

The complaint

Mr S complains that a car he financed through an agreement with LEASYS UK LTD (LEASYS) was misrepresented to him.

What happened

Mr S took receipt of a new car in March 2024. He financed the deal through a hire agreement with LEASYS.

The car was ordered three months earlier and was supposed to be all black, but before Mr S collected the car the dealership called him to explain the one supplied was black with a white roof. They explained that there'd been a mistake by the manufacturer who hadn't updated their brochures and had listed the car incorrectly. They gave Mr S the option to reject the car or to reorder. Mr S explained that he felt he had no choice but to accept the car as he is a driving instructor and needed the car urgently for work. He accepted a goodwill gesture of £300 but complained to LEASYS.

LEASYS said they had no control over the manufacturer's mistake.

When Mr S referred his complaint to this service our investigator didn't think they could fairly be blamed for what the manufacturer had done wrong.

Dissatisfied with that response, Mr S asked for a decision by an ombudsman.

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 know it will disappoint Mr S, but I'm not upholding this complaint. I'll 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.

Mr S acquired his car under a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

There's no dispute here that Mr S didn't receive what he thought he'd ordered.

Under Section 56 of the Consumer Credit Act (1974) the finance company (LEASYS here) can be held responsible for the any pre-contractual representations by the broker. It's under that Section that many consumers would typically raise a claim for misrepresentation. But

that doesn't apply to hire agreements such as Mr S's as credit isn't extended; there's no option to purchase the vehicle. However, it may be that other areas of the law could convey a similar right, so I will consider whether the agreement was misrepresented to Mr S by the dealership.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr S was told the car would be all black but that was untrue, I don't think it matters that the dealership, who brokered the finance arrangement between Mr S and LEASYS, didn't know the car had been improperly listed. It was their responsibility to ensure the goods matched the description. Mr S accepted the car anyway and, on that basis, it could be argued that the false statement didn't influence him to enter into the contract as he continued with the contract even though he was aware the car wasn't what he was told he would get. It seems likely to me, however, that his decision to proceed was driven by the fact he would have to wait for a new vehicle, and he was reluctant to do that because of the impact on his business.

So, it may be that the car was misrepresented to Mr S and that LEASYS could be held liable for that misrepresentation. However, when there has been a misrepresentation, we would usually ask the business to allow the consumer to reject the car and end the finance agreement and I think that's what Mr S was offered. He was given the option to reorder or reject. We may also ask a business to provide compensation for the distress and inconvenience caused and while the £300 offered to Mr S was framed as a good will gesture it was in *"recognition that the car arrived with the wrong roof colour"* and, I think, served as compensation. I don't think this service would have awarded a higher level of compensation given the distress and inconvenience caused. And, overall, I'm persuaded the offer was a reasonable one and no further action needs to be taken.

I understand that Mr S is also upset at the time it took LEASYS to respond to his complaint. While he says he referred the complaint to them in early June 2024 I can see that in their final response they've explained that was on 17 July 2024. If that date is right, it suggests LEASYS did respond within the eight-week timeline they are expected to and that they've done nothing wrong. If it's not the case and Mr S did refer a complaint to them earlier, I'm not persuaded that delay, in these circumstances, warrants any monetary compensation as it seems to me that the complaint has been finalised in a reasonable period of time and as I've not found cause to uphold the complaint.

Overall, I'm not asking LEASYS to take any further action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 January 2025.

Phillip McMahon
Ombudsman