

complaint

Mr M bought a car on hire-purchase terms to use as a taxi. He returned the car to the dealer when he discovered the mileometer reading was false. He complains that Carlyle Finance will not reimburse his lost earnings for the two weeks it took for his replacement car to be ready to use.

background

Mr M signed the hire-purchase agreement in November 2011. One month later, he discovered that the car's mileage was incorrect. The mileometer read 31,211 miles at the time he entered into the agreement, but he discovered the mileage at the car's previous service was already 34,489.

Mr M took the matter up with the dealer which gave him the following options:

- 1) choose an alternative car;
- 2) return the car and unwind the hire-purchase agreement; or
- 3) keep the car and receive compensation for the mileage discrepancy.

Mr M said he had no faith in the dealer and no longer wanted the car, so he took the second option. However, he made it clear that he still wanted to be compensated for his lost earnings.

The invoice shows the cash price of the car, the registration fee Mr M paid and the additional products he bought, including road tax. Mr M paid a substantial deposit. The balance was funded by a loan from Carlyle Finance under the hire-purchase agreement. Mr M also incurred expenses covering the cost of taxi insurance, road tax, local authority and other taxi-related fees.

Mr M returned the car in February 2012 with a mileage of 38,094. He has confirmed that his deposit and instalments made under the hire-purchase agreement were refunded. He also received a cheque to cover his additional expenses. However, he also wants Carlyle Finance to cover lost earnings, which he estimates at £75 per day, until his replacement taxi was ready to use.

Carlyle Finance considers it has acted fairly and reasonably in restoring Mr M to his pre-contract position and has nothing further to pay.

our initial conclusions

Our adjudicator did not recommend the complaint should be upheld, primarily because she did not consider Carlyle Finance was responsible for losses incurred after the hire-purchase agreement was cancelled. She also considered Mr M had received refunds from the dealer and Carlyle Finance exceeding any award she would have recommended because Mr M did not have to pay anything for his use of the car.

As Mr M rejected the adjudicator's conclusion, his complaint has been referred to me.

my findings

I have considered all the available evidence to decide what is fair and reasonable in the circumstances of the complaint. Having done so, I do not uphold Mr M's complaint for reasons I give below.

The dealer believes it has already more than compensated Mr M by reimbursing his expenses. For example, it does not consider it was obliged to reimburse Mr M's insurance costs because Mr M was using the car and would have needed insurance. The dealer also believes Mr M was entitled to a partial refund from his local authority. Whilst I have noted the dealer's comments, it appears the decision to reimburse these expenses was taken by the dealer on its own behalf, rather than on behalf of Carlyle Finance, against which Mr M is now complaining.

It is worth explaining therefore the basis upon which this service is able to consider the complaint against Carlyle Finance in this case. Mr M bought the car under a hire-purchase agreement. It is a condition of that agreement that the car supplied to him matched the description given to it. When Mr M bought the car the mileometer did not show the true mileage of the car. Therefore, this is a breach of the hire-purchase contract for which Carlyle Finance is responsible. This not only entitles Mr M to give back the car, but also to compensation for losses that have arisen as a result of that breach of contract.

Carlyle Finance says that it was not aware that Mr M proposed to use the car for private hire purposes when it agreed to grant the loan. However, it seems clear that Mr M told the dealer, who arranged the loan, about his intended use. As the hire-purchase agreement is regulated by the Consumer Credit Act 1974, section 56 of the Act effectively makes Carlyle Finance responsible for negotiations conducted by the dealer/broker. For the purposes of section 56, negotiations began when Mr M entered into communications with the dealer and include any representations made by the dealer to Mr M and any other dealings between them.

Ordinarily, Mr M would be entitled to be compensated for any lost earnings that he is able to prove. However, Mr M has been unable to provide any evidence to demonstrate his losses over the two-week period he says he was without a car. He has provided his 'job sheets' from his current employer, but these do not show his net income and are also not necessarily representative of what he was earning when he started out as a taxi driver.

Mr M has asked for compensation based on a daily rate of £75, which he believes to be reasonable based on what other taxi drivers in the area earn. I consider Mr M should be able to demonstrate his actual loss through accounts for the period in question. I appreciate Mr M appears to have started his business only in November 2011, but he should still be able to provide evidence of his net income before he returned the car. As Mr M has confirmed that he cannot provide this information, I am unable to consider his claim for compensation for loss of earnings.

In addition, Carlyle Finance has already refunded the monthly instalments Mr M paid under the hire-purchase agreement. In my view, it is fair and reasonable that Mr M should pay for his use of the car between November 2011 and February 2012. Although Mr M has referred to problems with the car 'cutting out' before he returned it, he has not suggested at any stage that he was unable to use the car for its intended purpose as a taxi. Therefore, I would have deducted Mr M's monthly payments for that period from any compensation for loss of earnings in any event.

my final decision

For the reasons given, my final decision is that I do not uphold Mr M's complaint against Carlyle Finance.

Athena Pavlou
Ombudsman