

complaint

Mrs L complains Honda Finance Europe Plc (Honda) misrepresented a hire purchase agreement she entered into.

background

In June 2016, Mrs L took out a hire purchase agreement to acquire a used car. Mrs L says she took out the agreement to enable her son to acquire the vehicle; he has failed a credit score and had asked her to come to the dealership to see if she would be willing to take out the agreement on his behalf.

Mrs L says the salesperson at the dealership informed her when her son was able to reach a satisfactory credit score, perhaps in two-three months; she could transfer the agreement into his name. Mrs L says she felt under a great deal of pressure and only agreed to take out the hire purchase agreement on the basis it could be transferred into her son's name.

When she tried to carry out the transfer, she was informed this wasn't possible. Mrs L was very unhappy with the situation. She continued to pay the monthly payments but in July 2018, she handed the keys back into the dealership and informed them she had left the car parked on a public house carpark.

When the car was collected, the dealership noted some damage and the vehicle was valued at £1750. This left Mrs L with an outstanding liability.

Mrs L complained, she says there was no damage to the vehicle when she left it on the public house carpark and disputed the outstanding balance, but Honda didn't uphold her complaint. It said it was a different business to the dealership, and it didn't know what was said at the point of sale. It also said it doesn't accept transfers to third parties and as Mrs L had signed all the relevant documents to Honda, she was liable for the outstanding balance.

An investigator looked into matters for Mrs L. She found that Honda has agreed to end the agreement early when normally it would only do so once the outstanding balance up to the half of the agreement is paid and only once the agreement has reached the half-term point. But, in order to assist Mrs L it agreed to collect the car early.

She said she sympathised with Mrs L. She understood her son had an arrangement with her to drive the car and subsequently pay the monthly instalments and unfortunately, he wasn't able to keep to this arrangement. But she didn't agree that this was Honda's fault, or that it had acted unreasonably.

She also didn't agree that Honda should waive the damages. She pointed out Mrs L's responsibilities as detailed in the agreement and as she'd left the car on a public carpark, she hadn't adhered to the terms and conditions of the agreement. She also noted the vehicle whilst valued at £1750 had actually sold for less at auction and this loss hadn't been passed on to Mrs L. She concluded Honda had acted fairly and reasonably and so didn't ask them to do anything further.

Mrs L disagreed. She feels very strongly that the hire purchase agreement was misrepresented to her and she wouldn't have entered into it if she couldn't transfer it into her son's name. She asked for an ombudsman review.

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've looked at all the information provided by both parties afresh. I appreciate Mrs L will be disappointed but I've reached the same conclusion as the investigator. 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. That is to say what I think is more likely to have happened.

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.

Because I wasn't present when the discussions took place between Mrs L and the dealership, I can't be certain of what was said. There's no contemporaneous evidence of what was discussed. In the circumstances, I need to look at the available documentary evidence in order to determine what's more likely to have happened at the time when the agreement was entered into.

I looked closely at the hire purchase agreement. The agreement was a valid and legally binding document, which has been signed by Mrs L, and, in doing so, she had agreed to be bound by its terms and conditions.

From what I've seen, there isn't anything in the agreement to suggest it could be transferred to a third party. Honda has said it doesn't offer a finance product that allows a consumer to obtain credit on behalf of a third party, who is unable to obtain credit in his or her own right. It has also said it doesn't offer a facility to allow a customer to transfer an active agreement to a third party.

I appreciate Mrs L feels very strongly that the salesperson from the dealership led her to believe she could transfer the agreement but Mrs L still had a responsibility to read the agreement before she signed it.

In clause 14 (b) it says:

"..any dealer, broker or manufacturer who has been involved in this transaction is not our agent and we are not responsible for anything they have said, or done or not done unless we have specifically authorised it in writing.."

If Mrs L entered into the agreement with the expectation of making a change, in this case transferring responsibility to her son, I think it reasonable that she should have checked with the finance provider first. I understand Mrs L has said she felt under pressure to agree to take out the arrangement but from the information I have available it's very difficult to ascertain whether that was from the salesperson or her son who was with her in the dealership and who wanted to acquire the vehicle but was unable to do so.

At the point of sale, the car registration was being transferred into Mrs L's name as the new registered keeper. Mrs L was also the insured person on the GAP insurance policy and the

service agreement. The paperwork Mrs L signed and received is clear and not misleading. Had Mrs L read the paperwork later she could have raised any concerns much sooner.

I don't doubt Mrs L feels very strongly about what was said in the dealership but I'm afraid that doesn't negate her responsibility to read through the terms and conditions of any agreement she enters into so I'm not able to find any evidence to substantiate the agreement being misrepresented.

Mrs L has also disputed the damage charges. She says she gave the keys back and informed the dealership of the vehicles location. It took around 5-6 weeks to collect the vehicle but Mrs L maintains there was no damage to the vehicle when she left it.

The terms and conditions are quite specific that the car must be returned in good condition for its age and mileage. If it's not in that condition Mrs L may be required to pay the amount required to bring it up to that condition. It also states that Honda will collect the car directly provided that the goods return fees are paid first, but if Mrs L wished to return the car herself, they will provide details of their nearest contracted auction site where the car can be delivered.

The term 8.7 also explains that:

..." upon the return or collection, the car may be appraised in your presence. Any damage will be identified and recorded. An amount will be calculated that would be needed to bring the car to good condition for its age and mileage. Should you wish to dispute this amount, you may arrange (at your cost) for an approved independent inspection to be carried out within a specified period."

I'm afraid that by leaving the car on a public house car park Mrs L hasn't adhered to the terms and conditions of the agreement and as it's not possible to ascertain when any damages occurred I'm satisfied Mrs L is liable for the damage charges.

Honda had the vehicle inspected on collection. The inspection report shows damages to the car totalling £2923.20. Honda also checked the current market value of the car with similar mileage and age and found the value to be around £3275. They have allowed for wear and tear and had the car independently valued. At auction, the value was given to be £1750.00. But, instead of charging the full amount for the damages detailed in the inspection report, Honda only passed on the amount they've lost out, which was equivalent to £1361.25. That's the difference between the value of the car in good condition and the price the auctioneer quoted for the car. The vehicle also only sold for £1600 at auction and Honda didn't pass this loss onto Mrs L.

Overall, I'm not persuaded there is sufficient evidence to support Mrs L's claim of misrepresentation and I'm satisfied Honda have acted fairly and reasonably, given the circumstances, in trying to assist Mrs L so I'm not going to ask it to do anything further.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 29 February 2020.

Wendy Steele
ombudsman