

complaint

Mr K is unhappy that Advantage Finance Ltd (Advantage) wouldn't allow him to reject his car as faulty under his hire purchase agreement.

background

In April 2016 Mr K entered into a hire purchase agreement with Advantage. He used this agreement to acquire a used car from a dealership. Under the terms of his finance agreement, if a fault is discovered within 30 days of the delivery date Mr K is entitled to reject the car, assuming the fault is confirmed by a mechanic. There are two copies of the sales invoice, one states that Mr K took ownership of the car on 6 April 2016 the other has this date crossed out and replaced with 20 April 2016.

In May 2016 Mr K says he discovered problems with the car. He reported this to Advantage on 19 May 2016 and asked to reject the car. Advantage responded by letting Mr K know that they believed that he was outside of the 30 day period in which he could reject the car. They also asked Mr K to take the car to the dealer for inspection and potential repairs. Mr K argued that he was within the 30 day period and didn't want to send his car back to the dealer for inspection. Instead Mr K paid for some repairs, and obtained a report from a mechanic detailing further problems with the car. He sent this information through to Advantage, who again advised that he was out of the rejection period, but that he could take his car for an independent inspection. They also advised that if any faults were present at the point of sale they'd be repaired.

Mr K says the dates are different on the sales invoice because on the original delivery date, 6 April 2016, he went to the dealership to take delivery of the car but the wheels had been changed from those originally advertised. So he let the dealer know he didn't want the car without the advertised wheels, but the dealer refused to change them back. He then tried to use his finance agreement to purchase a car from another dealership. When he realised he couldn't use the agreement elsewhere, he went back to the original dealer and made an agreement for them to re-fit the original wheels. So Mr K says that, because of this delay, the actual delivery date was 20 April 2016. So he thinks that he should've been entitled to reject the car.

Advantage say that the delivery date was 6 April 2016 and that the documentation supplied by Mr K has been amended to show an incorrect date. They also say that during his complaint Mr K became unresponsive to their correspondence, and when he did respond he was obstructive and this meant they were unable to deal with the complaint effectively.

After the first two payments Mr K stopped paying his agreement and, in the subsequent months, Advantage started repossession proceedings. During their attempts to repossess the car, Advantage say it was very challenging to communicate with Mr K, both through correspondence and personal visits to his home and work addresses. They also say that, when they were able to communicate with Mr K, he provided inconsistent and sometimes inaccurate information. So they asked the police to get involved, who started investigating Mr K for the theft of a motor vehicle.

The car is currently being stored by Mr K and he says it hasn't been used for many months. He still wants to reject the car. Advantage say that because of the lack of engagement from Mr K they have been unable to resolve the complaint and so have been forced into attempting repossession of the vehicle and involving the police.

Mr K was unhappy with Advantage's response to his complaint and felt he'd been treated unfairly, so he brought his complaint to this service. The investigator didn't think that the complaint should be upheld because they agreed with Advantage that the documentation appeared to have been amended after the point of sale. Advantage agreed with his opinion, but Mr K asked for a final decision, so the case has been passed to me.

I issued a provisional decision on 15 May 2017. My provisional findings were as follows:

The first issue I'll address is whether Mr K raised his concerns to Advantage within 30 days of the delivery of the car.

Before this case came to me for decision, not all of the relevant evidence had been submitted for consideration. In particular, at no stage during Mr K's complaint did Advantage ask Mr K why the sales documentation he possesses shows a different date to the one they received from the dealer. Nor have they asked him to provide supporting evidence, such as the registration or insurance documentation which could help understand which date is more likely to be correct. Instead they relied on what the dealer told them and the fact that Mr K phoned them on 6 April to say he was going to get the car.

So I requested further information from Mr K. He's provided our service with the registration document and proof of insurance. I've reviewed this new evidence and I think it's more likely that the delivery of the car was on 20 April 2016.

I haven't been able to establish who sent the registration to the DVLA, however it is common practice for the dealer to take responsibility for sending it and I think it's reasonable to assume that's what happened in this case. The registration document clearly states that Mr K took ownership of the car on 20 April 2016. He's also provided a screenshot which shows he insured the car from 24 April 2016. When I consider the registration document and insurance information together I think it's more likely the delivery of the car happened on 20 April 2016. So this means that I believe Mr K did contact Advantage to reject the car within the 30 day rejection period.

The next issue I've considered is whether the car was working as it should've at the point of sale. It's unfortunate to see that Mr K refused to allow Advantage to arrange an independent inspection. I appreciate that this made things much more difficult for Advantage than they should've been. From the correspondence I've seen I think that, although they failed to establish the correct delivery date, Advantage did try to engage with Mr K in an attempt to establish what the problem was with the car.

However, Mr K has submitted an invoice for repairs carried out at the start of June 2016. He has also provided a further quote from a BMW service centre, which lists many problems with the car. Having reviewed the invoice and looked carefully at the faults I think Mr K is correct in claiming there were problems with the car when he bought it. I've also looked at the age of the car and the mileage, and I still think the car should've been in a better condition when it was sold..

So I've established that Mr K did contact Advantage within the 30 day rejection period, and the car wasn't fit for purpose when it was bought. As a result, I intend to instruct Advantage to take the car back and unwind the agreement. I've then considered if Advantage should have to pay for these repairs, and I think it should. I have to put Mr K back in the position he would've been had he been allowed to reject the car, so I think that Advantage should pay £1,008 for the costs he incurred.

My provisional decision was therefore to uphold the complaint. I invited both parties to respond. Advantage let me know they had nothing further to add. Mr K also had nothing further to add.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But given that neither party has anything further to add, I see no reason to change my provisional findings.

my final decision

My final decision is that I uphold this complaint and direct Advantage Finance Ltd to:

- take back the car, with no further monthly payments owed
- refund the deposit plus 8% simple interest a year*
- pay Mr K for the cost of repairs; £1,008 plus 8% simple interest*
- ensure no adverse information in respect of this agreement is recorded on Mr K's credit files
- pay any admin fee that Mr K's insurer may charge for cancelling his insurance policy, subject to him providing evidence of this

*If Advantage Finance Ltd considers that it's required by HM Revenue & Customs (HMRC) to withhold income tax from that interest, it should tell Mr K how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 June 2017.

Lee Crawford
ombudsman