

complaint

Mr H complains he was mis-sold a personal contract hire finance agreement by Lookers Motor Group Limited. He wants to end the agreement.

background

Mr H tells us he first applied to have the agreement in the name of his business but was told he had to proceed with a personal application. He says he wasn't told of withdrawal rights and that the paperwork was falsified to put pressure on him to sign. Mr H states that when he lost his employment contract, the day after entering the agreement, he wasn't allowed to cancel the agreement. He says this has led to financial difficulty and he doesn't feel he's been treated fairly.

Lookers told us it did not consider it had done anything wrong and refuted any suggestion it had falsified paperwork or not followed correct procedures. It said it had tried to assist Mr H in negotiations with A, the finance provider, and this had led to a preferential settlement offer being made to Mr H. But Mr H had declined to proceed on this basis.

Our investigator did not recommend the complaint should be upheld. She said the finance had been provided by A, not Lookers. So Lookers didn't have the power to cancel the agreement. She found Mr H had signed the agreement which under the '*Key Information*' heading had stated "*this agreement is not cancellable*". And she saw that Mr H - when notifying Lookers of his loss of employment - had said he still wanted the vehicle.

Mr H didn't agree with this outcome. He said there had been ample time for the agreement to be cancelled. And he didn't think the correct paperwork had been processed by the time he'd notified his change of circumstances.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry that Mr H has experienced the worry and upset which has surrounded the circumstances of this complaint. And it was both unfortunate and unpredictable that he should lose his employment so soon entering the agreement.

Although I don't apply the law - directly - I do take it into account. And because this agreement is a hire agreement (as opposed to hire purchase) there are differences in the relevant law.

In some situations - a hire purchase agreement is one example - the provider of finance is potentially liable for any misrepresentation and/ or breach of contract by the credit broker during antecedent negotiations. This would mean that all aspects of a complaint such as Mr H's could be dealt with at the same time. But the legislation does not apply in the same way in the case of hire only agreements.

This means that the selling of this finance agreement - and what happened later when Mr H tried to cancel it - have to be dealt with as separate issues. And my decision only deals with the complaint against Lookers in respect of its actions as broker of the agreement. It's potentially open to Mr H to bring a separate complaint against the provider of finance if he feels it has not treated him fairly in respect of the financial difficulties he's described.

We're an evidence based service - which means we don't just rely on what the parties tell us but we also look to any documentary or other evidence to reach a decision. And where evidence is unclear - or contradictory - as some of it is here, I'm required to make my decision on the balance of probabilities.

I can see that Mr H first tried to take out the agreement in the name of his business - but apparently that application was declined and so it was resubmitted in Mr H's name. I mention - simply for completeness - that as Mr H's business appears to be a limited company this service would not have been able to look into any complaint if this hire agreement had been taken out in the company name.

Although I've seen a copy of the agreement - in which the business name is crossed out and Mr H's name is inserted by hand - I do not think there's anything sinister about this. It's clear from other documentation - which is in Mr H's name and apparently signed by him - that he was - or ought to have been - aware the agreement was being processed in his name. This includes an agreement document which is dated 28 June 2017 and appears to bear Mr H's signature. And on 29 June Mr H emailed Lookers to say *"I still want the car, still want to go ahead...."*

Our investigator has already explained that Lookers was not the provider of finance and so it was not open to them to cancel the agreement. And in any event the agreement is labelled *"this agreement is not cancellable"*.

Whilst any delay which followed in terms of the vehicle registration and collection *might* have given the opportunity for the agreement to be amended or terminated, that was not something that Lookers could bring about.

Mr H has also asked me to explain what would have happened if, on 10 July 2017, he'd not paid the balance of his deposit and signed to get the car registered. I'm not able to definitively answer that question - as it would not be for me to make the decision if that event had occurred. But I can't see it's likely to have made any difference to his obligations (or the ability of the finance provider to enforce the agreement) as by then he'd signed the non-cancellable agreement document.

In summary, I do not find that Lookers misrepresented the agreement or did anything wrong in relation to it being processed. As it's only the agreement broker it has no power to either enforce the agreement or cancel or amend it once it's in force.

Whilst I'm sorry my decision will come as a disappointment to Mr H I'm not going to uphold this complaint.

my final decision

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 June 2019.

Stephen D. Ross
ombudsman