

complaint

Mr D is unhappy with a car he bought on credit provided by FirstRand Bank Limited.

background

Mr D entered into a hire purchase agreement with FirstRand in March 2017 to finance the purchase of a car. He chose the car in question in reliance on an advert placed on line. It later turned that some of the information in that advert was not correct. The principal concern that Mr D had was that the car was described as being four-wheel drive. When he had the car serviced later that same year, he learned that the car wasn't four-wheel drive.

The complaint was looked at by an investigator who upheld it on the basis that Mr D had bought this car on the description of the car that had been given. Relevant legislation means that FirstRand can be liable in these circumstances.

FirstRand disagreed with the investigator's opinion. It said that the advert contained a disclaimer that said the information in the advert couldn't be fully relied on. It also said that Mr D would've realised the car wasn't the four-wheel drive model if he'd more carefully checked the paperwork he signed when buying the car.

Because FirstRand disagreed with the investigator's opinion, the complaint has been passed to me to issue a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I've come to the same conclusion as the investigator and for broadly the same reasons.

The relevant legislation in this area (s56 Consumer Credit Act 1974) makes finance providers liable for potential misrepresentations made during the negotiations in the run up to the agreement being entered into. A misrepresentation is a false statement of fact made by one party to the other that induces or convinces that side to enter into the agreement.

I've looked at the advert for Mr D's car and it clearly describes this as being a specific four-wheel drive model. Mr D told the investigator that he'd tended to buy cars with four-wheel drive in the past and that his decision to do so had been motivated by experience with unusually bad weather. From what Mr D has said, I think it's likely, if he'd known this specific car didn't have four-wheel drive, he wouldn't have gone ahead with the purchase.

FirstRand questioned whether Mr D had chosen to insure the vehicle as a four-wheel drive model. But the insurer that provides him with cover told the investigator that he wouldn't have needed to confirm either way – he'd have been asked for the car's registration details and things such as the model would've been pre-populated into an application form. So although the insurance wasn't for the four-wheel drive model, I don't think that demonstrates Mr D was aware that the car had been inaccurately described in the advertisement.

FirstRand has argued that the advert had a disclaimer with the following text:

"[We] make every effort to ensure all prices and vehicle details are correct however, as these are used cars the specification can sometimes differ from that displayed. Please satisfy yourself that a vehicle has a specific feature that's important to you before purchasing ..."

It says Mr D should've thoroughly checked the paperwork he signed and noted any disclaimers. I'm not persuaded by this argument. The way this disclaimer is written doesn't exclude liability for misrepresenting or mis-describing the car. And I don't think a generic warning to customers to consider carefully before purchasing changes the fact that the car was mis-described. Overall, I think there was a misrepresentation here and that FirstRand needs to remedy that.

I've thought carefully about the fair and reasonable thing to do here. I don't think Mr D would have bought this car had it not been for the incorrect information he was given, so here, I think he should be able to give the car back. I'm mindful of the fact that Mr D has had use of an otherwise perfectly satisfactory car and I think fairness requires that he pays for that use. So I don't think FirstRand needs to refund any of his monthly payments.

my final decision

For the reasons I've explained, I uphold this complaint. FirstRand Bank Limited now needs to do the following:

- end the agreement with nothing further to pay.
- collect the car at no cost to Mr D.
- refund the deposit paid (including the value of the part-exchanged car) of £2,750
- pay 8% simple interest on the refunded sum from the point Mr D paid it until the date it's returned to him.¹

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 March 2019.

James Kimmitt
ombudsman

¹ HM Revenue & Customs requires tax at the basic rate to be deducted from the simple interest. FirstRand should give Mr D a certificate showing how much it's taken off if he asks for one.