this to Mrs A, so she can register a Notice of Correction, explaining the circumstances behind the adverse entries.

The evidence I've seen shows that Mrs A paid three payments to the existing finance company after when the finance should've been cleared. As these were payments Mrs A shouldn't have had to make, I think it's only fair that Northridge refund these to her.

Finally, it's clear that Mrs A has been significantly inconvenienced by what's happened. She's explained how this has affected her health, and that this impact has been ongoing for almost a year. Mrs A has also explained how this has impacted her ability to obtain any further credit, as well as the impact of being chased for a debt she shouldn't owe. So, I think Northridge should compensate her for this.

The investigator had recommended Northridge pay her £750, 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, Northridge should:

- clear the outstanding balance on the existing finance;
- write to the existing finance company, explaining what I've set out above, and advise Mrs A of the outcome of this;
- upon receipt of proof of payment, refund the three payments Mrs C paid to the existing finance company after May 2023;

- apply 8% simple yearly interest on the refund, calculated from the date Mrs A made the payments to the date of the refund[†]; and
- pay Mrs A an additional £750 to compensate her for the trouble and inconvenience caused by the failure to clear the outstanding balance on the existing finance.

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

My final decision

For the reasons explained, I uphold Mrs A's complaint about N.I.I.B. Group Limited trading as Northridge Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 7 May 2024.

Andrew Burford
Ombudsman