

The complaint

Mrs B complains that a finance agreement brokered by Swansway Garages Limited, trading as Preston Audi ("PA") was misrepresented to her.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

Mrs B has been represented throughout this complaint but for ease, and because Mrs B is named on the finance agreement, I will refer only to her in this decision. I mean no discourtesy to her representative when doing so.

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 agree with the investigator's opinion. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mrs B acquired her car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

In order to find that there's been a misrepresentation, I would need to be satisfied that the supplying dealer made an untrue statement of fact which induced Mrs B to enter into the contract.

Mrs B says she was told that PA would pay the first three months of the agreement (3 x 1272.44) under the "3 on us" offer in place at the time. She says she was promised that the balance to pay would therefore be reduced to £38,247 with a little bit of interest. She's provided a copy of the quote on which the sales agent has handwritten "£3,817.32" (equal to 3 x £1,272.44) and "£38,247" which is the amount being borrowed less the three months (rounded down to no decimal places).

I think it's likely these are figures that the sales agent provided as I've found Mrs B's testimony compelling and consistent. She clearly intended, on the back of these discussions, to clear the finance after three months as that's when she asked for a settlement quotation.

On the other hand, it's clear that Mrs B did sign the finance agreement and that the agreement set out different figures that were to be paid. It seems that three months were to be provided free of charge but that the discount was to be achieved by reducing the interest rate from the standard interest rate thereafter.

On balance, I think it's likely the agreement was misrepresented to Mrs B. I don't think it was the clearest of schemes and I think the handwritten notes help to understand what was explained at the time the agreement was negotiated. I don't think it's likely Mrs B would have continued to finance the car had she not been encouraged to by the sales agent's projections. Her actions suggest she would have chosen to purchase the car outright and she's explained the only reason PA's offer was interesting was because it offered such a discount and that discount wasn't available on the other quote she'd received online.

Putting things right

Mrs B has kept the car and has kept paying finance instalments in line with the finance agreement. She says the settlement figure now provided will mean she's paying much more than what she was promised she'd pay.

When there's been a misrepresentation we try to put the consumer back in the position they would have been in if the misrepresentation hadn't happened. But we don't treat the false statement as if it were true and that's what Mrs B is asking me to do here.

It's not always possible to put the consumer back in exactly the same position as they would have been in had the misrepresentation not have happened but I think the investigator's suggested redress is fair and sensible in the circumstances.

If Mrs B chooses to accept this decision she will therefore need to request a settlement quotation and settle the agreement within 28 days of receiving it.

Mrs B always wanted to buy the car so it's fair for her to keep it, but it's not fair that she pays interest on the finance instalments. Any interest charged should therefore be refunded except for any paid on the October 2020 instalment as that was before a settlement quote was requested. That figure will need to be provided by the finance company as the interest figure will have changed since they last provided it.

I've looked at the Product Information Guide that explains how the "3 on us" promotion was to work. That explains that there is a requirement for dealers to make a contribution to the finance. So, the finance contribution of £2,130 has only been provided because the promotion was in place. Mrs B will therefore need to repay that contribution if she accepts this redress, or it can be deducted from any refund calculated under this decision.

My final decision

For the reasons I've given above I uphold this complaint and direct Swansway Garages Limited to settle it in the following way.

- Mrs B should request a settlement quotation and make payment within 28 days.
- PA should refund the interest payable for each monthly payment made except for the monthly payment in October 2020. The finance deposit of £2,130 can be deducted from that refund as Mrs B wouldn't have received that had she not taken the agreement.

- The dealer contribution should stay as I feel it more than likely it would've been offered even on a cash sale.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 22 September 2022.

Phillip McMahon
Ombudsman