

The complaint

Mr P complains about a number of issues concerning his car finance agreement with The Asset Exchange Ltd trading as The Car Loan Centre (TAE).

What happened

The details of this case are well known to both parties so I won't repeat them. Instead I will focus on the reasons for my 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 decided TAE's offer to put things right is fair given the circumstances. Mr P has raised a number of complaint points. I would like to reassure him that I've read and considered them but in this decision I won't address them all. No discourtesy is intended by this. Instead, I will focus on the issues I consider to be key to reach a fair outcome.

Both parties accept in 2020, TAE agreed to several months of payment deferrals following Mr P being financially impacted by the Covid-19 pandemic. The deferred payments totalled over £3,400.

An arrangement to pay was agreed and Mr P made overpayments for some months. But on other occasions, he failed to pay the contractual amount meaning the account fell into arrears. In a separate complaint, an ombudsman has decided TAE acted fairly when it decided to offer to move Mr P's overpayments from the payment deferral balance to the arrears balance so I won't comment on that any further as it's already been decided.

The account statement

Mr P complains there was a delay to receive the account statement despite his numerous requests since November 2022. I note this wasn't provided until January 2023 which is over two months after his initial request.

Having seen the extent of the communication from Mr P to TAE, it's clear this issue was causing him upset and frustration. I can understand why he felt that way, he was trying to get an understanding of the position of the account and the information he had been requesting from TAE wasn't forthcoming or clear. I think it's fair to say following his financial difficulty, Mr P was actively trying to get the account back on track and stay on top of his finances. I find his request for the account statement was a fair one and I would expect it to be provided in a reasonable period of time.

However that didn't happen. TAE has accepted there was a significant delay in providing the account statement.

The notice of sums in arrears (NOSIA)

TAE has also accepted when the account fell into two months arrears in July 2022, they should've sent Mr P a NOSIA as required by the relevant regulations. As TAE accept this failure, I don't find it's necessary for me to comment any further. What is left for me to decide is whether TAE has done enough to put things right. In this case, I find they have. I'll explain why.

TAE said as they didn't follow the relevant rules relating to issuing a NOSIA they had breached the contract meaning interest shouldn't be applicable during that period, nor could it be enforced. To put things right, TAE issued the NOSIA in January 2023, agreed to refund the interest applicable between July 2022 and January 2023 (around £1,100) and removed the adverse information from Mr P's credit file. Given the circumstances, I consider this to be a fair resolution to remedy their failure.

I'm aware Mr P maintains NOSIAs should've also been issued on other occasions, namely November 2021 and April 2022 as the account was two months in arrears at those points meaning TAE should be refunding further interest. There has been a lot of back and forth between the investigator, Mr P and TAE about this particular point. I can assure all parties I've carefully considered the evidence including the account statements.

Generally speaking, NOSIAs are sent when an account is two months in arrears. Based on the evidence I've seen, I accept around November 2021, the account was two months arrears however a payment was made within a few days meaning it no longer met the threshold for a NOSIA to be generated. Thereafter and up to July 2022, I don't find any other occasions where the account fell into two months arrears and stayed in that position long enough to warrant a NOSIA being sent. This is largely due to when Mr P paid payments towards the agreement which at times were twice a month meaning the threshold wasn't met.

Overall, based on what I've seen, I'm satisfied TAE has fairly determined the account fell into the equivalent of two months arrears in July 2022 and they were right in accepting a NOSIA should've been issued at that point (over £900 in arrears). In light of the same, I won't be asking them to backdate the refund of interest to November 2021. As mentioned above I find their offer to refund the interest between July 2022 and January 2023 is fair.

The default notice

Mr P complains within a few days of receiving the NOSIA in January 2023, he received a default notice. I can understand why he would've been shocked by this. According to him he was previously told the arrears were around £500 so he was surprised to see that number was over double when he received the NOSIA. It said he was around £1100 in arrears. As mentioned above, TAE delayed in sending him the account statement he had requested and had they done so sooner, I believe Mr P would've received the information and clarity he had been seeking. On balance, I'm also persuaded had he been aware the arrears were so high, he would've taken proactive measures to reduce them. His prior actions including making overpayments support this. So I can understand his upset when he received the default noticed so soon afterwards.

While I accept the same, that doesn't negate TAE obligations. The Information Commission's Office (ICO) provides guidelines that financial businesses should follow when reporting to credit reference agencies and recording defaults. I've taken this guidance into account when looking into this complaint. It says a financial business can initiate default proceedings when an account falls into three months arrears and one is expected to be in place by the time it's six months in arrears. In this case, based on the account statements Mr P was at least two months in arrears in January 2023. Although he was making partial

payments it may not have been enough to avoid the account falling into three months arrears. So it wasn't wholly unreasonable for TAE to believe the account would fall further into arrears so I find they acted fairly in sending the default notice. However I understand from Mr P's point of view, the timing was poor given he had only received the statement and NOSIA a few days prior. He said this caused him worry as he was concerned the agreement would be terminated.

I've seen the correspondence between Mr P and TAE following the default. He was told by TAE if he wasn't in the position to satisfy the default in full, providing an arrangement to pay was set up, TAE wouldn't proceed to default the account. I find this demonstrates TAE's willingness to assist Mr P and to avoid the default which would've had serious consequences for him. I find this was made clear to Mr P prior to the default notice deadline of 3 February 2023. Despite this, on 30 January 2023 he paid the required amount to satisfy the default in full. He said by doing so it caused him worry and inconvenience and meant his other creditors and priority bills weren't paid. I'm sorry to hear that was the case for Mr P and I recognise the worry it would've placed on him to come up with that money. However as outlined above, TAE did offer to set up an arrangement to pay to avoid the default. As there is no evidence to suggest Mr P contacted TAE to arrange this, I can't say they did anything wrong.

Other

TAE accept their level of service was poor. For the reasons outlined above, I find their level of service could've been better especially in regards to keeping Mr P updated about the account and what was owed. For this, they've offered to pay £250 compensation. Given the likely impact on Mr P, I consider this to be fair in light of the circumstances. I won't be asking TAE to do anything above what they've already offered.

My final decision

The Asset Exchange Ltd trading as The Car Loan Centre (TAE) has already made an offer which I consider to be fair.

So my decision is The Asset Exchange Ltd trading as The Car Loan Centre must:

- Refund to Mr P the interest applicable between July 2022 and January 2023;
- Pay £250 compensation to Mr P for the trouble and upset caused;

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 November 2023.

Simona Reese
Ombudsman