

complaint

Mrs V complains about problems suffered after when she arranged to buy a car under a hire purchase agreement with Black Horse Limited.

background

Mrs V signed a hire purchase agreement with Black Horse, but immediately before she did she found that the interest rate was higher than had originally been quoted (and more than a rate she could get elsewhere). However she still went ahead - to avoid being without a car and having to rearrange insurance. But two days later she arranged to pay off the agreement. Black Horse says she used her withdrawal rights but Mrs V says she settled the account. Nearly a year later she found that in fact the car was older than she had thought and should have been MOT'd months earlier. The dealer MOT'd the car and then replaced it but she then had problems with the replacement car. Mrs V felt that later problems all flowed from the issues over the initial arrangement to buy the car through Black Horse, and that Black Horse should be held responsible for remedying them and give her compensation for the stress and inconvenience.

The adjudicator did not recommend that the complaint was upheld. She said that Mrs V had withdrawn from the agreement, and that therefore it was as if the agreement had never been made. She also said that, as the second car was not subject to a credit agreement with Black Horse, it was not responsible for any issues with that.

Mrs V disagreed. She emphasised that she had settled the agreement rather than withdrawn from it, and therefore did still have rights under it. She was concerned that Black Horse said it no longer had a recording of the call from when she arranged to pay off the account, as she would have expected it to keep that when she had complained. She said the car had been misrepresented at point of sale, because it was a foreign import and the registration year (and hence retail price) were not accurate. Because Black Horse refused to accept her complaint, the only option she had had was to accept a replacement car. That had been in the workshop several times and was not fit for purpose.

my findings

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

A crucial issue in this complaint is whether Mrs V withdrew from the agreement or settled it. If she withdrew, then it is as if the agreement never existed. Like her, I am disappointed that the recording of the call where arrangements were discussed is no longer available - as that would have resolved that point. I know Mrs V is adamant that she settled rather than withdrew, but Black Horse is equally sure she withdrew. While its records about Mrs V's transactions are not entirely clear on the point, they do contain a number of references to her using "ROW" ie right of withdrawal. They also contain a note that someone had listened to the call recording after Mrs V complained and that that showed she knew she was withdrawing.

From what Mrs V says, if she had had the correct information about the interest rate, she would never have made the agreement in the first place, and knew she was likely to end it even before she signed it. In that situation, it seems likely that she would have been content simply to withdraw from it, as she would be no worse off than if she had never taken it

(except for paying interest for the short period she had the credit). The facility to withdraw from, rather than settle, an agreement was designed to cover situations of this general sort - where a consumer quickly realises they could have got a better rate. In all the circumstances, on balance, I think it is more likely than not that Mrs V did withdraw from the agreement. In that situation it is as if she never entered into it, and so the usual consumer credit rights do not apply. So I cannot uphold her complaint.

Although I know it will be of little consolation to Mrs V, I will mention that I am not convinced I would have asked Black Horse to do more even if she had settled the debt rather than withdrawn. I know she is concerned about the potential consequences of her having unwittingly driven the car without the necessary MOT, because she thought it was newer than it actually was. But, very fortunately, it seems that in fact she did not suffer any detriment or loss because of that. She has already been supplied with a replacement car. I know she now has concerns about that too, but that is not subject to any credit agreement with Black Horse. If everything had gone entirely smoothly, and Mrs V had been quoted the correct interest rate in the first place, from what she says she would never have taken the agreement at all. But, if she had still chosen the original car, she would still have found herself in a similar situation.

So, for the reasons explained above, I must disappoint Mrs V by saying that I cannot see grounds for me to uphold her complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs V to accept or reject my decision before 6 March 2015.

Hilary Bainbridge
ombudsman