

## The complaint

Mr K complains that Inchcape Retail Limited trading as Inchcape Mercedes mis-sold him GardX protect when he acquired a new car via a credit agreement.

## What happened

In September 2021 Mr K attended a dealership enquiring about a new car. Mr K says he was told that the dealership had the particular car Mr K was interested in on order but that he wouldn't be able to add or remove anything from the order form. After a test drive, Mr K agreed to purchase a car and an order form was completed.

Mr K says that he had to wait to speak with the salesperson and their conversation was very short. He said he was provided with very little information other than he wasn't able to add or remove anything to the car as it had already been ordered. Mr K says he was told everything on the order form came as standard. He says he didn't ask for any additional options to be added.

Inchcape says that its sales procedure is stringently followed and includes a video being played about the various additional options that can be included. Inchcape says that Mr K would have been given information about all of the various additional optional extras which included GardX and that he would have chosen the products he wished to add.

The order form provided to Mr K sets out on page one the cost of the car and that it was to be supplied with a factory fitted option costing £495.83 and a retailer option costing £624.17. On page two of the form it sets out that the factory fitted option was metallic paint and leather pack and the cost with tax amounted to £595 and that the retailer option was GardX costing a total with tax of £749.

At term 3 of the terms and conditions included with the order form it states *"If you wish to make a change to the vehicle that you have ordered prior to delivery, please contact us so we can let you know if it is possible.."* Mr K was also provided with an Initial Status Disclosure Document and provided with details of optional insurance products that could be considered. Mr K signed the form indicating he understood the terms and conditions.

Mr K says that he called the dealership after ordering the car and enquired about GAP insurance and the other insurance product that he'd been given details about. He says he was told GAP insurance wasn't available.

Two days before the car was delivered in December 2021, Mr K was provided with another copy of the order form which was identical in detail save the price of the car he was part-exchanging. Mr K took delivery of the new car.

Mr K sent an email to the salesperson shortly after taking the car querying the adding of the GardX. He said he had been made aware that this was an optional product and so had queried why it had been added when he hadn't asked for it.

As a gesture of goodwill, the salesperson provided Mr K with two free services which they

said would equate in value to the cost of the GardX. Mr K accepted this offer on the proviso he would keep the car long enough to be able to use this offer.

Mr K decided to sell the car. He contacted Inchcape and requested that he was reimbursed the cost of the GardX which amounted in total to £749 as he no longer had the car and so wouldn't be able to take advantage of the free services.

Inchcape investigated Mr K's complaint. It said that by this time the salesperson had left and so it wasn't able to obtain their version of events surrounding the ordering of the car. However, Inchcape said it was satisfied that its set sales process would have been followed and that Mr K was aware that GardX was an optional extra that he had chosen to have added. It didn't uphold his complaint.

Mr K was unhappy at Inchcape's response and complained to this service. Our investigator recommended that his complaint should be upheld. She said she thought Mr K's evidence had been credible and consistent and that he had been misled by the salesperson as to the inclusion of the GardX. She said it would be fair for Inchcape to reimburse the £749 cost.

Inchcape disagreed with the view of our investigator. It says its sales staff are all trained in the sales process and this is stringently followed. It says its staff have one to ones and are also audited to ensure the process was followed. Inchcape says it can't be said that Mr K's version of events is correct in the absence of hearing from the salesperson.

Inchcape says that as Mr K had received the information about the optional insurance products that it was likely he had also received information about GardX which was also optional. It says the offer of the two services free of charge didn't mean that the salesperson had accepted they had misled Mr K about the GardX as this had been offered as a gesture of goodwill.

As the parties were unable to reach an agreement the complaint has been passed to me.

### **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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. And where evidence is missing or contradictory then I must decide what I think is the most likely thing to have happened.

Here, Mr K says that he was told that everything that was recorded on the order form came as standard and that he couldn't add or remove anything because the car had already been ordered by the dealer. He had therefore thought that he had no choice but to take the car with GardX and cover that cost. He says he would have asked for it to be removed if he'd known. Mr K also says that when he learnt he could have asked for that item to be taken off he raised it with the salesperson who agreed to match the cost by giving Mr S two free services. Mr K wasn't able to make use of this offer since he then sold the car.

Inchcape says the events described by Mr K, limited time with the salesperson, no presentation about the additional options (including the playing of a video) isn't in accordance with its set sales processes which it says are stringently followed. It says it isn't possible to assess the credibility of Mr K's evidence as to what happened in the absence of being able to speak with the salesperson.

While I appreciate there is a set sales process followed by Inchcape's salespeople, I'm afraid I disagree that it's guaranteed this process is followed each and every time with a customer. I think it's reasonable to say there would be times when time is limited for discussions or a salesperson shortens the information provided. Mr K has been clear and consistent about what he says happened. And although I appreciate Mr K was given information about the optional insurance products, I haven't seen he was also given information about GardX.

On the order form the GardX shows as a "*retailer option*" and I think that supports why Mr K thought he couldn't query it at the time. He'd been told by the salesperson that the car had already been ordered by the dealer which gave the impression it wasn't being ordered exclusively for him. And I've seen that under the terms and conditions of the order form Mr K could have asked for changes to be made before the car was delivered but didn't make this request. So, had he changed his mind about wanting GardX, he would have had ample time to do so before the car arrived since he ordered it in September, and it was delivered at the start of December. I think this supports Mr K believing that he couldn't seek any changes to the order.

I appreciate the offer of two services was a gesture of goodwill, but I think it's reasonable to take this into account. I'm unclear why this was offered if the salesperson was satisfied Mr K had chosen to have GardX included as I don't think there would have been a rationale for making such a gesture. I think it's reasonable to infer from this offer that there had been an error in respect of the GardX being added to the car.

So, although I haven't heard from the salesperson, I don't think it would be fair for me to say in these circumstances that I've insufficient information on which to reach a decision about what I think is the most likely thing to have happened. I think Mr K has been consistent in what he says occurred when he ordered the car and I don't think he was told the GardX was an optional extra he didn't need to take. I think it's more likely than not he was told that he wasn't able to make changes to the order form for the car because it had already been ordered by the dealer with those added extras. I think he was misled about the GardX.

Mr K was offered two services by the salesperson which he was happy with on the proviso that he would use them. As he then decided to sell the car, he hasn't been able to take advantage of this offer. I think it's therefore fair for him to be reimbursed the cost of the GardX in place of that offer.

For the reasons given above, I'm upholding Mr K's complaint.

### **Putting things right**

I'm asking Inchcape to reimburse Mr K £749 being the cost of the GardX that was added to the car.

### **My final decision**

For the reasons set out above, I'm upholding Mr K's complaint. I'm asking Inchcape Retail Limited trading as Inchcape Mercedes to reimburse Mr K £749 being the cost of the GardX.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 January 2023.

Jocelyn Griffith  
**Ombudsman**