

complaint

Miss R complains that a hire purchase agreement, under which a car was supplied to her, was mis-sold to her by Arnold Clark Automobiles Limited.

background

A new car was supplied to Miss R under a hire purchase agreement with a finance provider that she signed in April 2018. She complained to Arnold Clark in July 2018 and said that she disputed the price of the car, the mileage limit had been lowered from 40,000 to 20,000 miles without discussion with her and that she'd been lied to about the insurance cover.

Arnold Clark said that the correct information was set out in the order form, pre-contract credit information and hire purchase agreement – all of which had been signed by Miss R. She wasn't satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He was satisfied that, had the mileage cap been discussed and the lower cap been identified as not fit for purpose, Miss R wouldn't have continued with the purchase of the car. So he thought that Arnold Clark should: end the hire purchase agreement; collect the car; refund the deposit (with interest); and remove any adverse information from Miss R's credit file.

Arnold Clark has offered to issue Miss R with a cheque for £734.98 to cover her in full against the excess mileage charge that the finance provider might apply in the future providing that she doesn't exceed the 40,832 miles cap.

But Miss R has asked for her complaint to be considered by an ombudsman. She says that she's not happy to remain in a contract which is not fit for purpose and feels that the solution of handing the car back is the only satisfactory outcome for her. She says she feels that both Arnold Clark and the finance provider have been very dismissive of her and she doesn't want to stay in the contract as she has anxieties about being treated unfairly at the end of the contract regardless of the settlement that Arnold Clark is offering her.

my provisional decision

After considering all of the evidence, I issued a provisional decision on this complaint to Miss R and to Arnold Clark on 3 February 2020. In my provisional decision I said as follows:

“Miss R signed a vehicle order agreement with Arnold Clark in April 2018. The basic price of the car was shown as £17,995 and there was a £500 discount. Factory options, road fund licence and registration fees were added to give a price of £19,010. But Miss R says that the basic price was higher than the manufacturer's basic price and that the car was available at a lower price from other sellers. But Miss R signed the order agreement and agreed to the basic price of the car of £19,995. The price that is agreed for a car is a commercial decision between the parties and this service wouldn't normally interfere with a commercial decision. And I see no reason for me to interfere with the price that was agreed between Arnold Clark and Miss R for the car.

Miss R also signed the hire purchase agreement which said:

“The maximum annual mileage is 5000 and the maximum total mileage is 20,418. The Excess Mileage Charge payable pursuant to clause 11 of the Terms is 3.6 (incl VAT) per mile”.

And she signed the pre-contractual explanations checklist which said:

An explanation that where an estimated mileage is applicable, it is a fundamental term of the agreement and that estimating mileage too low may result in an excess mileage charge being payable when the agreement ends or is terminated at any time. I have checked that the estimated mileage is correctly stated on the agreement”.

Miss R says that the mileage limit had been reduced from 40,000 to 20,000 miles without discussion with her. But she signed the agreement and the checklist and agreed to an annual mileage limit of 5,000 miles and a total mileage of 20,418 miles.

In response to the adjudicator’s recommendations, Arnold Clark has offered to pay Miss R £734.98 to cover her in full against the excess mileage charge that the finance provider might apply (providing that she doesn’t exceed the 40,832 miles limit). I consider that that offer is fair and reasonable in the circumstances. It puts Miss R in a better position that she would be in if the mileage limit was 40,832 because she’s been compensated for any excess mileage charges upto 40,832 and will have received compensation of 3.6p for each mile by which her mileage is less than 40,832 miles (excluding the 20,416 mile limit included in the agreement).

Miss R says that she was lied to by Arnold Clark about an insurance offer and that she was told that she qualified for the offer and that information about it would be provided later. Arnold Clark says that she was presented with all of the information for her to take advantage of the insurance offer but chose not to do so. So Arnold Clark and Miss R give very different accounts of what was said about the insurance offer. But if she was expecting to be provided with information about the insurance offer I consider that it would be reasonable to expect her to have contacted Arnold Clark within a short period of time after the car was supplied to her if she hadn’t received that information. I’m not persuaded that there’s enough evidence to show that Arnold Clark has acted incorrectly in connection with the insurance offer.

For these reasons, I don’t consider that it would be fair and reasonable for Miss R to reject the car. She says that she has anxieties about being treated unfairly at the end of the contract but the finance provider will be required to comply with the terms of the agreement. If it doesn’t do so she should complain to it and then, if she’s not satisfied with its response, she may be able to make a complaint to this service about the finance provider. She’s had use of the car for more than 21 months and I consider that it would be fair and reasonable in these circumstances for Arnold Clark to pay to Miss R the £734.98 that it’s offered to her”.

So subject to any further representations by Miss R or Arnold Clark, my provisional decision was that I was minded to uphold this complaint in part.

Miss R has responded to my provisional decision in detail and says, in summary, that:

- there’s no proof that Arnold Clark presented her with any information about the insurance offer - she would’ve taken advantage of the opportunity to save £300 to £400 on her insurance – and it didn’t follow correct procedures;

- she accepts that she can't now complain about the price that was agreed for the car but it's not professional practice for Arnold Clark's representative to denigrate her;
- she signed an electronic document and at no point was mileage discussed so she believed that the 40,000 allowance on her previous car would be carried forward;
- Arnold Clark is admitting liability by offering her £734.98 – but it doesn't cover the loss of equity that she'll suffer when she hands the car back;
- Arnold Clark has used a test drive voucher dishonestly because she didn't get a test drive until the day of purchase;
- it failed to go through the documentation and explain what she was signing or to discuss her mileage requirements;
- no affordability assessment was ever done;
- it failed to present her with information on the free insurance offer;
- it added negative equity into the new agreement without discussing the risks of doing so and failed to explain the total payable, termination rights, the right to withdraw or its commission;
- had there not been such a considerable delay by this service she would've had the car for significantly less than 21 months when her complaint was decided; and
- Arnold Clark is at fault here as proper procedures weren't followed and it acted improperly and manipulatively.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In particular I've considered the detailed comments that Miss R has made in response to my provisional decision. She clearly strongly disagrees with my provisional decision but I'm not persuaded that I should change that decision.

Miss R says that Arnold Clark mis-used a test-drive voucher and didn't consider whether the agreement was affordable for her. But those issues weren't raised in her complaint to Arnold Clark or this service – so I'm unable to now consider them as part of this complaint. I won't be addressing in detail all of the comments made by Miss R but will focus on what I consider to be the significant issues in deciding her complaint.

Miss R says that the mileage limit wasn't discussed with her. But she signed the vehicle order agreement, the pre-contractual explanations checklist and the hire purchase agreement. Both the pre-contractual explanations checklist and the hire purchase agreement referred to the mileage limit. Miss R says that she didn't realise that she was signing an agreement. But I consider it to be reasonable to expect a consumer to have read and understood what they are being asked to sign before doing so – even if it's a signature on a screen. By signing the screen, I consider that Miss R agreed to the terms that are contained in the agreement – and the car was supplied to her on that basis.

Arnold Clark has offered to pay £734.98 to Miss R to cover the excess mileage charges that the finance provider might apply. I don't consider that to be an admission of liability that it acted incorrectly. I consider that it puts her in a better position than she would've been in relation to the excess mileage charges for the reasons set out above. Miss R says that it won't cover the loss of equity in the car that she'll suffer. But she agreed to make 48 monthly payments of £327.45 for the car and then an optional final payment of £6,277.50. If she chooses to keep the car she'll have to make the final payment of £6,277.50 but won't pay any excess mileage charges (and will have the benefit of the £734.98 from Arnold Clark). If she chooses to return the car she won't make the final payment and will be able to use the

£734.98 from Arnold Clark to pay any excess mileage charges (unless she drives the car for more than 40,832 miles. The mileage allowance won't affect the value of the car at the end of agreement: if it's been driven for 40,000 miles when the agreement ends its value will be the same whether the mileage allowance in the agreement was 20,000 or 40,000 miles.

If Miss R was expecting to be provided with information about the insurance offer I consider that it would be reasonable to expect her to have contacted Arnold Clark within a short period of time after the car was supplied to her if she hadn't received that information. But I'm not persuaded that there's enough evidence to show that she did so.

Nor am I persuaded that there's enough to show that Arnold Clark has acted incorrectly in its dealings with Miss R about the car and the hire purchase agreement. So I don't consider that it would be fair and reasonable for her to reject the car. I consider that it would be fair and reasonable in these circumstances for Arnold Clark to pay to Miss R the £734.98 that it's offered to her.

my decision

For the reasons set out above, my decision is that I uphold Miss R's complaint in part. And I order Arnold Clark Automobiles Limited to pay £734.98 to Miss R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 3 April 2020.

Jarrold Hastings
ombudsman