

complaint

Mr K complains that a car that was supplied to him under a conditional sale agreement with PCF Credit Limited was misrepresented to him.

background

A used car was supplied to Mr K under a conditional sale agreement with PCF Credit that he signed in June 2017. He complained to PCF Credit that he'd found out that the car was an overseas import and hadn't been manufactured for the UK market. It issued its final response in August 2018 but Mr K wasn't satisfied with it so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She thought that the car was an import but said that Mr K could've reasonably inspected the car to ascertain its history and that he can return the car at the end of the agreement. So she didn't think that PCF Credit had done anything wrong.

Mr K has asked for his complaint to be considered by an ombudsman. He's provided a letter from his solicitor which says that court proceedings against the dealer have been issued. And he says, in summary, that the car was imported but he wasn't informed of that so the car was mis-sold to him and that he's become aware that the car doesn't have all of the features that would've been included on this model of car that was supplied to the UK market. And he says that when he asked a dealer about part-exchanging this car he was told that because it was imported with a different specification it would be worth considerably less than it otherwise would've been.

my provisional decision

After considering all of the evidence, I issued a provisional decision on this complaint to Mr K and to PCF Credit on 10 December 2019. In my provisional decision I said as follows:

"The car was supplied to Mr K in June 2017. The conditional sale agreement says that the car was first registered in the UK in September 2015 which is confirmed by the car's registration certificate. The manufacturer says:

"I can confirm that your vehicle was manufactured for the [named nationality] market;" and:

"I can advise that this vehicle was built for [named country], and was sold by [named dealer] in [named country]".

Mr K has provided an invoice which shows that the car was sold in May 2015 by the named overseas dealer to the dealer in the UK that is identified on the conditional sale agreement. So I'm satisfied that the car was imported into the UK and that it wasn't manufactured for the UK market.

When it was supplied to Mr K it had UK licence plates, it wasn't mentioned that it had been imported and there was no reason for Mr K to be aware that it had been imported. But the dealer knew that the car had been imported and I consider that it would be fair and reasonable to expect it to have told Mr K that the car was imported. I've seen no evidence to show that it did so. Mr K says that he's found out that the car has a different specification to the model of car that was supplied to the UK

market and he says that he's insured the car on the basis that it was originally supplied in the UK but he's now concerned that his car may not be properly insured. And he says that he wouldn't have agreed for the car to be supplied to him if he'd known that it was imported.

I consider that the fact that the car was imported was so significant that it was likely to impact Mr K's buying decision – and I consider that it would be reasonable in these circumstances to expect the dealer to have told Mr K that the car was imported and that it had a different specification to a car supplied to the UK market. I've seen no evidence to show that Mr K paid a lower price for the car because it was imported than he would've paid had the car been supplied to the UK market. But I consider it to be reasonable to conclude that an imported car with a lower specification would've had a lower value than a car with a higher specification that was supplied to the UK market. Mr K says that when he asked a dealer about part-exchanging this car he was told that because it was imported with a different specification it would be worth considerably less than it otherwise would've been. I'm persuaded that Mr K has suffered a significant loss of value because the car was imported. And I consider it to be more likely than not that Mr K wouldn't have signed the conditional sale agreement if he'd known that the car was imported.

I find that it would be fair and reasonable in these circumstances for PCF Credit to arrange for the car to be collected from Mr K and to end the conditional sale agreement. The invoice for the car shows that its sales price was £53,848.99. It also shows that Mr K part-exchanged his car which had a value of £21,000, that the outstanding finance on that car of £13,139.13 was settled and the net part-exchange value was £7,860.01. The invoice also shows a deposit of £3,038.98 and that the amount to be financed was £42,950. I find that it would be fair and reasonable for PCF Credit to refund the £7,860.01 to Mr K and, if the deposit was paid by Mr K, to also refund £3,038.98 to him (both with interest). In responding to this provisional decision I ask PCF Credit and Mr K to confirm whether the deposit of £3,038.98 was paid by him.

Mr K has been able to use the car so I consider that it would be fair and reasonable for PCF Credit to keep the monthly payments that Mr K's made under the agreement as payment for that usage. But these events have caused him distress and inconvenience and I find that it would be fair and reasonable for it to pay him £250 to compensate him for that distress and inconvenience”.

So subject to any further representations by Mr K or PCF Credit, my provisional decision was that I was minded to uphold this complaint.

Mr K has accepted my provisional decision and has discontinued his court proceedings so that a decision on this complaint can be issued. PCF Credit's solicitors have responded to my provisional decision in detail and say, in summary, that:

- there's no evidence of a misrepresentation by the dealer;
- the dealer accepts that the car was imported but no assertions were made by it to Mr K when the car was supplied to him;
- it hasn't been provided with a copy of the certificate of origin document that shows that the car was imported but it presumes that it was available to Mr K when the car was supplied to him;
- no evidence has been provided regarding the valuation of the car – and it suggests that Mr K obtains a valuation report for the car which compares its value if it was a

UK sourced car to the actual car and, if there is a reduction, a resolution may be possible regarding the balance to be paid under the agreement; and

- the outcome contained in my provisional decision will leave PCF Credit considerably out of pocket without being able to recoup any losses from the dealer.

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'm not persuaded that I should change my provisional decision.

In my provisional decision I said that Mr K had provided an invoice which showed that the car was sold in May 2015 by the named overseas dealer to the dealer in the UK that is identified on the conditional sale agreement. That was an error as that invoice was provided to this service by PCF Credit in August 2018. A copy of the invoice has been provided to PCF Credit's solicitors. The invoice shows that the car was sold in May 2015 by the named overseas dealer to the dealer in the UK that is identified on the conditional sale agreement. So I consider that the dealer knew that the car was imported when it was supplied to Mr K – and I don't consider that there was any reason for Mr K to be aware that it had been imported. So for the reasons set out in my provisional decision, I consider that it would be fair and reasonable to expect the dealer to have told Mr K that the car was imported. It didn't do so and I consider that Mr K has suffered a loss as a result.

PCF Credit's solicitors have suggested that Mr K obtain a valuation report for the car which compares its value if it was a UK sourced car to the actual car. Mr K hasn't accepted that suggestion. I consider it to be more likely than not that Mr K wouldn't have agreed for the car to be supplied to him if he'd been told that it was imported. So I consider that it would be fair and reasonable in these circumstances for Mr K to return the car to PCF Credit and for the agreement to be ended on the basis set out in my provisional decision.

my decision

For the reasons set out above, my decision is that I uphold Mr K's complaint. And I order PCF Credit Limited to:

1. End the conditional sale agreement and arrange for the car to be collected from Mr K – both at no cost to him.
2. Refund to Mr K the net part-exchange value of £7,860.01.
3. Refund to Mr K the deposit of £3,038.98 - if he paid it for the car.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Pay £250 to Mr K to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires PCF Credit to deduct tax from the interest payment referred to at 4 above. PCF Credit must give Mr K a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 April 2020.

Jarrold Hastings
ombudsman