

complaint

Mr J complains that 1st Stop Car Finance Ltd failed to put right faults in his car and then failed to return the car to him.

background

Mr J obtained a used car in March 2016 under a finance agreement with 1st Stop. He says that a number of serious faults became apparent in the car, which he asked 1st Stop to put right. Mr J says that 1st Stop delayed making the repairs and also lied to him about what had been done to correct the faults.

Mr J also says that, following the repairs being carried out, 1st Stop has unreasonably refused to give him back the vehicle and will not pay him compensation that he was promised. He says that 1st Stop has recently made searches on his credit file which have affected his credit standing.

1st Stop says that it took steps to deal quickly with the problems, providing Mr J with an alternative car to use during the repairs. It says that any information it gave Mr J about the repairs was provided by the engineer that it had instructed to report on the car.

1st Stop also says that Mr J rejected the car on several occasions and that it has now accepted his rejection. So it does not consider that it is obliged to return the car. It says that Mr J has paid nothing by way of deposit or under the finance agreement and so is not out of pocket.

It had already offered to pay Mr J £200 and to cover the costs he incurred to switch insurance, subject to his providing evidence of that. It said this was a goodwill offer and is dependent on Mr J returning the V5 registration certificate for the car.

As things were not settled, Mr J brought his complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator did not consider that 1st Stop was obliged to return the car to Mr J.

The adjudicator felt that 1st Stop had not acted unfairly and that the conditions attached to its existing goodwill offer were not unreasonable – so did not recommend that the complaint should be upheld.

Mr J did not agree and made a further submission in support of his complaint saying, in summary:

- This was a regulated agreement and 1st Stop cannot go back on it now. There's nothing in the terms and conditions that say 1st Stop can withdraw at any time.
- The problems with the car were out of his control, and he should not be penalised. The steering problem was potentially serious and it was entirely reasonable for him to challenge whether it had been properly put right. On reflection, and given its condition, the garage should never have sold him the car in the first place.

- He was told that his rejections were not accepted, and told to wait for the repairs. Now that the car has been repaired, he would like it returned to him. The car was ideal for his back condition and he has not been able to source, or to finance, a suitable replacement.
- 1st Stop tried to deliver the car when he was not in, but then changed its mind. If 1st Stop can change its mind, then so can he. His consumer rights to have the car back take precedence over 1st Stop's decision not to continue the agreement.
- He was kept waiting for the car for 40 days, and only provided with a courtesy car for 20 of those days.
- He now has no finance, and cannot get finance. This would not have happened if the car had not been faulty. He has paid road tax for the car and holds the vehicle registration document showing his name, and he also has two spare keys to the vehicle. He will not return the logbook and keys unless a court order requires him to.
- He would consider an amicable agreement if 1st Stop will return the car to him and pay him £200. He sees no reason why the finance agreement cannot then continue as normal, with the direct debit being reinstated so that payments can begin.
- If the ombudsman does not find in his favour, he will go to court. He doubts a court would reach the same conclusions as the adjudicator did.

my findings

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

There's no doubt that, when Mr J discovered the faults in the car, he wanted to reject it and cancel the finance agreement. More recently, he has said he does not consider that the car should have been offered for sale at all in the circumstances.

There's also no doubt that, when Mr J initially said he rejected the car, 1st Stop did not agree and said he should take back the car. But Mr J persisted in saying he wanted to reject the car. No payments were ever made under the finance agreement.

At one stage, 1st Stop said it would give him the car and pay him £200. Delivery of the car did not, however, succeed at that time and matters continued in dispute. Once the car was fixed, Mr J changed his mind about rejecting it and there are then emails from him to 1st Stop said to be 'un-rejecting' the car.

1st Stop says that it accepted Mr J's final rejection and does not consider that it is obliged to allow Mr J to now 'un-reject' it. Mr J says he can see no provision in the agreement that allows 1st Stop not to give him back car and continue with the agreement.

Taking everything into account, I am not persuaded that 1st Stop must give the car back to Mr J and reinstate the finance agreement. He was insistent that he wanted to reject the car and that's what subsequently happened. I don't consider it fair and reasonable for 1st Stop to be made to accept Mr J's later change of mind.

1st Stop made a goodwill offer to Mr J, though I note that he has told us he is unwilling to return either the log book or the keys to the car and so it seems unlikely that he will be in a position to fulfil the conditions of the offer.

But that is a matter for Mr J, and he has recently notified us that he has issued proceedings against 1st Stop in the small claims court. I confirm that, if he does not accept it, my final decision will not affect any right Mr J may have to take legal proceedings against 1st Stop in the matter.

The credit searches that Mr J has mentioned were generated because he applied for credit through a broker platform which includes 1st Stop on its panel of lenders. I don't see that 1st Stop has acted unreasonably in that regard.

Finally, Mr J has told us that he has now noticed the finance agreement showing on his credit report. 1st Stop has assured us that it is updating the credit file to reflect the cancellation of the agreement – so it won't show at all after that. There is often a time lag between information being updated by the lender and the change becoming visible on the credit file.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 June 2016.

Jane Hingston
ombudsman