

complaint

Mr A complains that a guarantee he bought with finance from GMAC UK Plc is worthless because the provider is no longer trading. He would like the cost of the guarantee to be deducted from the loan.

background

In January 2015, Mr A bought a car with a loan from GMAC. He also bought a two-year extended guarantee. He says the cost of the guarantee was also covered by the loan.

The car dealer was also the provider of the guarantee and brokered the loan. It stopped trading in about April 2015. Therefore, Mr A won't be able to benefit from the guarantee.

GMAC initially said it wasn't responsible because the guarantee wasn't included on the finance invoice or credit agreement.

I issued my provisional decision in December 2015. I said intended to uphold Mr A's complaint and ask GMAC to remove the cost of the guarantee from the loan and re-work the finance agreement to put Mr A in the position he would have been had the guarantee not been taken.

Mr A has accepted my provisional findings. GMAC says it's sourced an equivalent product for its customers. So, it doesn't want to take off the cost of the guarantee.

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 considered all the information afresh, and taken account of the parties' further representations, my opinion hasn't changed.

As GMAC no longer seems to be disputing that the cost of the guarantee was covered by the credit agreement, or, at least, that Mr A was led to understand it was covered, I won't say anything more about the paperwork or sales process in this decision. All of this information is already set out in my provisional decision.

All I now have to decide is whether GMAC should be allowed to provide cover under an equivalent guarantee. Mr A doesn't want it anymore, but GMAC says this is what it's doing for all of its other customers who are in a similar position.

GMAC has referred me to another complaint considered by this service in which the ombudsman agreed that it could do so.

I have looked at that complaint but the circumstances are not the same, in my view. In that case the customer had bought a four-year warranty, so there was still a considerable period of cover left to run. The customer still wanted the warranty and had incurred expenses that would have been covered by the warranty but for the provider's insolvency.

Mr A is not in the same position. He bought a two-year guarantee. Because GMAC has rejected his entitlement to warranty cover for so long, Mr A has already lost the benefit of

half of the warranty and the peace of mind associated with it. Mr A had also reduced his monthly payments because he could no longer claim under the guarantee.

As GMAC is aware, complaints have to be considered on their individual merits. And in Mr A's case, the fair and reasonable outcome, in my view, is that GMAC should remove the cost of the guarantee from the loan and re-work the finance agreement to put Mr A in the position he would have been had the guarantee not been taken.

Because Mr A has decided to pay a reduced amount each month he might have overestimated the proportion of his monthly instalments that relate to the cost of the guarantee. If this is the case, he might have to bring his payments up to date under the reworked agreement.

However, if he has underestimated and has been paying too much, GMAC should refund any monthly excess, plus simple interest at the gross rate of 8% a year from the date Mr A made the payment until the date of the refund.

my final decision

My final decision is that I uphold Mr A's complaint against GMAC UK Plc. I direct GMAC to proceed in accordance with the above directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 February 2016.

Athena Pavlou
ombudsman