

complaint

Ms M complains that a car that was supplied to her under a hire purchase agreement with Volkswagen Financial Services (UK) Limited was mis-sold to her.

background

A new car was supplied to Ms M in December 2015 under a hire purchase agreement with Volkswagen Financial Services. She complained to the dealer – and then to Volkswagen Financial Services - that the car had been mis-sold to her because it did not have a “hill-start facility”. The dealer offered to buy the car back at a fair market value. Ms M didn’t accept its offer and complained to this service.

The adjudicator didn’t recommend that this complaint should be upheld. She concluded that Ms M had made it clear to the dealer that she needed a car that drove the same as her previous car because of her medical issues. And she also concluded that the dealer explained that there were some key differences between her previous car and the cars it was able to offer her. Ms M’s previous car was eleven years old so the adjudicator said that it was fair to expect a new car to drive differently. She concluded that Volkswagen Financial Services wasn’t required to tell Ms M that the car didn’t have the “hill-start facility”.

Ms M has asked for her complaint to be considered by an ombudsman. She says, in summary, that

- she wasn’t offered a test drive in the new car;
- she was told that the new car would perform in the same way as her previous car and she specified that she needed the same type of car due to her learning difficulties;
- the sales people should’ve known that the “hill-start facility” was not included on the car and that - given the depth of details she gave them about her requirements - they should’ve known that the difference would matter; and
- she is having to use her old car which she had to pay a substantial amount to have repaired to pass its MOT – and she is paying finance, insurance and has paid a cash deposit for a car that she cannot drive.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I sympathise with Ms M for the difficulties that she is experiencing with her car. But both Ms M and the dealer give very different accounts of what was said when they were talking about the car.

Ms M’s previous car was eleven years old so it is reasonable to expect that there will have been changes in car design and engineering over that period. Whether or not a test drive was offered to Ms M – it is clear that she did not drive the car before choosing it. And it also seems to be clear from the evidence that the dealer did tell Ms M that there were differences between the car that she was choosing and her previous car. I find it to be more likely than not that Ms M did tell the dealer about her medical issues – but I am not persuaded that

there is enough evidence to show that she gave the dealer enough information that it would've known that the "hill-start facility" was important to her. And I'm not persuaded that Ms M ever asked the dealer whether the car had a "hill-start facility". I don't consider that the dealer was required to explain all the features of the car to Ms M – unless she asked about them – so I don't consider that it was required to tell Ms M that the car didn't have a "hill-start facility".

For these reasons, I find that the car wasn't mis-sold to Ms M. So it wouldn't be fair or reasonable for me to require Volkswagen Financial Services to allow Ms M to return the car and cancel the hire purchase agreement. The dealer did offer to buy the car from Ms M at a fair market value and it offered her a driving lesson. She didn't accept those offers but I consider that the dealer was acting reasonably and trying to resolve the problem.

my final decision

So my decision is that I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms M to accept or reject my decision before 11 April 2016.

Jarrold Hastings
ombudsman