

## **The complaint**

Mr B is unhappy with a hire agreement taken with Tesla Financial Services Limited ('TFS').

Mr B says he was told he could hand the car back once he had made 50% of the payments, but he found out later this was incorrect.

## **What happened**

Towards the end of April 2023 Mr B was in discussions with TFS about a hire agreement to acquire a new car. He says he was initially going to take an agreement over 36 months.

Mr B says TFS told him he could terminate the hire agreement free of charge when he'd paid half of the amount due. He said because of this, he decided to take the agreement over a longer term.

Mr B then entered into a 48 month hire agreement with TFS to acquire the car. He paid an advance payment of £6,200.

Mr B says he then found out that he couldn't return the car part way through the agreement. He complained to TFS.

TFS issued its final response to the complaint in July 2023. This said, in summary, that it accepted Mr B was given incorrect information. TFS apologised and said it would offer £400.41 to put things right.

Mr B remained unhappy and brought the complaint to our service. He said he'd suffered a lot of stress due to what happened. He said he would've taken the agreement over 36 months if he'd have understood the terms properly. Mr B said he should at least be compensated the difference of what he would pay because of the advice, which he said was £19,220. Or he said TFS should discount his monthly rentals by 50%.

Our investigator issued an opinion and explained he thought the complaint should be upheld. In summary, he said he thought the agreement had been misrepresented to Mr B. He said he thought the fairest thing to put things right would be for Mr B to hand the car back and for the agreement to be ended without further charge. He said Mr B should get back a pro rata portion of his initial payment. And he said the £400.41 already offered by TFS was a fair reflection of the distress and inconvenience Mr B suffered.

Mr B was unhappy with this. In summary, he said costs had gone up, so if he gave the car back and took out a new agreement he wouldn't be better off. And he said he'd made cosmetic changes to the car which he would have to pay to be changed back. Mr B said TFS should alter the agreement to make it a 36 month contract and he'd backdate any payments due.

Our investigator explained he didn't think it was possible for TFS to alter the agreement. And he said the other points didn't change his opinion.

Mr B remained unhappy and said he'd accept £4,920 to settle things.

TFS also responded and said it was unhappy with the investigator's findings. It said, in summary, that it disagreed a misrepresentation had taken place as there was no evidence Mr B wouldn't have taken out the contract if he'd had the right information. And it said Mr B would've understood from the paperwork he received that the information he'd earlier been given was incorrect.

As both parties disagreed with what our investigator said, the case has been passed to me to decide.

### **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.

Having done so, I think this complaint should be upheld. I'll explain why.

Mr B complains about a hire agreement. Entering into regulated consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr B's complaint about TFS.

What I need to consider in this case is whether TFS misrepresented the terms of the finance to Mr B.

I would consider a misrepresentation to have taken place if Mr B was told a 'false statement of fact', that induced him into entering into the agreement when he otherwise would not have.

I can see before Mr B entered into the contract, when discussing the hire agreement, he received an email from TFS that explained:

*"All finance in the UK, as per the Credit Consumer Act (sic), has a voluntary termination clause which states that once 50% of the total amount payable is paid then you can hand the vehicle back"*

It isn't in dispute here that this is a false statement of fact. Mr B's hire agreement does not have the option of handing the car back once 50% of the payments have been made.

In response to the investigator's view, TFS explained it thought it was 'disproportionate' to say Mr B had been induced into taking the contract because of the incorrect information he was given.

But I don't agree. Mr B specifically asked TFS what he would have to pay if he wanted to end the agreement early, along with another question. And he followed this up and told TFS - *"I'm not going to pay the deposit until I'm clear on these two points"*.

Mr B was then in contact with TFS the day before he entered into the agreement asking it to confirm the situation, and asked them to advise *"as a matter of urgency"*.

Thinking about this, I'm satisfied this was a key factor to Mr B entering into this agreement. I'm persuaded he wouldn't have entered into this contract if he'd been given the correct information.

TFS also said that Mr B would've known from the terms and conditions that the information he'd been given was incorrect. But, I disagree this would've been obvious from what he saw. And, either way, from the communication I'm persuaded that he relied on what he was told directly from TFS.

Thinking about all of this, I'm satisfied there was a false statement of fact told to Mr B. I'm satisfied this induced him into entering into this particular contract when he otherwise would not have. It follows that I'm satisfied a misrepresentation took place here.

I now need to consider what would be fair and reasonable to put things right. I've firstly thought about what Mr B said would be fair.

Mr B explained he expected to return the car half way through his current contract – so he initially said it would be fair for TFS to pay him the difference in the total cost over 24 months compared to 48.

Mr B also said he's lost out by taking a 48 month agreement rather than the original 36 month one discussed, as he'll be paying more overall under the longer agreement. In response to the investigator's opinion, Mr B said it would be fair to receive the total difference in cost between these two contracts back.

I agree Mr B will pay significantly more over 48 months than if he was allowed to return the car after paying 50% of the total due under the agreement. While I haven't seen a copy of any agreement for a shorter term, I can see on an email from TFS that they confirm if Mr B took a 36 month agreement it would be £930 a month. So I also agree he will likely pay more in total over 48 months than he would over 36, if he keeps the agreement in place.

I've carefully thought about what Mr B thinks would be fair here. But I need to consider the very key point that if he keeps the car for 48 months he would retain the use of it, which it's reasonable he pays for.

I also think it's worth pointing out that from the limited information I have, on a monthly basis, it appears Mr B is paying less under the 48 month contract than he would've paid under the 36 month one.

So, I disagree with what Mr B proposed and I don't think this is a fair and reasonable way to consider putting things right.

I accept Mr B may well have entered into a 36 month agreement at the time if he was told the correct details. But, it isn't practical, or very likely even possible, to now change the terms of the agreement.

So, I'm satisfied the fairest thing to do is to put Mr B as close back to the position he would've been in had he not entered into the contract – which means ending the agreement and returning the car without further cost. It's reasonable Mr B pays for the use of the car he's had – which means TFS can retain all the monthly repayments he's made. It can also retain a pro rata proportion of the initial rental Mr B paid to cover the period he has the car for.

I understand Mr B has made cosmetic changes to the car that he says will need to be put back to the original condition if the car was returned. But, this was Mr B's choice to do. And he was always going to have to cover the cost of this whatever happened. So I don't think TFS needs to take any action on this point.

I also think Mr B has suffered distress and inconvenience because of what's happened. I think it must have been upsetting to realise he didn't have the option of returning the car when he thought he could. And he's explained how stressful it was getting to the bottom of the issue. But I'm satisfied the £400.41 already offered by TFS fairly reflects this.

I want to reassure Mr B and TFS that I've carefully considered everything else said in relation to the complaint. But this doesn't change my opinion about the outcome, nor what I think would be fair and reasonable to put the issue right.

### **My final decision**

My final decision is that I uphold this complaint.

I instruct Tesla Financial Services Limited to put things right by doing the following:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr B
- Refund the advance payment of £6,200 \* \*\*
- If it hasn't already done so, pay Mr B £400.41 to reflect the distress and inconvenience caused
- Remove any adverse information from Mr B's credit file in relation to this agreement

\*TFS can retain a pro rata proportion to reflect the time Mr B has use of the car

\*\* TFS should pay 8% simple interest on this amount from the time of payment to the time Mr B is refunded. If TFS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks/ask 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 B to accept or reject my decision before 4 June 2024.

John Bower  
**Ombudsman**