

complaint

Mr S complains that White Dove Garages Limited failed to clear the outstanding finance on a vehicle he used as part-exchange towards a new financial agreement. He wants it to clear that balance and pay compensation.

background

Mr S is represented in this complaint by a family member, Mrs S. But for ease of reading I'll mostly refer to him.

Mr S tells us that in May 2018 he went to WDG and negotiated a deal which involved the part-exchange of his existing vehicle, which I'll refer to as vehicle "A". He says he acquired a replacement vehicle, which I'll call vehicle "B", using some of the proceeds from vehicle A as a deposit. Mr S states that WDG did a HPI check and advised him there was no outstanding finance on vehicle A. A couple of months later he says he noticed he was still paying for finance agreements in respect of both vehicles. Upon making enquiries with the supplier of finance for both the agreements, a company I'll call "V", he says he was told that there was still outstanding finance on vehicle A and that this was being collected via monthly direct debits. Mr S states he was later informed that an error had been made and that the finance agreement for vehicle A had listed an incorrect registration number. And this had led to it not being identified as being subject to outstanding finance.

WDG told us it hadn't made any mistakes. It said it had performed an HPI check on vehicle A and this had shown it to be free from finance. It had gone ahead with arranging the new finance agreement on vehicle B and used part of the proceeds of vehicle A as a deposit. With the balance being refunded to Mr S.

Our investigator issued two views. In the first of which she recommended that the complaint should be upheld. But following further information being provided by WDG she changed her opinion. She thought that Mr S knew that there was outstanding finance on vehicle A when he used it in a part-exchange deal to acquire vehicle B.

Mr S wasn't satisfied with this outcome and said he was having to pay for a mistake by WDG or V. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final decision.

my findings

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

I can understand that Mr S would be upset and concerned to learn that he was paying for two finance agreements if he thought the first one had been settled.

I should emphasise at the outset that whilst my findings include reference to another business, the provider of finance V, this complaint is brought against WDG. It's only the actions of WDG that I'm directly considering in this decision.

In summary, Mr S' complaint is that he was misled by WDG into believing that the finance on vehicle A had been fully repaid. And that he was able to use the proceeds towards partly financing vehicle B. He's now found out that there was over £8,000 still to be repaid in respect of vehicle A. And V has required him to pay this, which he says he can't afford.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where information is incomplete, unclear or contradictory - as some of it is here - I reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

I have the advantage of being able to look back at what's happened. And in that respect it's often easier to see where mistakes have occurred than it would've been for the parties at the time. I can see that the one of the principal causes of the present circumstances appears to be a typing error on the finance agreement relating to vehicle A.

In July 2015, Mr S acquired vehicle A – also from WDG and using finance provided by V. The finance agreement was a hire purchase agreement. And this type of agreement means that the vehicle wouldn't have become the property of Mr S until he'd repaid the full amount of the agreement including the purchase price and interest.

The printed finance agreement records the registration details as ending in the letters "OV" when in fact it should have recorded "OU". It's not in dispute that vehicle A when acquired by Mr S was correctly identified and registered as "OU". The sales invoice for vehicle B also identifies that it was vehicle A (OU) that was used in part-exchange.

Unfortunately, and probably as a result of the input error which led to the mistake on the printed agreement, it seems that V failed to register its interest in vehicle A (OU). Whether it registered it against the incorrect registration "OV", I'm not sure. But as it doesn't affect my decision it's not something I need explore. It's not surprising that when WDG came to do the finance check in May 2018 it failed to identify any outstanding finance on vehicle A (OU).

I've considered whether WDG made any material error when it did the HPI check and advised Mr S that there was no outstanding finance on vehicle A. I've reached the conclusion that it didn't. I'll explain why.

When Mr S presented vehicle A as a potentially part-exchange item for vehicle B, WDG carried out the HPI check for the vehicle registered "OU". This was correct. And WDG was entitled to rely on the findings revealed by the HPI check.

An HPI check can only reveal the information that has been recorded against a vehicle. Where the vehicle owner (V) fails to correctly register an interest in the vehicle it's not the fault of WDG that such an interest is not disclosed. It's not fair and reasonable to find that WDG should be held liable for the consequences of a typing error some three years earlier on a document it didn't prepare. Particularly as Mr S also didn't notice the error at the time. And as it (WDG) was not involved in the subsequent administration of the finance agreement it wouldn't have any need to know of the payment history until the need for the HPI check arose.

When it advised Mr S that there was no outstanding finance on vehicle A, I find it implausible that Mr S could've believed this to be a true reflection of the situation. If he did, I can only put it down to *"wishful thinking"*. There's information to show that Mr S made enquires of V in November 2017 regarding a settlement balance which at the time was over £8,300. As monthly instalments for vehicle A were only around £215 per month with a final balloon payment of over £4,900, Mr S could hardly have thought that six months later the finance would be cleared without him having made a significant lump sum payment in the meantime.

It's further the case that the used vehicle order form for vehicle B, which records the details of the part-exchange vehicle, states clearly that no financial settlement was made in respect of vehicle A. Mr S appears to have signed this document over a week before vehicle B has handed over. So he'd have had ample time to see that nothing further had been paid in settlement of the finance agreement on vehicle A.

It's also the case that Mr S signed documents to say the vehicle (A), was *"free of any financial lien or any other encumbrance whether financial or otherwise"*. Which in plain language means he was confirming he wasn't aware of any outstanding finance owed on the vehicle. I'm not finding that Mr S did so with any intention to mislead, rather I suspect that – like many others – he didn't read what he was signing before doing so.

In summary, I don't find that WSG has made any material error in the way it dealt with Mr S in the circumstances that surrounded his acquiring vehicle B and part-exchanging vehicle A. It carried out an appropriate HPI check and was entitled to rely on the result of that check. And also the declarations made by Mr S that there was no outstanding financial obligation remaining on vehicle A.

I don't accept that Mr S was misled about his true remaining liability in relation to the finance agreement regarding vehicle A. I find he knew, or ought reasonably to have known, that he still owed a substantial amount on this agreement. And that he was required to settle this amount before becoming entitled to sell the vehicle.

I'm aware my decision will come as a disappointment to Mr S but for the reasons given I'm not upholding this complaint.

Although it has no part in my decision which as I've explained is only about WDG, if Mr S is in financial difficulty, he may wish to approach V and explain his situation. He may also seek to enquire as to whether the second loan for vehicle B was affordable. Although the registration number was incorrect, presumably the details of the finance agreement itself would've shown on a credit check.

my final decision

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 October 2020.

Stephen D. Ross
ombudsman