

complaint

Mr I complains that Blue Motor Finance Ltd (“Blue”) took possession of the car it had supplied to him under a hire purchase agreement, when it ought not to have done so.

background

In April 2016 Mr I entered into a hire purchase agreement for a used car. Mr I had a complaint about the quality of the car. At Blue’s request Mr I agreed to take the car to a third party’s premises to get it inspected. The issue about the quality of the car has already been looked at separately by this service in an earlier complaint. We have not looked at the quality issue again in this complaint. This is because we no longer have any power to look at that same issue any further, although we are aware that Mr I still remains unhappy about it.

After the inspection the car was left at the third party’s site while the parties discussed what should happen next. On 15 June 2018, Mr I and Blue had a series of phone calls about the car. It seems Mr I ended the phone calls with the impression that he’d see Blue in court when all the issues he thought were relevant, would be aired. Conversely, Blue left the phone calls with the impression that Mr I had surrendered the car to it.

Eventually, Blue collected the car from the third party’s premises and sold it on. But the car didn’t sell for enough to cover Mr I’s debt under the hire purchase agreement. Blue wanted Mr I to pay for this shortfall, which is something he would have to do if he had surrendered the car. Mr I refused; his stance was that Blue had repossessed the car against his will. He suggested that by law in these circumstances, Blue couldn’t do this without a court order. Blue did not accept Mr I’s position; its take was that it didn’t need to apply for a court order because Mr I had handed over the car to it voluntarily. It also said Mr I had abandoned the car in any event.

Dissatisfied, Mr I came to our service.

Our investigator looked into Mr I’s complaint. He concluded that Mr I had not surrendered the car to Blue, neither had he abandoned it. Moreover, he concluded, in the circumstances, since Mr I had paid one third of the total cost of the car before Blue took it away and sold it, Blue should have got a court order. Because it did not our investigator told Blue it must end the agreement, return all the money Mr I had paid under the agreement, and pay Mr I £200 for distress and inconvenience.

Mr I accepted our investigator’s conclusions. Blue did not. In summary, it sent us information about court action that Mr I had begun then stopped. It suggested in the calls of 15 June, Mr I objected only to having to pay for the shortfall and continued to dispute the quality of the car. But it also repeated that in those calls he had agreed to surrender the car. It indicated it thought we had misunderstood the relevant law about taking possession of a car. In addition, it did not understand what we had said about our fair and reasonable approach to complaints whereby when we decide what is fair and reasonable, we take relevant law into account, but we don’t apply it like a court would for example.

Blue asked that an ombudsman review Mr I’s complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the outcome reached earlier in our process by our investigator. These are the reasons why I have come to this conclusion.

First, I'm very 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 going to respond to every single point made by all the parties involved. No courtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free 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 the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

When I look at what is a fair and reasonable way to decide Mr I's complaint I have to take account of relevant law and regulations. But I don't apply the law in the way that a court would, particularly where I don't think a strict interpretation of the law would result in an outcome that is fair or reasonable. I hope this explanation is enough for Blue to understand our approach.

Both Mr I and Blue agree that the relevant law says amongst other things, that where the debtor under a hire purchase agreement is in breach of that agreement - and where that debtor has paid one third or more of the total price of the car - then the creditor is not entitled to recover possession of the goods (here the car) from the debtor except on an order of the court. Further, both parties also agree that in addition to what the law says, the hire purchase agreement says in these circumstances Blue will only take the car against the consumer's will if it has a court order.

However, the debtor can also choose to hand back the car. This process is known as voluntary surrender. Blue says this is what happened during the calls it had with Mr I on 15 June. It said because Mr I had surrendered the car then the provisions in law and the agreement about repossession don't apply. If Mr I had surrendered the car then I'd agree no repossession had happened and the provisions about needing a court order wouldn't apply. So, the key thing here it seems is: did Mr I voluntarily surrender the car during those calls?

After it received our investigator's view, Blue suggested that when I look at whether Mr I surrendered the car I need also to look at what happened leading up to the calls. In particular, it has suggested I need to look at the court action Mr I started before 15 June 2018 and what he said about it in March 2018. But I don't think I need to do that. Blue told us it was relying on what was said in those 15 June 2018 calls to say that Mr I agreed to a voluntary surrender. It has been crystal clear about this saying "*it is an undisputed fact that Mr I consented to our repossession of the vehicle. During the call recordings on 15th June 2018*". That being so, that is where I have directed my attention. Further, since the 15 June calls happened after the events in March 2018. I think it is correct to say that anything said in March 2018 was superseded by what was said on 15 June 2018.

I've listened to the calls several times. They are instructive. Mr I had six calls with three different people, one after another. Neither side appears to be listening to the other party; instead, it appears, they both try to get their point across without taking on board the other side's stance. Indeed, in one of the calls a Blue employee more than once incorrectly summarises what she says Mr I has just said, and he has to correct her. Another time a Blue employee says, "*I am not sure what you are trying to say*". At some points Mr I seems frustrated and the tone of the conversation becomes heated. But what is very clear is that Mr I is insisting on his legal rights as he sees them. He is not surrendering the car back to Blue. Rather, he talks about taking things further and going to court where he can bring all his arguments into the mix.

Further, any such surrender must be voluntary and informed, in that Mr I must fully understand the significance of surrender. That being so, I would have expected Blue to have clearly explained what voluntary surrender meant to Mr I, albeit I can see it was difficult for it to get its points across in the calls of 15 June 2018. One of the risks of voluntary surrender is that the consumer may have to pay a shortfall. But Blue tells us Mr I was not agreeing to pay any potential shortfall. By definition therefore, I think it ought to have known he was not voluntarily surrendering the car because he was not accepting a key part of the voluntary surrender process.

Alternatively, and somewhat in contradiction to what it says about how Mr I surrendered the car in the calls of 15 June 2018, Blue appears to be saying that Mr I had abandoned the car, and this entitled it to take the car back into its possession without a court order. I don't see how it is possible to surrender a car that has been abandoned. That said, I might have found it fair and reasonable for Blue to repossess the car without a court order if it had been abandoned.

But again, listening to the calls of 15 June 2018 I don't agree Mr I had abandoned it. He was vexed because he had taken the car to the third party for it to assess it only to find he couldn't get the car back without being charged. This is because the third party wanted to charge him for storage before releasing the car. Mr I's position seemed to be that Blue, not he, ought to pay for all this. But in the calls Mr I is still asserting his rights in relation to the car. For example, he mentions that even though he'd had a final decision about the quality issue, he'd rejected it and wanted to take this point to court. He also talks about needing the car and the money he has sunk into it and that he wants the car, although he wants it to run properly.

For all of these reasons, I don't agree that Mr I voluntarily surrendered the car to Blue on 15 June 2018. Neither do I agree Blue had reasonable cause to think that he did. Nor do I find that in the circumstances, it was fair and reasonable for Blue to act as it did without getting a court order.

Mr I and Blue both agree that at the time Blue took possession of the car he had paid one third or more of the total price of the car. I think Blue also took the car away against Mr I's will as I have already mentioned. In the circumstances both the law and the hire purchase agreement itself say Blue cannot do this correctly without a court order. And there is no dispute that it didn't get one. In the circumstances, taking this all into account, and taking into account relevant law, I find it is fair and reasonable that Blue must end the agreement and return all the payments Mr I made to it under the agreement.

Mr I and Blue were often talking at cross purposes. I think things might have gone better if Mr I had chosen to use more measured language at some points. That said, I think some of the confusion was caused by Blue not actively listening to Mr I and not explaining what was going on adequately. I think this most likely caused Mr I distress and inconvenience. I think that £200 is a fair award for this.

my final decision

My final decision is that Blue Motor Finance Ltd must:

- End the hire purchase agreement with Mr I with nothing further owed by him. And it must contact the credit reference agencies and ask them to remove any information it has asked them to register about the agreement on Mr I's credit file.
- Refund all the payments that Mr I made under the hire purchase agreement including the deposit he paid. The information I have seen shows he paid a deposit of £3,750. That is a cash deposit of £1,000 and he part exchanged his car for the value of £2,750. Blue must refund the whole deposit that is £3,750.
- Pay Mr I £200 for distress and inconvenience.

Blue must pay the compensation within 28 days of the date on which we tell it Mr I accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 18 September 2020.

Joyce Gordon
ombudsman