

Ombudsman Determination**CIFO Reference Number: 17-000307****Complainant: [The complainant]****Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainant] complained to CIFO on behalf of his daughter, [redacted for anonymisation purposes], about the decision taken by [Company X] to apply a penalty charge of 6 months' interest to a loan obtained by his daughter.

Background

[The complainant's] daughter, [redacted for anonymisation purposes], purchased a vehicle and entered into a hire purchase agreement with [Company X] on 29 June 2016. [The complainant] informed CIFO that the amount financed was £12,495. However, before the first payment, due to be taken on 29 July 2016, [the complainant's daughter] called [Company X] to obtain settlement for the agreement.

[Company X] advised that, even though [the complainant's daughter] had not made the first payment, a penalty charge of 6 months' interest would still apply following the Clause 8 of the "Terms of the Agreement".

[The complainant] advised CIFO that [Company X] wanted an additional £927.64 to clear the agreement. [The complainant] paid the total amount payable (£13,422.64) by bank transfer on 21 July 2016 and the payment was received by [Company X] on 22 July 2016.

However, in September 2016, [the complainant] wrote to [Bank X] to express his dissatisfaction about the interest charged on the settlement of his daughter's agreement. [Company X] did not uphold his complaint, because of Clause 8 of the Terms of the Agreement:

"Early Settlement

In the case that the buyer wishes to settle this agreement before the end of the Hire Period specified in the Schedule overleaf, the company shall rebate

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

all interest charges that would have become due after the date of settlement, less a maximum penalty of six months forward interest charges."

The case handler did not uphold [the complainant's] complaint. He concluded that it would not be reasonable to disregard the provision in the Terms of the Agreement that [the complainant's daughter] signed in advance where Clause 8 defined the charge payable in the event of an early settlement.

Subsequent submissions

[The complainant] rejected the case handler's conclusions. He sent a letter to CIFO dated 4 February 2018, asking why a "cooling-off" period was not applied, because the settlement was requested before the first payment due to 29 July 2016. [The complainant] informed CIFO that, in his view, a "cooling-off" period should have been present and applied.

[The complainant] also added that some errors were noticed on the correspondence from [Company X] regarding the title of his daughter. According to [the complainant], his daughter received a letter dated 13 September 2016 addressed to "Mrs [redacted for anonymisation purposes]" rather than "Miss". [The complainant's daughter] also received another letter dated 5 October 2016 addressed to "Mrs [redacted for anonymisation purposes]".

[The complainant's daughter] then received a letter dated 16 October 2016 which referred to her as "Dear Miss [surname misspelt]". Finally, she received a letter dated 2 November 2016 which also referred to her as "Miss [surname misspelt]".

Findings

I agree with the conclusions of the case handler, and for largely the same reasons. The decision by [Company X] to apply a charge of 6 months' interest is in accordance with the Terms of the Agreement.

[The complainant] paid £13,422.64 to [Company X]. The Hire Purchase Agreement signed by [the complainant's daughter] suggested that a sum of £15,526.38 would have been payable if the loan had continued for the full 5 years. I agree, therefore, with the case handler that in setting the loan early, a smaller sum has been paid by [the complainant] than would have been the case if the loan had continued for the full term.

In its response letter to [the complainant's] complaint of 16 October 2017, [Company X] advised that the charge would not have applied if

"there had been a discrepancy with the vehicle or with the dealership".

Given that there was no issue raised at the time, this exclusion is not applicable in the circumstances.

The agreement was dated 29 June 2016 and was cleared on 21 July 2016. No provision was made in the “Terms of the Agreement” for a “cooling-off” period and I consider it would be unreasonable to include one, given that the terms [the complainant’s daughter] signed were disclosed to her in advance of agreeing the loan. Furthermore, Clause 8 defined the charge payable in the event of an early settlement.

In any event, I note that non-bank credit is unregulated in [jurisdiction 1]; there is, therefore, no provision in [jurisdiction 1] law setting out a requirement to include a “cooling-off” period in a loan agreement, or to govern the inclusion and/or amount of interest rate penalties permitted in such agreements.

I recognise that the errors made in the correspondence [Company X] had with [the complainant’s daughter] in September, October and November 2016 were unprofessional; however, given that no financial loss has been incurred as a result, I do not consider that an award would be appropriate in the circumstances.

Final decision

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

[The complainant] must confirm whether he accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **27 April 2018**. The determination will become binding on [the complainant] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 27 April 2018, he should contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 26th March 2018