ISLE OF MAN **OFFICE OF FAIR TRADING**

Financial Services Ombudsman Scheme

Summary of the determination dated 15 September 2023 regarding payment by a lender of the proceeds of a personal loan to a supplier of services to the borrower, rather than to the borrower themselves.

The Complaint

The complainant applied for a personal loan to fund a repair to his vehicle. He expected that the loan proceeds would be paid to himself, rather than directly to the vehicle repairer.

The lender paid the loan proceeds, before the vehicle repair had been undertaken, directly to the vehicle repairer. Once the repairs were completed, the complainant was unhappy with the work undertaken and believed that if he had received the loan proceeds himself, he could have paid the vehicle repair firm if and when he was happy with the work.

Other matters pertained to the complaint, including that the complainant was originally sold a hire purchase agreement in error which was replaced by a personal loan. However, this point was not disputed by the lender, and the product whose proceeds were in dispute was a personal loan.

The complainant sought to recover financial losses, calculated as £9300, being the total capital borrowed from the lender and interest payable on the personal loan.

The lender rejected the complaint, making an ex-gratia offer of £500 as a goodwill gesture. This was rejected by the complainant and the complaint was referred to an Adjudicator.

Investigation

The Financial Services Ombudsman Scheme ('FSOS') has a particular and specific purpose, set out in the Financial Services Act 2008 at Schedule 4. It is also made clear to the public in guidance issued by the FSOS. This meant that the complaint that the Adjudicator was required to focus on was the supply to the complainant of a financial service (the personal loan).

It would be acting outside the powers of legislation for the Adjudicator to consider the acceptability or otherwise of vehicle repair services supplied to the complainant. An individual, if dissatisfied with non-financial services received and who wishes to dispute them, must use the appropriate channels for that purpose. In this case, that would have been to take a case to the Court using the Small Claims Procedure. This was made clear to the complainant.

In respect of the personal loan, the Adjudicator noted that the lender accepted that it had originally sold the wrong product. However, before the drawdown of proceeds the lender amended this to a personal loan.

The lender did not agree that it had wrongly paid the proceeds of the loan to the vehicle repairer. The lender referred to 'instructions' to pay the proceeds to the vehicle repairer, and that this was normal procedure once it was issued with an invoice from the repairer.

The Adjudicator reviewed the lender's personal loan application form and noted that it did not contain any question regarding to whom loan proceeds should be sent. Furthermore, the lender was unable to provide any evidence of an instruction from the borrower to pay the repairer. It was also discovered that the lender had issued the payment on receipt of a quotation from the vehicle repair firm, not an invoice, which was against its own procedures.

When the complainant noticed loan repayments coming from his account, he contacted the lender to query why this was. The lender suggested that the complainant should contact the repair firm and ask it to send the proceeds back to the lender.

The complainant did contact the vehicle repair firm but did not ask it to return the funds, and the complainant continued to pay the loan repayments to the lender. The Adjudicator noted that the complainant had not done all he could to mitigate his loss.

Determination and Findings

The Adjudicator considered the inclusion of a question in the lender's personal loan application form about where loan proceeds should be sent could have avoided this situation.

The Adjudicator determined that the lender should bear the burden of proof in establishing that it was instructed to pay the introducer, and it was unable to do so. The Adjudicator determined that the lender assumed that it would pay the repair firm, and did not check with the borrower whether that was correct.

As an entity regulated under the Financial Services Act 2008 by the Isle of Man Financial Services Authority, the Financial Services Rule Book 2016 applies to it. Under Rule 6.7, a holder of a licence must "take all reasonable steps to enable its clients to take informed decisions relating to their business with the licenceholder". The Adjudicator determined that the lender's lack of inclusion of a relevant question and / or lack of stating in its Terms and Conditions that loan proceeds would be sent to the repairer, did not allow the complainant to take an informed decision.

The Adjudicator determined that there had been errors on both sides, for example with the complainant not mitigating his loss when he had the opportunity to ask the repair firm to send back loan proceeds to the lender. However, the Adjudicator noted that the lender's agreement with the repair firm (an introducer of loans to the lender) gave the lender the right to request this, but it had not done so – it instead asked its client to do so.

The lender was a specialist in lending products, whereas the complainant is a consumer that should not have to demonstrate specific and detailed knowledge about personal loans.

On balance, the Adjudicator determined they were satisfied that the complainant had suffered loss or damage by reason of a wrongful act or improper act or omission by the supplier, and upheld the complaint, determining the matter in favour of the complainant.

The Award

The amount of the complainant's loss attributable to the lender could not be £9300 as claimed (being capital borrowed of £7500 and £1800 of interest).

Furthermore, if the complainant had been happy with the vehicle repair, there would be no loss, and the value or otherwise of the repair is not a matter for the FSOS. Therefore, the Adjudicator determined that the capital element of the personal loan was not part of the loss that could be addressed by the FSOS.

The Adjudicator did consider that loss has been incurred by the complainant as a result of inadequate documentation, and made an award of compensation limited to the value of the interest the complainant

paid on the loan. Although the original amount of interest would have been £1800 if the loan had continued to the end if its term, the loan was repaid early, and so the interest figure was reduced by the amount of £964.29 due to the early repayment.

The Adjudicator ordered that the lender pay compensation of £835.71 within 21 days of the date of the Final Determination. The Adjudicator further awarded £150 in compensation to be paid to the complainant to reflect the distress and inconvenience caused to him.

The total award was therefore £985.71.