

The complaint

Mr W complains about the end of contract charges in relation to a car that was supplied through a Personal Contract Purchase (PCP) agreement brokered by Richard Hardie Limited (RHL).

RHL has been represented on this complaint. But to keep things simple I'll only refer to RHL in my decision.

What happened

In September 2015 Mr W acquired a new car through a PCP agreement brokered by RHL. Mr W paid a deposit of £500 and part exchanged his previous car which had some existing finance to settle. The total amount financed on this agreement was £21,358.86, payable over 48 months.

Mr W explained that towards the end of the agreement he realised that the annual mileage allowance was 5,000. Mr W says that at the time of application he disputed that amount and specifically requested an allowance in the region of 15,000 miles per year. Mr W says he needed enough mileage to cover his commute to work which would be around 7,500 miles each year, in addition to other personal journeys.

Mr W said the annual allowance of 5,000 miles had left him with an end of contract excess mileage charge of around £2,100. Mr W says he wouldn't have entered into the agreement had he known what the mileage allowance was. Mr W said he wanted RHL to pay the excess charges.

In July 2019 Mr W raised his complaint to RHL. He also complained to the finance provider. On 8 October 2019 RHL wrote to Mr W to say that the details of the mileage allowance were set out on the agreement which they say he'd signed. So, they felt he would have been aware of what the mileage allowance was. RHL said they couldn't help him with the charge.

In October 2019 Mr W brought his complaint to us. And in December 2019 the finance provider sent their final response to Mr W's complaint. In their response the finance company confirmed that Mr W had completed around 55,000 miles by the end of his contract, which was about 35,000 miles in excess of the total allowance on his agreement. They said they believe the excess mileage charges were applied fairly and in line with their terms and conditions, but in the circumstances, they were willing to reduce the amount by £1,000 as a gesture of goodwill. This would leave Mr W with a balance of £1,096.82 to pay.

In January 2020 Mr W told our investigator that he'd decided to pay the excess mileage charge and had accepted the finance provider's offer in order to reduce the amount he had to pay. Mr W said he did so in the understanding that it wouldn't affect his complaint against RHL.

Our investigator looked into Mr W's concerns and recommended that the complaint be upheld. The investigator didn't think that Mr W would have knowingly opted for a 5,000 annual mileage limit as he didn't think it was consistent with his travel needs. So, our

investigator recommended that RHL reimburse to Mr W the excess charges he'd paid and to compensate him £150 for the inconvenience caused.

Mr W responded to say that he was happy with the investigator's view, however RHL disagreed with the view and asked that the complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Mr W complains about a PCP agreement brokered by RHL. Credit broking is a regulated activity, so I'm satisfied I can consider Mr W's complaint.

I've considered whether RHL did anything wrong when it brokered the credit to Mr W, such as giving him incorrect or misleading information. Specifically, I'll consider if he was aware of the mileage allowance.

RHL says that the mileage allowance was set out on the PCP agreement which Mr W had signed. So, they felt he should have known what the allowance was when he entered into the agreement. However, Mr W says that he wasn't aware of the limit until near the end of his agreement and said he told RHL, at the time, that he wanted a higher mileage allowance.

From the evidence provided I'm persuaded that Mr W hadn't reasonably been made aware of the mileage allowance. I acknowledge that RHL have pointed out that the mileage allowance was recorded on the agreement, however I can see that it was on page three of the agreement. Mr W signed page two, before the allowance was listed. I've considered this point because I'm not persuaded Mr W's attention would have necessarily been drawn to it.

In addition, Mr W's circumstances appear inconsistent with agreeing to an annual mileage allowance of 5,000. For example, in an email to RHL in 2019, Mr W said that his usual commute to work was around 7,500 miles per year, which in itself exceeded 5,000. Mr W also said in that email that he'd estimated an annual usage of 15,000 miles. Mr W provided his car insurance policy from 2017 which shows he declared an annual mileage of 15,000 miles. This is inconsistent with the allowance on the PCP agreement, but supports what Mr W has said about what he'd initially asked for.

Over the term of the agreement Mr W travelled around 55,000 miles in his car. This is consistent with an allowance of 15,000 each year, which is what Mr W said he'd asked for. Had RHL applied that limit, Mr W would have had an allowance of 60,000 miles over the four-year agreement period and so would have been within the allocated mileage limitations.

Mr W also said he had previous agreements with a higher mileage allowance and so never would've agreed to this amount. I can see he's provided a copy of the finance from his previous car, which was a fixed sum loan and had no charges for excess mileage. This seems to back up his testimony here.

So, from the information provided I'm not persuaded that Mr W would have knowingly opted for a considerably lower mileage allowance than what his lifestyle required. And I'm satisfied that Mr W wasn't aware of the 5,000 miles limitation on the agreement.

I recognise that had RHL applied the correct mileage allowance this would have likely increased the monthly repayments for Mr W. So, in effect it's likely Mr W will have benefitted from lower repayments throughout his agreement. I've thought about this carefully, and although I don't know what the monthly repayments would have been had the mileage been set at 15,000 each year, Mr W said he wouldn't have accepted a higher monthly repayment and so wouldn't have entered into the agreement.

Overall, I can't be sure what position Mr W would have been in had he not entered into this agreement, but in the circumstances, I don't think it's reasonable for Mr W to pay the excess mileage charge.

Putting things right

Given that I've found Mr W wasn't aware of the mileage limitations on the agreement, I don't think it's fair that he should pay for the excess charges. So, I think RHL needs to put things right for him. Mr W confirmed to us that he accepted the offer from the finance company of a £1,000 reduction. So, Mr W has paid out £1,096.82 for the excess mileage. In the circumstances I'll be instructing RHL to reimburse to Mr W £1,096.82.

Mr W has said that this situation has caused him a degree of upset and frustration. I think it must have been stressful for Mr W to realise that he had a 5000 miles annual allowance and was facing an unexpended bill of over £2,000. In the circumstances, I'm in agreement with our investigator that £150 is a reasonable amount of compensation to reflect this. So, I'll be instructing RHL to pay Mr W £150 compensation for the inconvenience caused.

In his complaint form Mr W raised concerns about a previous application for finance, with a lower interest rate, that he said the dealer told him he'd been rejected for. He also raised concerns about a signature on the agreement that he hadn't recognised as his own. I've not seen any evidence about a previous application for finance or in relation to what Mr W has said about his signature on the agreement. However, as Mr W's complaint centres around the excess mileage charges, which I've found he should be reimbursed for, I haven't considered the other points as part of my decision.

My final decision

Having thought about everything above, along with what is fair and reasonable in the circumstances, I uphold this complaint and instruct Richard Hardie Limited to:

- reimburse Mr W the £1,096.82 for the outstanding excess mileage charge as described in my decision
- pay Mr W £150 compensation for the inconvenienced caused

Richard Hardie Limited should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Richard Hardie Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2022.

Benjamin John
Ombudsman