

complaint

Mr F has complained that a car he hired from Ald Automotive Limited isn't of satisfactory quality.

background

facts

Mr F took out a two year hire agreement with Ald for a new car, and took delivery of it on 6 December 2015. This was through a third party dealership. But two weeks later, he noticed problems with the paintwork. He contacted the dealership and said he wanted a replacement or a respray.

He later complained to Ald and asked to reject the car, but was told that was no longer an option. This was because Ald said to do so, he'd have had to complain to it within 30 days of taking delivery of the car. He hadn't done so in time, as he'd initially complained to the dealership instead. It felt offering a respray was fair.

Our adjudicator recommended that the complaint should be upheld, as she felt the car was of unsatisfactory quality, and that Mr F had complained in time. She recommended that Mr F be allowed to reject the car and have his deposit refunded. But she didn't think he should receive any repayments back, as he'd had full use of the car (save for one day).

Ald disagreed, as it felt rejection would be disproportionate, and outside the scope of the remedies set out in the Consumer Rights Act 2015.

my provisional decision

The complaint was then passed to me. As I somewhat disagreed with the adjudicator's proposed remedy, I issued a provisional decision, to allow both parties the opportunity to submit anything further in respect of what I was inclined to award and why.

I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I was minded to make the following findings.

Much has been made of the Consumer Rights Act. In particular, Ald says Mr F lost his short term right to reject, as he didn't complain to it within 30 days. The Act provides that the 30 day 'clock' stops while repairs are being carried out, meaning Mr F would have had the right to reject the car when he discovered the further problems – but only if he'd complained to Ald in the first instance. As he didn't, he's outside within the 'extended' period – so Ald feels it should be given an opportunity to carry repairs out. It hasn't had this.

Although I agreed that Ald's strict interpretation may be correct, I didn't analyse this further. This was because I thought the technicality Ald is seeking to argue produces an unfair outcome. Although my decision must take the law into account, ultimately, I make a decision based on what I think's fair and reasonable in the circumstances.

I understood the dealership had already carried out a respray, but it hadn't worked. This turned out not to be the case, and no respray has so far been carried out. But as I thought it had, I said that had Mr F complained to Ald in the first place, I thought the respray would still

have been ineffective. This is because it would, in all likelihood, have been carried out by the same repairer, in the same fashion. Therefore, there'd have been one attempt at repair, and that would have failed.

Further, I didn't feel respraying a brand new car is a fair or suitable remedy in this case. I didn't believe a 'touch up' respray is likely to be as good as the factory paint job that you'd get during the manufacturing process.

For these reasons, I agreed with the adjudicator that Mr F should be allowed to reject the car. This meant he should be refunded his deposit. But that left the issue of the repayments. I didn't feel it would be proportionate for him to receive these back in full, as he's had use of the car. But I was satisfied his enjoyment of it has been affected. He's been paying for a new car, but has instead been driving one with unsatisfactory paintwork. So I thought he should be refunded 25% of his repayments as well. As the rejection will likely happen between repayment dates, the refund for the final month would be on a pro rata basis for that month, but ensuring Mr F only pays for the days of that month that he's had the car. In other words, he'd get a full refund for the days after the car's taken back, and a 25% refund for the days he's had the car.

responses to my provisional decision

Ald accepted my provisional decision, but said it still feels it's disproportionate for the car to be rejected, particularly given that no attempt at repair has yet happened. It said it's entitled to first attempt a repair under the Consumer Rights Act. It also said the damage is minimal, and that it believes a respray would be effective.

Mr F agreed with my provisional decision, but added a number of further points. In summary, he said:

- my proposal is contrary to the Consumer Rights Act, as I'm not putting him fully back in his pre-contractual position;
- he hasn't been driving the car for some time, meaning he's driven fewer miles than set out in the agreement (on a pro rata basis); and
- he didn't report the issue to Ald initially, because the documentation is so misleading he didn't realise he was leasing from it.

He also asked me to confirm whether rejecting the car would mean information about the finance would be removed from his credit file.

Further, Mr F explained that the dealership didn't carry out an initial respray. I thank him for pointing this out, as I had misunderstood the position.

my findings

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

Although I accept that there hasn't in fact been a respray, I still think Mr F should fairly be allowed to reject the car. This is for the other reason I gave – that I don't think he should be paying for a new car, when in fact it's been fully resprayed. I accept that it *may* be that a respray would make the car as good as new, but – on balance – I think a reject is fairer. Although I've taken into account the provisions of the Consumer Rights Act, I've reached my

decision by then looking at what I think's fair and reasonable. I believe a rejection of the car is both fair and reasonable.

Because of this, it follows that all reference to the agreement should fairly be removed from Mr F's credit file. This is because, in essence, the agreement is being unwound.

That said, I don't think Mr F should have his repayments returned in full. I know he feels that - under the Consumer Rights Act - he should fully be returned to his pre-contractual position. This means he'd have made no repayments. But I don't think this would be fair. As explained above, although I need to take into account the law, I also look at what I think's fair and reasonable. As the car could be driven and Mr F was able to use it, I think it fair he pays for this. I think he should be returned his full deposit, but only 25% of his monthly repayments. I think he should have the 25% back, as he had a less than perfect car, when it was supposed to be in brand new condition.

Mr F has also calculated how many miles he's done, against the contractual mileage. On a pro rata basis, it's lower, so he thinks a refund's due for this. I don't agree. It was up to Mr F how much he drove the car. I'm aware he hasn't driven it for some time, but I don't think there was any persuasive reason not to.

Finally, Mr F feels strongly that the agreement and other documentation was misleading, about who Mr F should complain to. I don't think I need to look at this, as it wouldn't affect my decision. This is because I'm awarding him what I would have, had he complained to Ald within the 30 days. So whether or not the documentation was misleading, it's ultimately had no negative impact on Mr F. It's my role to put consumers back in the position they'd have been in, had everything gone as it should. I feel I've done this. Anything beyond that would in effect be 'punishing' a business, which isn't my role.

If Mr F feels the documentation breaches legislation, this may be something that could be looked at by Trading Standards or the Financial Conduct Authority.

my final decision

For the reasons given above, it's my final decision to uphold this complaint. I require Ald Automotive Limited to:

- allow Mr F to reject the car;
- refund his deposit in full, plus 25% of his monthly repayments (on a pro rata basis for the final month, as it's unlikely to be a full month);
- to all of these refunds, add 8% simple interest a year, from the date of each payment to the date of settlement; and
- remove all reference to the agreement from Mr F's credit file(s).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 August 2016.

Elspeth Wood
ombudsman