

complaint

Mr T complains that UK Car Group Limited ("Carcraft") misled him about a fixed-sum loan agreement. Mr T says he was persuaded to take out a loan to buy a car for Mr P and says they were both misled about the price of the car. Mr T also says he was led to believe Mr P had agreed to take out a 'drive happy guarantee' when Mr P says he had not agreed to this. Mr T also says Carcraft wrongly took £100 out of Mr P's bank account twice and that this caused Mr P significant distress and inconvenience.

background

Mr T says he went to Carcraft's showroom with Mr P's mother on 20 December. The intention was to pick out a car for Mr P (who was not present), which Mr P would buy on finance. Mr T says Mr P had a budget of £1,000 - £3,000 (or around £130 per month).

After looking round the showroom Mr T says he and Mr P's mother picked out a car costing £5,499 which they thought might be suitable for Mr P. Mr T says one of Carcraft's staff (who I will call 'JP') then telephoned Mr P and described the car to him whilst he viewed it on his laptop. She also took a £100 deposit from Mr P's debit card and a £900 deposit from Mr T. However, Mr P was declined for finance.

JP then asked Mr T if he would take out finance in his own name to buy a car for Mr P. Mr T says he refused and at this point another Carcraft staff member (who I will call 'MO') became involved. MO asked if Mr T had enough money in his account to cover a further £900 deposit and said he would refund the first £900 deposit. Mr T was asked to sign some forms but says he refused after seeing the total amount payable.

Mr T says he asked MO to phone Mr P and says MO did this in a private office. Mr T says he then signed the forms after being assured by MO that Mr P had agreed to the loan terms.

Mr P contacted his mother later that night to say a second £100 payment had been taken from his account. Mr T says it took several days for this money to be refunded and he says this caused Mr P significant distress.

The following day (21 December), Mr T and Mr P's mother returned to the Carcraft showroom to dispute the second £100 payment and also to dispute the five-year drive happy guarantee. The guarantee was cancelled and Mr T signed more forms. Mr T believes the price of the car was altered during this process and that the £2,000 cost of the guarantee was added to the cost of the car. Mr T also says the car delivered was not the car discussed at the showroom and over the phone with Mr P, as it did not have central locking and electric windows.

Carcraft says the price of the car was clearly displayed on the windscreen and did not change. It says anyone viewing the car would see it had manual windows and locks. It also says MO called Mr P in full view of Mr T and Mr P's mother and explained the drive happy guarantee to him and that Mr P agreed to take this out. It says the second £100 payment was taken in error and was refunded as soon as this was discovered. It also says Mr T suggested he (and Mr P) had a monthly budget of £130, but freely agreed to a loan with monthly payments of £162.92 – which were set out in the paperwork he signed at the time.

Our adjudicator did not uphold the complaint. He explained that any concerns that the car was not as described, or was not the car Mr T bought, would have to be taken up with the finance provider. The adjudicator did not think the agreement could be said to be unaffordable, given that Mr T had chosen to buy a car which cost more than the budget he said he had. He noted that the cash price of the car was given throughout the paperwork as £7,499 (plus £3.33 tax), so he did not think Mr T or Mr P had been misled about the price.

The adjudicator also reviewed Mr P's bank statement and saw that two payments were taken from his account and one was refunded; all on the same day. This information was later also given to us by Mr P's own bank.

Mr T did not accept the adjudicator's findings. He asked for a hearing to put questions to Carcraft's salespeople. He also says the money was not returned to Mr P's account for several days.

my findings

I have considered what Mr T and Mr P, and Carcraft, have said and provided, to decide what is fair and reasonable in the circumstances. This includes the written statement Mr T recently sent directly to me and also the telephone statement Mr P recorded, which I have listened to.

Having considered all of this evidence – and whilst I am aware this is not the outcome Mr T and Mr P will be hoping for – I do not uphold this complaint.

why am I issuing a final decision now?

During the course of this complaint, Mr T asked for a hearing so he could put questions to Carcraft's salespeople. However, I was satisfied that it was not necessary for me to hold a hearing to be able to decide this complaint. I explained that I did not think a hearing would give Mr T the answers he was looking for, or help me to establish what happened when Mr T bought this car and entered into this finance through Carcraft. So I explained to Mr T and Mr P that I would not be holding a hearing.

Mr T has responded by raising further questions he wants to put to Carcraft. However, part of my role as an ombudsman is to decide when I feel I have enough information to allow me to reach a fair and reasonable decision on a case. I am satisfied that I can now reach a fair and reasonable decision in this case, without asking for further information and evidence from either Carcraft, or from Mr T and Mr P.

who can bring this complaint?

Mr T can bring this complaint as he has entered into the finance agreement through Carcraft. Our adjudicator did explain that Mr P can also bring a complaint against Carcraft, as he paid a £100 deposit when he expected to be taking out a separate finance agreement himself.

Technically Mr P's complaint should be treated entirely separately from Mr T's complaint. However, as Mr P's complaint is closely bound up to Mr T's I think it produces a fairer outcome if I continue to look at Mr P's concerns in this decision – and this was also what Mr T and Mr P wanted. I will deal with this aspect of the complaint first.

Mr P's £100 payment

Based on the events Mr T described, it seems Mr P always intended to put down a £100 deposit for the car. Carcraft says the second £100 payment taken from Mr P's account was a 'banking error'. Mr T disputes this. Looking at the circumstances, I also think it is unlikely it was an error.

I think it is far more likely that the first £100 payment was taken as the deposit towards Mr P's own purchase, but a refund was processed later the same day because Mr P's own purchase could not go ahead. That is why one of the two payments was refunded, in the same way that Mr T's first £900 payment was taken and later refunded. I think the second £100 payment was then taken as a deposit towards Mr T's purchase of the car, in the same way that a second £900 payment was taken from Mr T. The end result of this was that Mr P paid a £100 deposit towards the car, which seems to have been his intention all along.

Mr P says the two £100 payments were taken from his account on 20 December. Certainly that is when the payments were taken on his debit card. However, that does not mean the money was taken out of his account straight away. Instead the two payments are likely to have shown as 'pending' transactions. Mr P's bank statement shows that the two payments were taken from his account on 21 December. It also shows that one of the payments was refunded the same day.

Mr T and Mr P say the refunded £100 was not returned to Mr P's account until Christmas Eve. They say this was particularly distressing for Mr P as he has young children and little income. However, Mr P's bank has provided us with a further statement for his account which shows that Mr P was able to make a withdrawal – which included the £100 refund – on 22 December. So it is not correct to say that the money was unavailable to Mr P for several days. It was available to him, and he removed it from his account, by 22 December.

Mr T and Mr P clearly feel very strongly that Carcraft took money from Mr P's account wrongly – even suggesting this was an illegal activity. I accept it is possible there was some misunderstanding, and that Mr P did not realise he was being asked to pay a second deposit so the first one could be refunded. However, it seems Mr P always intended to pay £100 as a deposit to buy the car and that is the position he ended up in. The evidence does not show that the money was unavailable to Mr P for several days. So I do not think Carcraft should have to pay Mr P any compensation for this. This service also has no powers to look into allegations of criminal activity.

Mr T has very recently suggested that Mr P's bank might be involved in some form of cover-up. But I have to say I find that highly unlikely. If Mr P has any concerns about the information provided by his bank, he will have to take that up directly with the bank.

the loan Mr T entered into

I am satisfied that Mr T did go to Carcraft on both 20 and 21 December, because paperwork was signed on both days.

The loan agreement for the car was signed on 20 December. It showed the cash price of the goods as £7,502.33 and this figure was also shown on the pre-contract information. The loan agreement didn't show how this figure was broken down. However, the contract of sale, which Mr T also signed, showed this as £7,499 for the car and £3.33 for the tax disc.

After a £226.08 discount and the £1,000 deposit contributed by Mr T and Mr P the amount Mr T needed to borrow was £6,276.25. This is the amount of credit shown in the loan

agreement he signed on 20 December. The total amount payable was £11,295.28 – and the monthly payments were shown as £162.92.

Mr T signed more paperwork on 21 December. This supports his recollection that he went back to Carcraft the day after he bought the car to dispute the drive happy guarantee. Carcraft has explained – and I accept – that the £2,000 cost of the guarantee was to have been funded using a second loan with a different finance company. As Mr T cancelled the guarantee that second loan was also cancelled. Mr T described the paperwork being taken off him and shredded; which explains why no copy is now available. It also explains why Mr T signed a finance confirmation form on 21 December, saying he understood he had one finance agreement with £162.92 per month payments. It is likely that Mr T had originally signed a finance confirmation form on 20 December saying he had two loans with two monthly payments (one for the car and one for the guarantee). That paperwork was most likely also destroyed.

None of the paperwork from either 20 or 21 December gives the price of the car as anything other than £7,499. And none of the paperwork refers to a car with any other registration number than the one delivered by Carcraft. Given this – and despite Mr T and Mr P's arguments to the contrary – I must reasonably conclude that the car Carcraft delivered was the one discussed with Mr T and Mr P, at the price advertised. I am not persuaded that the cost of the drive happy guarantee was incorrectly added to the first loan Mr T took out.

From his description of events, it seems Mr T was aware he was being asked to enter into a loan to buy a car for Mr P. He has not said he thought he was entering into the loan in some other capacity; such as guarantor. Mr T also looked at the paperwork, at least enough to see the total amount payable. Despite saying he initially refused to sign for the loan, he nevertheless went on to do so. He says he only did this because he was told – by MO – that Mr P had agreed this was the car he wanted. Mr T also says he was told Mr P wanted the drive happy guarantee.

Given the importance of the transaction Mr T was entering into I am having some difficulty accepting that he would simply have taken MO's word for it that Mr P wanted this car, at this price. MO accepts he did discuss the transaction with Mr P over the phone, but that he did so in full view of Mr T and Mr P's mother. They dispute that and it is impossible for me to be sure what happened. But it does seem more likely, to me, that the discussions would have taken place in front of Mr T and Mr P's mother. If not, I would reasonably expect Mr T to have wanted to speak to Mr P himself, to verify that this was the car Mr P wanted, at the price he wanted to pay.

Ultimately as Mr T was the one taking out the loan it was Mr T that Carcraft had to explain the transaction to. And it was for Mr T to decide whether he was prepared to enter into the loan to buy the car – whether he was buying it for Mr P's benefit or for his own use. Mr T was also made aware of the monthly cost of the agreement and was able to decide whether that was affordable compared to the budget he says he had.

Looking at all the papers, and having considered everything Mr T, Mr P and Carcraft have said, I am not persuaded that Carcraft misled Mr T about the car he was buying, the price of it, or the nature of the agreement he was entering into.

Under the circumstances I don't find that Carcraft misled Mr T or Mr P. And I cannot reasonably direct it to refund the £2,000 Mr T feels he has paid over and above what he

believes the car is worth. Nor do I require Carcraft to pay any other form of compensation to Mr T or Mr P.

I am aware that Carcraft offered a £500 goodwill gesture to Mr T and Mr P in the early stages of the complaint. However, that offer was withdrawn quite some time ago and I cannot reasonably direct Carcraft to reinstate it, given my findings.

my final decision

My final decision is that I do not uphold this complaint and I make no order or award.

Dawn Griffiths
ombudsman