

complaint

Mr G complains Pendragon Motor Group Limited mis-sold a finance agreement to him.

background

In 2012 Mr G bought a car from Pendragon Motor Group with the help of finance from a third party. Mr G says the salesman at Pendragon Motor Group said he would be able to hand back the car after 30 months if he wanted to.

In 2014 Mr G says he tried to hand back the car he had bought and was told that this was not possible. Mr G complained. Pendragon Motor Group investigated Mr G's complaint but didn't uphold it saying he had signed a fixed sum loan agreement which did not give him the right to hand back the car after 30 months. Mr G complained to us.

Our adjudicator recommended that this complaint be upheld as she considered Mr G wouldn't have entered into the finance agreement he did had he known he wouldn't be able to hand back the car after 30 months. She recommended that Pendragon Motor Group pay off the balance on the loan (after having deducted the proceeds of sale from the car), that it refund the payments Mr G had made to the finance company since the car was sold, refund the deposit and make arrangements to remove the loan from Mr G's credit file. In addition, she recommended that Pendragon Motor Group pay £250 in compensation for the distress it had caused as well as interest on the refunds.

Pendragon Motor Group disagreed with our adjudicator's recommendations saying that she had relied too heavily on a call recording when making her findings rather than the rest of the evidence. Pendragon Motor Group also said that the recommendations would put Mr G in a better position than he thought he was as it put him in the position he would have been had he not entered into the agreement at all. I was, therefore, asked to make a 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.

The main issue I have to decide is whether or not Pendragon Motor Group misrepresented the finance agreement Mr G entered into. Pendragon Motor Group says that it is clear from the documents signed that the agreement was a fixed sum loan agreement and that the car could not be handed back after 30 months. Mr G says that it is clear from the surrounding facts that he was told he could hand the car back after 30 months. Mr G relies, in particular, on the fact that before he bought the car in question another one had been ordered which subsequently became unavailable. Mr G says, in effect, that Pendragon Motor Group offered him a deal that would in effect be as good as the first one he had been offered.

I agree with Pendragon Motor Group that the call recording Mr G has supplied is of limited evidential value – the conversation took place two years after the sale and the salesman (who is one of the parties to the conversation) makes relatively generic remarks. In this particular case, however, I feel the background to the sale is particularly relevant. I say this because I'm satisfied that Mr G originally wanted to buy a different car and this car became unavailable. I'm satisfied that this car was going to be bought on a hire purchase basis – meaning it could have been handed back after 30 months. I'm satisfied that the payments for the car Mr G bought were higher and that a discount was offered which was calculated by multiplying the difference in monthly payments by 30. Based on the background, I'm satisfied

Pendragon Motor Group offered Mr G what was, in effect, an identical deal. I'm satisfied that he was told this included being able to hand back the car after 30 months. The actual agreement Mr G signed does not allow for this. I, therefore, agree the agreement was misrepresented.

In cases involving misrepresentation, we aim to put consumers into the position they would have been had it not been for the misrepresentation. I agree with our adjudicator that it would not be right to ask Pendragon Motor Group to refund the payments Mr G made whilst he had the car as he had use of it. I do, however, feel Mr G should have the payments he had to make after the car was sold refunded. In other words, the payments he had to make from August 2014 onwards. In this particular case, however, I don't feel it is fair to ask Pendragon Motor Group to refund the deposit as Mr G would have paid the same amount had the first sale gone through. Mr G has told us that he should be compensated for having to continue to make payments from August 2014 onwards but I feel an award of 8% interest (which I'm going to make) adequately deals with this.

my final decision

My final decision is that I require Pendragon Motor Group Limited:

- to pay off the remaining balance on the loan Mr G took out once the proceeds of sale of the car have been taken into account (£5,620);
- to refund the payments Mr G made to the finance company between August 2014 and October 2014 having taken the discount Mr G was given when he agreed to buy the car into account (in other words, to refund the equivalent of £164.99 a month) plus interest at a rate of 8% per annum simple from the date of payment to the date of settlement on each of these payments;
- to refund the payments Mr G made to the finance company between November 2014 and the date of settlement (in other words, to refund the equivalent of £203.83 a month) plus interest at a rate of 8% per annum simple from the date of payment to the date of settlement on each of these payments;
- to pay Mr G £250 in compensation for the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 September 2015.

Nicolas Atkinson
ombudsman