

## complaint

Mr S complains that he was mis-sold a hire purchase agreement for a car, financed by PSA Finance UK Limited.

## background

In November 2015 Mr S bought a car under a hire purchase agreement financed by PSA Finance. In 2018, at the end of the agreement, he discovered that if he wanted to keep the car then he would have to pay a final "balloon payment" of over £7,000. He says he was not told about that when he entered the agreement. He had expected to pay off all that he owed with his monthly payments. He complained to both PSA Finance and to the dealership, but they both told him that the terms of the agreement had been clear all along. So he brought this complaint to our Service. Meanwhile, his account was defaulted due to non-payment, and the agreement was terminated. (Repossession has been put on hold while the complaint was with our Service.)

Our adjudicator did not uphold this complaint. She thought the documentation had made it clear that the balloon payment would have to be paid. She provided figures to explain the difference between what the agreement said Mr S owed and how much Mr S thought he owed.

Mr S insisted that he had never wanted a personal contract purchase (PCP) agreement, and that he had only wanted a hire purchase agreement with no balloon payment. He also said that the agreement gave the wrong figure for the advance payment he made when he bought the car. So this case was referred to me for an ombudsman's decision.

I wrote a provisional decision which read as follows.

## my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

A hire purchase agreement, whether it is a PCP agreement or not, would normally have a balloon payment at the end of its term. So whatever kind of hire purchase agreement Mr S had, I think it would be essential for him to check the written agreement to see if the payment terms were what he was expecting them to be. This is not intended to be a criticism of him for not having done so. (Indeed, he may well have done so at the time and forgotten since.) But I don't agree that the agreement was mis-sold to him. So I will now turn to whether he has been charged the correct amount.

The hire purchase agreement is the only contemporaneous documentary evidence of what was agreed when Mr S bought the car. I have read it carefully. It clearly sets out the following figures.

The *cash price of the car* was **£16,085** (including VAT). This is not in dispute.

The agreement says that an *advance payment* was made of **£6,300**. This figure is in dispute. I will have more to say about this figure later on, but until then I must ask Mr S to accept it for now.

The *amount of credit* is given as **£9,785**; this is the difference between £16,085 and £6,300.

The *interest* was **£1,271.28**. (Mr S has not specifically complained about this figure, but of course if the advance payment figure is wrong then this figure will also be wrong.)

The *total amount payable* is **£17,356.28**; this is the sum of the cash price of the car and the interest.

Right below all of those figures, the agreement says that the duration of the agreement was 37 months. Right below that, it sets out the terms of payment. These were *36 monthly payments of £101.73*, followed by one payment of **£7,394** "*payable 37 months after the date of this agreement.*"

Multiplying **£101.73** by 36 gives **£3,662.28**. Adding to that figure the advance payment of **£6,300** (still assuming that it is correct for now) gives **£9,962.28**. And adding the balloon payment of **£7,394** gives a total of **£17,356.28**, which is the total amount payable.

So, provided that Mr S did indeed pay a deposit of £6,300, then we can see that the balloon payment figure of £7,394 would indeed be correct.

Mr S disputes those figures, because he says he paid an advance payment of **£9,000**. The difference between these figures is **£2,700**. He has therefore argued that the true outstanding balance is **£4,694**, which of course is £2,700 less than PSA Finance says it is.

So to resolve this complaint, I must establish whether Mr S paid in advance £9,000 or £6,300.

I have seen the dealer's invoice for the car. It clearly says – in two places – that Mr S *part-exchanged* his previous car for **£8,500**. He also paid another **£500** as a *deposit*: a total of **£9,000**. So the dealership deducted £9,000 from the cash price of the vehicle (£16,085) to get a *total amount due* of **£7,085**. That is, of course, £2,700 less than Mr S borrowed.

PSA Finance has suggested that the part-exchange figure on the invoice is incorrect, and that it should really be **£5,800**. It argues that when it created the hire purchase agreement, someone must have entered the 5 and the 8 the wrong way round by mistake, thereby wrongly entering a part exchange figure of £8,500 instead of £5,800. The difference between these figures is of course £2,700, and adding the £500 deposit to that amount explains where the figure of £6,300 came from. So PSA Finance maintains that the correct part-exchange figure is £5,800, the total advance payment is £6,300, and therefore Mr S needed to borrow £9,785 to pay the dealer.

However, there is no evidence for that assertion; it is pure conjecture. To clarify what I mean: I accept that someone transposed the figures 5 and 8 by mistake, but I think the correct figure was £8,500, and £5,800 was the mistaken figure.

Mr S insists that he would never have accepted such a low part-exchange figure for his old car. I have no way to evaluate that now, but I have no reason to doubt him. I am satisfied that the correct part-exchange figure is £8,500, because that is the figure given in two documents: the dealership's invoice, which is a contemporaneous document, and the dealership's final response letter in October 2018, which it wrote after investigating Mr S's complaint. I will elaborate.

Firstly, I think the dealership's invoice is the most persuasive evidence in this case, because it is a document which sets out how much the old car was part-exchanged for, produced by the people who part-exchanged it. So it is likely to be right.

Secondly, the invoice gives the part-exchange figure twice: in the middle of the page, under the sub-heading "Statement/Summary," and again below that in a row headed "Trade-in vehicle details," under the column "Net Allow." In both places the figure is £8,500. It's unlikely that someone keyed a 5 and an 8 the wrong way round twice. It's more likely to have happened only once. That error would only have had to happen once during the preparation of the hire purchase agreement, so it's more likely to have occurred then.

Thirdly, the part-exchange figure doesn't actually appear on its own anywhere in the hire purchase agreement, so the figure of £5,800 was never printed anywhere. The £500 deposit was added to it first, and so it was subsumed within the total advance payment figure of £6,300. I think that could have made the error more likely to go unnoticed at the time.

Fourthly, although the hire purchase agreement is also a contemporaneous document, it contains another error. At the bottom of page 1, there is a box entitled "VAT." It provides two figures, both of which are demonstrably wrong. They are as follows:

"Amount within "Cash Price" of vehicle on which VAT is charged	£13,358.33
VAT at 20.00 % on the above amount is	£2,671.67"

The second figure is indeed 20% of the first figure. But these figures do not add up to £16,085. That is because the first figure is not really the amount on which VAT was charged. The invoice for the cash price of £16,085 was made up mainly of the car itself and a delivery charge for the car. But it also included five other items, including two fees: a "first registration fee" of £55, and a "plate transfer fee" of £80. No VAT was charged on those two fees. So the total VAT figure was less than 20% of the total bill. The sub-total of all the items, before VAT, came to £13,426.67. Subtracting £55 and £80 from that figure gives the amount on which VAT was charged, which is £13,291.67. 20% of that comes to £2,658.33, which is the VAT figure given in the invoice.

Fifthly, once Mr S complained to the dealership, the dealership investigated the matter and gave its conclusions in its final response letter. If it really had made an error in 2015, then it's likely that this would have come to light during its investigation. Instead, the dealership stuck by its figure of £7,085 as the total amount which was due to it for the new car.

In its final response letter, the dealership went on to explain what it had done back in 2015, when it had received £2,700 more from PSA Finance than Mr S had needed to spend on the car. It showed its workings. It started with the total amount that Mr S had to pay after making his £9,000 advance payment – £7,085. From that figure, it deducted the £9,785 it received from PSA Finance, which of course is an overpayment of £2,700. It then deducted a "finance deposit allowance" of £1,000, so it now owed Mr S £3,700. But then it added £99 for a service plan package. That gave a total refund figure of **£3,601**.

In an email to our adjudicator on 7 June 2019, Mr S told her that he had found a refund receipt from the dealership for £3,601. He didn't know what it was for, or even whether it was relevant, so I am very grateful to him for bringing it to our attention. Three days later, he checked his account and found that he had received a payment of that amount in November 2015, which is the same month in which he signed the hire purchase agreement.

Mr S couldn't recall what the refund was for. Our adjudicator reminded him about the calculations in the dealership's final response letter, but he struggled to follow the explanation at the time. In case my own explanation in the previous paragraph was hard to follow, I will set out the figures again in a column:

Total amount due, from the invoice	<b>£7,085</b>
<i>Minus</i> the amount financed by PSA Finance	<b>£9,785</b>
Sub-total =	<b>-£2,700</b>
 <i>Minus</i> the finance deposit allowance	<b>-£1,000</b>
Sub-total =	<b>-£3,700</b>
 <i>Plus</i> the service plan package	<b>£99</b>
Grand total refund =	<b><u>£3,601</u></b>

This refund includes the £2,700. If it hadn't, then I would have agreed with Mr S that the balloon payment should have been £2,700 less than it is, or £4,696. But since he has had this back already – because the dealership dealt with it at the time – he can't have it back twice. So the balloon payment of £7,394 is correct.

Actually, I should really say that the balloon payment figure is *almost* correct. It's still wrong, because although the dealership refunded the £2,700 to Mr S, PSA Finance has still charged him interest on it, because it wrongly lent him £2,700 too much – £9,785, instead of the £7,085 he needed.

So although I find that the balloon figure was calculated correctly based on the interest figure given in the agreement, I think that Mr S has been charged too much interest. He shouldn't have been charged interest on the sum of £9,785, because PSA Finance shouldn't have lent him more than £7,085. It follows that the interest figure should be lower than £1,271.28. The difference between that figure and what that figure should have been should be deducted from the arrears on Mr S's account.

I can't see how the figure of £1,271.28 was arrived at anyway, on an interest rate of 2.52%. So I request that PSA Finance shows its working when it calculates the new interest figure.

Once the correct figure has been calculated, Mr S must pay PSA Finance the revised balloon payment, or return the car. He hasn't yet paid his debt in full, and until he does, PSA Finance will be entitled to repossess the car.

#### *my provisional decision*

My provisional decision is that I am minded to uphold this complaint in part. Subject to any further representations I receive from the parties by the date below, I intend to order PSA Finance UK Limited to:

- recalculate how much interest Mr S would have been charged if he had only borrowed £7,085 instead of £9,785, and
- deduct the difference from his arrears.

PSA Finance UK Limited must show how it calculated the new interest figure, so that I can verify that it is correct before Mr S decides whether to accept my final decision or not.

To be clear, I do *not* intend to require PSA Finance UK Limited to deduct £2,700 from the arrears, because Mr S has had this refunded to him already.

I invite submissions from both parties about whether any further compensation, and how much, should be awarded for any distress or inconvenience caused to Mr S.

### **responses to my provisional findings**

Mr S accepted my provisional decision. He did not ask for additional compensation.

PSA Finance accepted my findings. It calculated that Mr S had been charged excess interest of £204.07 (and showed its workings). It agreed to reduce the balloon payment by that amount.

### **my findings**

I have checked how PSA Finance worked out the figure of £204.07, and I agree that it is correct. When that is deducted from the balloon payment, that gives a new balloon payment figure of £7,189.93. Mr S will have to pay that if he wishes to keep the car.

Alternatively, if Mr S no longer wishes to keep the car, then I encourage him to contact PSA Finance as soon as possible and arrange to have the car returned to them, to avoid the need for court action for repossession.

I have considered whether to order PSA Finance to refund £204.07 to Mr S if he returns the car, but on balance I don't think that would be fair, because the car will have depreciated in value during the time since the hire purchase agreement ended.

### **my final decision**

My decision is that I uphold this complaint. I order PSA Finance UK Limited to deduct £204.07 from the balloon payment figure.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 13 January 2020.

Richard Wood  
**ombudsman**