

complaint

Mrs W complains that she was mis-sold a finance agreement by Pendragon Finance and Insurance Services Limited.

background

In October 2017 Mrs W was supplied with a car and entered into a hire purchase agreement with Pendragon Finance.

Mrs W says that she made the salesperson aware that she was purchasing the car for her son with the intention that he would take it back to Kenya tax free once he had been the registered keeper for 12 months.

Mrs W subsequently discovered the car was registered to her and not to her son. The dealership told Mrs W that it wasn't possible to register the car in her son's name because the hire purchase agreement was in her name.

Mrs W says that as a result her son will incur £6000 import tax to take the car back to Kenya. She wants Pendragon Finance to compensate her for this.

In its final response Pendragon Finance said that the salesperson at the dealership appeared to be aware of Mrs W's request for the car to be registered in her son's name but failed to explain that as the borrower, Mrs W would have to be the registered owner. Pendragon Finance said that the salesperson had said that he was unaware of any intention to take the car abroad. As a resolution to her complaint, Pendragon Finance offered to buy the car back from Mrs W at the current settlement figure and return her deposit of £4200.

Mrs W wasn't happy with the response and complained to this service. She says the salesperson was fully aware of her request to put the V5C registration document in her son's name so that he could take the car back to Kenya when his student visa expired. Mrs W says that if the salesperson had explained that the car needed to be registered in her name and couldn't be registered to her son she wouldn't have entered into the agreement.

Our investigator upheld the complaint. He said he was satisfied that Mrs W would not have entered into the hire purchase agreement if she had been told that her son's name couldn't go on the V5C document. The investigator said that he couldn't reasonably conclude that the salesman was aware that the car was intended to be taken abroad. The investigator explained that this service cannot award compensation to third parties and said that import tax was a liability which would be incurred by Mrs W's son who was a third party. The investigator recommended that the car was returned with the hire purchase agreement cancelled and Mrs W's deposit refunded.

Mrs W didn't agree. She said she wouldn't be in a position to buy a replacement car of the same quality as the car which she had part exchanged for the current car and if she had been given correct advice she wouldn't have entered into the hire purchase agreement but would have instead transferred her old car to her son.

my findings

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

Mrs W says that she entered into the agreement on the understanding that the car would be registered to her son. She says she made the salesman aware of her wish that the car should be registered in her son's name. This does not appear to be disputed by the salesperson and Pendragon Finance in its final response has acknowledged that the salesperson did not explain that the V5C would have to be in Mrs W's name.

Based on the available information I'm satisfied that Mrs W wasn't given correct advice about the V5C. I think that if Mrs W had been told that the V5C would have to be in her name, she would not have entered into the agreement.

I can't be certain whether the salesman knew whether Mrs W's son intended to take the car abroad after 12 months. That's not to say that Mrs W didn't raise this point during the discussions. But I think that if the salesman had been aware of this, he would have had further detailed discussions with Mrs W about it because the terms and conditions of the hire purchase agreement say that the finance providers consent is needed before the car can be taken abroad.

I appreciate that Mrs W has said that she would have paid off the finance before her son took the car back to Kenya so obtaining the consent of the finance provider wouldn't have been an issue. However, at the time of entering into the agreement the finance would have been outstanding so I would still have expected the salesman to have discussed this with Mrs W.

I understand that if he takes the car to Kenya, Mrs W's son will have to pay approximately £6000 import tax because he hasn't fulfilled the criteria of being the registered owner for a period of 12 months. Mrs W wants the business to compensate her for this. There are a number of reasons why I'm not persuaded that any compensation should be paid. Firstly, there's no evidence that the car has actually been taken to Kenya and therefore the import tax hasn't been incurred. Secondly, the import tax is a liability which belongs to Mrs W's son and not to her. I'm unable to compensate Mrs W for a loss which isn't hers and this service doesn't compensate third parties.

I've taken account of what Mrs W has said about not being able to find a suitable replacement car. I'm not sure why this is the case, because she would have her deposit back and could enter into another finance agreement to purchase a car if she wished. I understand the point which Mrs W makes about her old car and the fact that she could have transferred it to her son so that it became a qualifying vehicle for import tax purposes. However, given that Mrs W has said that she intended to settle the hire purchase agreement before her son went back to Kenya, I can't see why she wouldn't have settled the agreement and transferred the car to her son when she found out that he couldn't be on the V5C whilst the finance agreement was in her name.

In the circumstances I think the fairest way to resolve Mrs W's complaint is for Pendragon Finance to take the car back, cancel the agreement and refund Mrs W's deposit.

my final decision

My final decision is that I uphold the complaint. Pendragon Finance and Insurance Services Limited should:

- Cancel the agreement with nothing further to pay

- Arrange for the car to be collected at no cost to Mrs W.
- Refund the deposit paid by Mrs W together with simple interest at 8% per annum from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 January 2019.

Emma Davy
ombudsman