

## **The complaint**

Mr K complains about the way AM Marketing Group Ltd (AMMG) ended a hire agreement he had with them, for the use of a car.

Throughout this complaint, Mr K has been represented by a third party. But for ease, I'll just to refer to Mr K.

## **What happened**

In January 2020, AMMG entered into a hire agreement with a vehicle leasing company, who I'll call X, for a car. Around eight months later, AMMG provided Mr K with a separate hire agreement, for the same car.

Mr K paid for the first five months to use the car under the agreement. But, in March 2021, X arrived at Mr K's home, to take the car back. X had previously written to AMMG to say they were terminating their agreement, but AMMG hadn't contacted Mr K beforehand, to tell him what was happening.

While at Mr K's home, X subsequently made their own hire agreement with him, meaning he was able to retain the car he had been using. However, Mr K complained to AMMG, because his monthly payment amount had increased, compared to his previous agreement. He also said AMMG owed him for the lost days he had already paid for, after his agreement with them had ended.

AMMG didn't respond to Mr K's complaint, so he brought his concerns to us. One of our investigators looked into Mr K case and found that AMMG wasn't responsible for the contract Mr K subsequently agreed with X.

The investigator also concluded that AMMG should refund a proportion of Mr K's initial payment and refund an amount for the days Mr K had paid for but wasn't able to use the car. And he said AMMG should add interest to both refunds and pay Mr K £300 for the distress and inconvenience caused.

Both AMMG and Mr K made various other suggestions after the investigator reached his conclusions, but a settlement wasn't reached. So, Mr K's case has now been passed to me to make 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.

This complaint is about a car supplied under a hire agreement, which is a regulated activity. This means we can consider Mr K's complaint about AMMG. Specifically, Mr K says there was a breach of contract by AMMG in the way they ended the hire agreement.

Section nine of the terms and conditions for Mr K's agreement with AMMG covers the termination process. I don't think AMMG placed a specific term within the contract to say

what would happen to Mr K's monthly payment, should the car be taken away part way through the month. I think the agreement allows for Mr K to end the contract at any point, or for AMMG to take the car back should Mr K fall behind with repayments.

From looking at Mr K's bank statements I can see that he maintained the payments due under the hire agreement with AMMG. So, I don't think AMMG had cause to terminate the agreement because of a missed payment or the accumulation of arrears. On balance, I think AMMG ended the agreement, because of the circumstances of their own relationship with X.

Overall, I think AMMG did breach the contract they had with Mr K, when the agreement was ended on the same day that X tried to take the car back. So, I've gone on to consider the impact on Mr K and if AMMG needs to put things right.

I think Mr K found himself in a very unfortunate situation. I acknowledge that it must have been very frustrating for him, when X arrived at his home, to take the car back. Mr K has previously asked for AMMG to refund all the payments he had made under the hire agreement.

However, I can see that Mr K had use of the car from the start of the hire agreement in November 2020, until it was terminated in March 2021. I think it follows that it's fair for Mr K to pay for the usage he had from the car, so I don't think AMMG should have to refund all of those repayments.

I've also looked at the subsequent agreement that Mr K entered into with X. Mr K says that the monthly payments to X were more than he was paying to AMMG, so he'd also like a proportion of those payments refunded.

Although I empathise with the position Mr K found himself in, I think there were other options available. I agree that looking elsewhere for a hire agreement, at a time when X had arrived unannounced, would have caused further frustration. But, I think looking elsewhere was an option for Mr K. So, I don't think it would be fair to hold AMMG responsible for Mr K's decision to enter into an agreement with X.

I've concluded that AMMG ended their contract with Mr K part way through a month, where he'd already paid to use the car until the next payment was due. I think this means Mr K has suffered a financial loss and that AMMG should refund him for the lost days of usage from March 2021.

There are around fourteen days from the day the agreement was terminated by AMMG, to the day the next payment was due. Mr K's monthly payment to AMMG was £899. So, I think it's fair for AMMG to pay Mr K £414, to reflect the usage he had paid for, but didn't receive.

Similarly, Mr K made an initial payment of £2,399.88, to AMMG, when the hire agreement started. The agreement was in place for just over four months, meaning there were eight months remaining, when AMMG breached the contract with Mr K.

I don't think it's fair for AMMG to retain all of the initial payment, as Mr K didn't benefit from agreement, for a significant proportion of its twelve month term. Having considered everything, I think it's fair for AMMG to pay £1,599.92 to Mr K, as a proportion of the initial payment, when AMMG ended the agreement early.

Mr K has been without the use of the funds from the lost usage and the initial payment. So, I think it's fair for AMMG to add interest at 8% a year simple to each amount, from the date they were paid, to the date of settlement of this complaint.

I've thought about the circumstances of the ending of Mr K's hire agreement with AMMG and I agree it caused him distress and inconvenience. I think the arrival of X to Mr K's home early in the morning would have caused alarm and disrupted a large part of Mr K's plans in the days following. In all the circumstances, I think it's fair for AMMG to pay Mr K £300 for the distress and inconvenience they caused to him.

### **Putting things right**

For these reasons AM Marketing Group Ltd should:

1. pay Mr K £414 for the days he couldn't use the car, but had paid for under the hire agreement;
2. pay Mr K £1,599.92 as a pro rata refund of the initial payment used in the hire agreement;
3. add interest at a rate of 8% a year simple to parts one and two of this settlement, from the dates they were paid, to the date of settlement of this complaint; and
4. pay Mr K £300 for the distress and inconvenience caused.

AMMG must pay these amounts within 28 days of the date on which we tell them Mr K accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If AMMG deducts tax from any interest they pay to Mr K, they should provide Mr K with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and require AM Marketing Group Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 January 2023.

Sam Wedderburn  
**Ombudsman**