

The complaint

The executor, Mrs R on behalf of the estate of Mr P, complains that West End Garage (Honda) Limited (West End Garage) irresponsibly approved a hire purchase agreement for Mr P.

What happened

The late Mr P had been a customer of West End Garage for over 20 years. In July 2019, he acquired a brand-new car with a hire purchase agreement. The cash price of the car was £38,404 and Mr P traded in his then current vehicle as a deposit, for a sum of £11,000 as well as a £3,000 deposit contribution, giving a total deposit of £14,000. Mr P was to make 37 monthly repayments of £263.02 and a final payment of £18,795.43.

Sadly, Mr P died in February 2020. Mrs R as his executor, spoke with the garage as the vehicle has been left as a legacy in Mr P's will. The garage met with Mrs R and agreed to buy back the vehicle. A settlement figure was reached, the finance settled, and the balance paid to the estate via the solicitors.

Mrs R then raised a complaint as the executor of the estate. She said she felt the finance agreement had been mis-sold and/or mis represented to Mr P. She said he was vulnerable and would never have entered into such an agreement if he had realised the amount of interest he would have had to pay. He would simply have paid cash for the car. She also says West End Garage was aware the vehicle would have been a legacy in his will, and as a result of the finance the legacy failed. She further complained that West End Garage disclosed details of the settlement to a third party and in doing so breached its responsibilities under GDPR. Although the vehicle has been returned and a settlement figure reached, Mrs R asks to be compensated for the failure of the legacy.

West End Garage refutes all of the points raised in complaint by Mrs R. It says it had dealt with Mr P as a customer for over 20 years. Although elderly he did not present as vulnerable and he had previously held exactly the same car finance arrangement on another vehicle. It met with Mrs R and reached a settlement figure in good faith and only after doing so does it say Mrs R raised any complaint about the way in which it dealt with Mr P.

An investigator looked into things for Mrs R. He didn't find any evidence that Mr P was vulnerable or that West End Garage had any reasons to suspect he was vulnerable. He also looked at a previous finance agreement Mr P entered into which was very similar to this agreement and as such he wasn't persuaded Mr P had no experience of finance agreements or that he wouldn't have understood the agreement. With regards to the legacy, he found there was nothing to prevent Mr P leaving the vehicle as a legacy and it wasn't West End Garage's role or responsibility to give any legal advice on such a decision. Taking all this into account the investigator didn't uphold the complaint.

Mrs R disagreed. She said she feels strongly that West Garage took advantage of an elderly gentleman and provided unsuitable finance agreements resulting in Mr P paying thousands of pounds of interest unnecessarily. She does not seek compensation but asks for West End Garage and Honda Finance to be held accountable for what she sees as unfair practice. She

feels in failing to uphold this complaint the financial ombudsman service has failed in its remit to protect customers. She asks for an ombudsman review.

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.

I've looked at all the information afresh and I've reached the same conclusion as the investigator. I appreciate this will come as a disappointment to Mrs R. Please allow me to explain why.

Firstly, may I offer my condolences on the loss of Mr P. I can understand this is a difficult time. Mrs R has provided a copy of Mr P's will and I can see he wished to leave any car he may own to his grandson. So, it is entirely understandable that they would have hoped this would be a legacy without issue.

In deciding this complaint, I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs R and by West End Garage.

Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority nor is it to act as a consumer champion. This service is an alternative to the courts, it looks to resolve individual complaints between a consumer (or their representative) and a business.

I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

The hire purchase agreement in this case is a regulated consumer credit agreement – therefore this service can consider a complaint relating to it. There are various rules and protections about how hire purchase agreements operate, including those set out in the Consumer Credit Act 1974 ("CCA") The CCA is therefore relevant law in this complaint.

In order to find that there's been a mis-sale, I would need to be satisfied that there's been a misrepresentation. A misrepresentation is an untrue statement of fact which induces a consumer to enter into a contract and I'm afraid I haven't found any evidence to suggest this was the case.

I have looked carefully at the agreement Mr P entered into. Whilst I accept, he was elderly, he had a relationship with West End Garage and had previously entered into another very similar agreement. In terms of vulnerability, the definition isn't confined to just have an existing condition such as dementia but equally vulnerability isn't presumed just because of age alone. So, I can see Mr P had experience of a similar arrangement, he may well have had the cash to buy the vehicle previously but chose a finance agreement instead, that isn't

unusual or a necessary indicator that he didn't understand the agreement. It seems to be a choice he had made previously and decided upon again on this occasion.

I'm aware that Mr P made large payments towards the vehicle finance effectively overpaying it considerably. But as Mrs R points out he had the cash to do so and wasn't penalised for doing so. There could have been a multitude of reasons behind the decision to overpay but there's no evidence available in the file to say why he chose to take that course of action or that he didn't understand the terms of the agreement.

In terms of the legacy, it also wouldn't have prevented him from leaving the vehicle as a legacy in his will, but again there is no evidence to show this was discussed prior to the sale. Even if it had been, it wasn't West End Garage's responsibility to give legal advice to Mr P, he would have needed to seek legal advice.

Similarly, when Mrs R asked for West End Garage to buy the vehicle back and settle the finance providing the balance to the estate, that was a decision she should have sought legal advice on prior to doing so. In my view, it isn't fair or reasonable to assign that responsibility to West End Garage.

West End Garage has accepted it disclosed information inadvertently to a third party. It says the individual identified themselves as a solicitor and it assumed this was in connection with the estate. This was clearly an error and it should have checked the identity of the caller and its authority to act for the estate, but I agree with the investigator in that I don't think this warrants compensation to Mrs R. I also haven't seen any evidence that the disclosure of the settlement figure caused Mr P's estate a financial loss. Indeed, the balance after settlement was paid to the estate as I understand it, so I can't make a compensatory award to the estate.

I appreciate this was not the outcome Mrs R hoped for, but after considering all the available evidence I'm unable to uphold this complaint.

My final decision

For the reasons I have given I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr P to accept or reject my decision before 28 March 2022.

Wendy Steele
Ombudsman