

The complaint

Mr K complains that he was given misleading information in relation to a car supplied to him under a finance agreement with Volvo Car Financial Services UK Limited ("Volvo FS").

What happened

Mr K got a used car from a Volvo dealership ("D") at a cash price of £25,249. He paid a deposit for the vehicle, with the balance of the purchase price being provided through a conditional sale agreement with Volvo FS.

Shortly after taking delivery of the car, Mr K contacted D to query what he considered discrepancies over the information he'd been given before he agreed to buy the car. These included a difference in of around 1,350 miles on the odometer, a statement that the car had new tyres and the number of registered former keepers.

Although Mr K acknowledged he'd accepted the first two of these points when he collected the car, he was still unhappy that the V5 document showed the car had more former keepers than he'd been told. D gave Mr K assurances about this, and Mr K went on to pay off the finance agreement the following month.

However, following a change to Mr K's personal circumstances, a few months later he decided to sell the car. He approached a couple of third party car buying services, "W" and "M", who undertook salvage checks on the vehicle history. As a result of those checks M was unwilling to place the car on its website, and W said it was only willing to buy the car at a significantly lower price.

Mr K took matters up with Volvo FS, who said the salvage information simply showed that the car had been stolen and recovered. This hadn't been shown on the HPI check D had undertaken on the car, which only includes whether the car is currently reported as stolen. Volvo FS told Mr K that it had discussed the matter with D, who offered to buy back the car for £21,600. Although this was less than Mr K had paid for the car, it was around £7,000 more than W had offered him. Mr K remained unhappy and asked us to look into his complaint.

Our investigator noted that section 56 of the Consumer Credit Act 1974 had the effect that Volvo FS was responsible for things said and done by D before Mr K entered into the conditional sale agreement. The investigator felt that while D had given Mr K conflicting information about the number of former keepers, this hadn't affected his decision to buy the car. He felt Mr K had ratified the information in his text message exchanges with D and by proceeding to pay off the finance shortly afterwards.

But the investigator did consider that the fact the car's salvage history hadn't been disclosed by D had the effect of misrepresenting the vehicle to Mr K, given the sale price was the same as a car without salvage history. He proposed to Volvo FS that it should take steps to put Mr K as close as practicable to being back in the financial position he would have been in had he not bought the car. This included Mr K returning the vehicle, and a deduction made to reflect the usage he'd had of the car.

However, Mr K had since moved overseas, taking the car with him. He asked if an alternative solution could be found to avoid having to return to the UK with the vehicle. But in any event, Volvo FS didn't agree with our investigator's proposal. It said that there was no retail or industry requirement when selling a car to check for any salvage report, and that it was open to Mr K when buying the car to arrange his own checks. D had undertaken an HPI check in line with common market practice. And Volvo FS said that while the car value was based on a range of factors, such as its age, mileage and general condition, the number of former owners wasn't one of those factors.

Our investigator reviewed his initial findings and felt Volvo UK's arguments sufficiently persuasive to change his assessment. Noting what Volvo FS had said, as well as Mr K's own change in circumstances, the investigator concluded that he couldn't reasonably uphold the complaint.

Mr K was unhappy with the outcome reached. He's asked for this review. In doing so, he's restated his earlier evidence about the car valuation he received from W in support of his position that the salvage status is material to the car's value. He also offered to bring the car back to the UK on condition that Volvo FS undertook to settle matters (as I understand it, D has withdrawn its offer to buy back the car). Mr K said he raised the matter with Trading Standards but never received a response. Overall, Mr K felt the problems he'd experienced had caused much distress to him and his family, and asked that the complaint be upheld in his favour.

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.

As our investigator noted, the fact the car was supplied to Mr K by Volvo FS under a conditional sale agreement means that the credit provider has responsibility for things that were said or done by D prior to Mr K's entry into the agreement. That includes the advertisement published on the website operated by "A", a third party, which Mr K has provided as part of his submissions. Anything shown on A's website relating to the car was submitted by D, so is to be treated as representations about the vehicle.

The advertisement included (among other things) the make and model of the car, its age, mileage and price, features of the vehicle and – pertinent to the complaint at hand – that it had had two owners, and wasn't categorised as an insurance write-off. Most of these aspects are to be viewed as inducements to purchase the car; that is, after all, the primary purpose of such an advertisement.

Noting Volvo FS's comments regarding market practice and Mr K's concerns over trading standards requirements, I've reviewed relevant guidance issued by the Chartered Trading Standards Institute ("CTSI")¹. That information ("the guidance") sets out to the motor trade steps to take in terms of compliance with relevant law², such as avoiding misleading actions or omissions, and poor or unfair business practices.

The guidance says that creating a misleading impression about the previous usage of a vehicle may be unfair. The example given is that of a car being described as having one previous owner when in fact it has had multiple previous users. Although Mr K has said he

¹ Car traders and consumer law: Guidance for dealerships – can be found at <https://www.businesscompanion.info/focus/car-traders-and-consumer-law>

² Among other things, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts Regulations 2013, and the Consumer Rights Act 2015

was told the car he bought had only one owner, the advertisement he supplied clearly stated it had had two former keepers. In fact, the car had three.

That the information in the advertisement was incorrect isn't in dispute. And I can see how it might have created a misleading impression of the previous usage of the car – though of course I also must recognise that the more former keepers a car has, the less likely it is that a difference of one will have a material impact on a customer's buying decision.

Further, like our investigator I find that Mr K's actions after discovering the true position were not consistent with a conclusion that he would otherwise not have bought the car. So while I can see that this part of the description might amount to a misleading action, I don't find that it has materially disadvantaged Mr K, and make no award in this respect.

I now turn to what is clearly the more contentious aspect of the dispute; that is, the car's history. The advertisement on A has a dash under "Insurance Write-off Category". That is factual information; it is in my opinion a representation that the car has not been categorised as an insurance write-off (or at least, that D had no information to indicate it had been).

The guidance gives examples of misleading omissions, as reproduced below:

"failing to disclose the existence and results of checks carried out on the vehicle (for example, mechanical, history and mileage checks) and any adverse information you have found out or are otherwise aware of - for example:

- *the vehicle's previous accident and/or insurance write off history*
- *discrepancies in the mileage or service history of the vehicle*
- *faults with the vehicle that have not been rectified"*

D did undertake an HPI check on the car, conducted around three weeks before Mr K bought it. Volvo FS has provided a copy of that check, which Mr K has also seen. That check showed the car wasn't categorised as stolen or written off due to damage or theft, and that it was clear of outstanding finance. I don't consider there's anything in that check that suggests D failed to disclose any key information to Mr K, or that he was unaware of at the time he accepted delivery of the car.

Importantly, as Volvo FS has previously identified, there's no obligation on a trade seller undertaking further checks – though clearly these can be performed by a potential buyer, as W has demonstrated. But in light of the relevant guidance, I don't see that I can properly conclude that D not doing such a check amounts to a misleading omission on its part.

I'm conscious, of course, that Mr K has since discovered that a few months before he bought the car from D, it was the subject of a salvage sale. It is accepted by all parties that the car was previously stolen and recovered. I don't find any of this information inconsistent with the HPI check D obtained, or the advertisement it placed on A's website. It doesn't amount to an insurance write-off under the Association of British Insurers ("ABI") Code of Practice³, which only requires categorisation of recovered vehicles that have sustained damage. In respect of vehicles that have minimal or no damage, the code doesn't apply. It says:

"Recovered stolen vehicles that are undamaged or with only minor non-structural damage fall outside of this code of practice. All recovered vehicles must be notified to [the Motor Insurance Anti-Fraud Theft Register]. The record must not be deleted."

³ ABI Code of practice for the categorisation of motor vehicle salvage – November 2019

The information that's been provided to me doesn't show that any of the ABI specified salvage categorisations apply to Mr K's car. The correspondence from W doesn't say this either. Essentially, this evidence only demonstrates that the car was previously sold through a salvage auction. The absence of any insurance write-off categorisation suggests to me that the most likely explanation is that the car was sold at auction after the insurer had settled a theft claim and recovered the vehicle with no or only light damage.

There's no requirement on a seller – trade or otherwise – to disclose how the way in which they acquired the car that they're selling. D gave Mr K the information it needed to, and that appears to have been in its possession. It follows that I don't find he was treated unfairly in this respect when buying the car.

I appreciate Mr K feels he's lost out financially. I don't doubt W might have used the salvage auction information as a basis to reduce its offer to him. Of course it might otherwise have found different reasons for doing so. But the amount W was willing to pay for the car isn't necessarily its true market value. D was willing to pay Mr K considerably more to buy back the car. Mr K is also able to sell the car privately to other buyers, and negotiate what he considers the car is worth. And the issue doesn't seem to have affected Mr K's use of the car. Taking all of this into account, there's no reason for me to require Volvo FS to compensate him.

My final decision

For the reasons I've set out here, my final decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 April 2024.

Niall Taylor
Ombudsman