

complaint

Mrs G has complained that the finance agreement she entered into through Glyn Hopkin Limited for her car was misrepresented to her.

background

In January 2015, Mrs G entered into a hire purchase agreement for a car, with a third party. It was arranged by Glyn Hopkin. The price of the car was £37,225. A deposit and part-exchange brought the finance needed down to £25,275. If Mrs G wanted to exercise her option of owning the car at the end of the agreement, the agreement said she needed to make a balloon payment of £14,688. But the agreement also said if she decided to hand the car back, she'd have to pay for excess mileage, if there was any.

Mrs G explained she'd bought five cars outright from Glyn Hopkin in the past. In January 2015, she was contacted by a representative from Glyn Hopkin, saying that as she was such a good customer, she could have a really good discount. She says she was told she could part-exchange her existing car, which was less than two and a half years old and top of the range, then pay £294 a month for three years for another car. After this time, the new car would be hers, or Glyn Hopkin would buy it from her and she could enter a new agreement.

Mrs G explained she was then contacted in September 2017, and told the above wasn't correct. Instead, in January 2018, she'd need to pay around £3,000 (for excess mileage) if she wanted to hand the car back. Or if she wanted a new agreement, she'd need to pay a further £11,000. She was upset and distressed, as come the January she'd have no car, whereas for a number of years she'd bought cars to make sure she was in the position of having a good car. She said she'd questioned the finance agreement, as the figures weren't right, but was told by the Glyn Hopkin representative that he had to put those figures, and it would all be ok at the end.

Mrs G wants Glyn Hopkin to stand by what it said – which she says was that at the end of the three years, as the car would have a high mileage, it would buy it back from her and she could have a new model of her choice, without paying the £14,688.

Mrs G also said she contacted a dealership to find out the value of the car, and was told it was around £12,300. But the finance provider was asking for £14,688 if she wanted to keep it.

Glyn Hopkin said it had investigated the matter in detail, but couldn't change the finance agreement Mrs G had entered into with the third party finance provider. It said the total cost of the car was set out in the agreement as being £37,225 – comprising the deposit, part-exchange, monthly repayments and the final payment. It said it was happy to try to help Mrs G get another car, but wasn't able to help with her final payment to the finance provider.

Our investigator looked at the information provided to us from Mrs G and Glyn Hopkin. He thought the agreement was clear that Mrs G would have to pay the extra money at the end to own the car. He thought it was evident from the agreement that the car was hired to Mrs G until she made an (optional) final balloon payment of £14,688.

He noted that Mrs G had said Glyn Hopkin told her she would receive £14,688 if she handed her car back. He referred to an email which said:

“Monthly payments are made for £282 per month for 36 months. At the end of the 3 years as your car will be high mileage we buy that car back off you like we are now and straight into a new model of your choice and £14,688 of the car you will not have to pay. You will only be financing £10,000 of the car...”

He didn't agree that this suggested Mrs G would receive £14,688. Rather, it said that she would not be responsible for the balloon payment of £14,688 if she wanted to give the car back. At which point, she could start a new hire purchase agreement again if she wanted.

However, he did think there was an issue regarding the mileage. He considered that Glyn Hopkin ought reasonably to have been aware that Mrs G would have had to bear a *large* cost at the end of the agreement for high mileage if she did not wish to buy the car. But he couldn't see this had been made clear to her. And considering the likelihood of this charge, he thought it should have been - it being mentioned on in the small print of the finance agreement wasn't enough. So he thought Glyn Hopkin should meet this payment itself.

Glyn Hopkin accepted what our investigator said, and asked for an up-to-date figure for the mileage.

Mrs G also responded and made a number of points. In summary, she said she'd sought advice, and been told that she's paying too much for the car due to the mileage. She thinks the finance agreement may be wrong because it wasn't calculated based on the higher mileage.

Our investigator then sought further information – in particular, whether Mrs G had now bought the car. She confirmed she had. He also clarified some points.

He said that he'd previously talked to Mrs G about her concerns regarding the final balloon payment of £14,688 being too high. This was on the basis that she feels the value of the car is significantly lower than the balloon payment, and had the high mileage been taken into account, the balloon payment would have been lower – closer to £11,000.

He explained that Mrs G had benefited from lower monthly repayments, so had a higher payment at the end. Had the higher mileage been taken into account (as he thought it should have been), the monthly repayments would have been higher. He said he didn't agree that Mrs G should benefit from both lower monthly repayments and a lower balloon repayment. I note here that it was the finance company who would charge this, not Glyn Hopkin. The point would be that he would not ask Glyn Hopkin to contribute to the balloon repayment.

Mrs G said she couldn't understand why a salesperson couldn't give the correct information at the time. She said the outcome she was looking for was Glyn Hopkin paying around £3,000 towards the cost of the car due to mileage issues.

Our investigator responded with his thoughts. He said Mrs G opted to buy the car at the guaranteed future value (*ie* the balloon payment) – which doesn't necessarily mean the market value. This was agreed when the agreement was entered into. So he didn't think Glyn Hopkin needed to do anything.

As regards the excess mileage, he felt asking Glyn Hopkin to meet this cost was no longer applicable. This is because it would only have been charged if Mrs G gave the car back –

and in fact she'd now bought it. And as she'd accrued the mileage, he didn't see it would be fair to hold Glyn Hopkin responsible for any lower value as a result.

Mrs G made some final comments. She said she was told by the finance provider that Glyn Hopkin could buy the car and resell it to her, as this had happened before. Further, she was told she couldn't return the car when it was still under the agreement – but she now understands she could have done, and would have. Instead, she was put under pressure to buy the car by the finance provider, and because of her health. She's now in a worse situation than when she took out the agreement.

Mrs G said again that the email implies she'd either get £14,000 towards a new car, or her deposit back.

The complaint's now been passed to me.

my findings

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

The way a hire purchase agreement works is that, at the end of the term, the consumer can either (i) hand the car back (and pay for any excess mileage and/or damage) – so has essentially been hiring the car for the period; or (ii) buy the car from the finance provider, by making the final balloon payment (and there will be no charge for damage and/or excess mileage).

Here, Mrs G was told that if she handed the car back, she'd need to pay for excess mileage – ie the amount of miles she'd driven over that set out in the agreement. Our investigator thought Glyn Hopkin should meet this charge, because he thought it should have been clear to it, when setting up the agreement, that Mrs G would go over her mileage limit, and discussed this with her.

However, the issue of the charge for excess mileage is no longer relevant. This is because Mrs G has bought the car, so wasn't charged for excess mileage. I've considered whether Glyn Hopkin should be required to make a contribution to the purchase price, of an amount equivalent to what the excess mileage charge would have been. But I don't see any basis for requiring this. I don't think Glyn Hopkin has any responsibility for reducing the purchase price of the car.

I've thought carefully about what Mrs G has said about her understanding that she could hand the car back and Glyn Hopkin would give her £14,688 (the same amount as the balloon payment). Having looked at the email, I agree with our investigator. I don't think it says Glyn Hopkin would give her this money. Rather, it simply wouldn't be payable if Mrs G gave the car back. And this ties in with how hire purchase agreements work.

Mrs G has made a number of points about what she believes Glyn Hopkin said it would do, or what it could have done – including buying the car and reselling it to her, giving her money as described above, or giving her the deposit back. But even if I accepted it agreed to any of these things – and I have seen no evidence to persuade me it did – all of these scenarios are based on Mrs G handing the car back. But she chose to buy it, so none of these scenarios are relevant.

I've also thought about whether Glyn Hopkin did anything that essentially made Mrs G feel she had no choice but to buy the car. I don't think it did. The option was open to her to hand it back, and Glyn Hopkin had agreed it would cover the cost of the excess mileage. The agreement is clear that Mrs G could hand the car back. Her rights to voluntarily terminate the agreement were also set out.

I've also considered Mrs G's point that she believes the balloon payment was too high, given the high mileage of the car. First, I need to explain that these agreements set out what the final payment will be, and the total cost of the car (including the finance) at the beginning. It isn't dependent on the market value of the car at the end of the agreement. Further, Mrs G has said the market value of the car is lower because of the high mileage. But it was Mrs G who accrued the miles. Even if the agreement had set out a more realistic mileage – that is, a higher mileage – the amount Mrs G would have had to pay overall to own the car (deposit, part-exchange, monthly repayments and balloon payment) would almost certainly have been the same. There would have been a lower balloon at the end, but the monthly repayments would have been higher, to take into account the extra miles Mrs G was driving during the 'hire' period. Accordingly, I don't think that Mrs G has been left out of pocket because of Glyn Hopkin's failure to arrange an agreement with a higher mileage allowance. It isn't my role to punish businesses for any mistakes it makes. My role is to put things right as far as possible where a consumer has been affected by a mistake. And here, I don't think Mrs G suffered any detriment, for the reasons I've explained.

Finally, I've considered Mrs G's submission that when she met with a Glyn Hopkin representative, it was clear from his body language that he'd taken a dislike to her. I appreciate that Mrs G has said she has expertise in this area. But even so, I don't have any evidence to support that there was any personal dislike, or that this affected Glyn Hopkin's position. Further, I can see from the email following this meeting that Glyn Hopkin had considered Mrs G's complaint, but it explained why it couldn't help her. I think this was based on its view of what had happened, rather than because of anything to do with Mrs G personally. Indeed, Mrs G was a very good customer, and I see no reason why Glyn Hopkin wouldn't have wanted to assist her if it felt able.

my final decision

For the reasons given above, it's my final decision not to uphold this complaint. I make no award against Glyn Hopkin Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 8 November 2018.

Elsbeth Wood
ombudsman