

## **complaint**

Mr M complains that the vehicle he acquired through a hire purchase agreement financed by Specialist Motor Finance Limited was misrepresented. He wants to reject the vehicle and end the agreement.

## **background**

Mr M tells us he acquired the vehicle in February 2019. Prior to supply he says he'd been in discussions with a broker, a company I'll call "C". And that he'd informed them his annual mileage was around 50,000 miles. He says he'd identified a vehicle which he was happy to acquire and had provided the details of this and the registration number to C. As a result of discussions with C, he says a different vehicle had been suggested and he'd gone along with this. But he'd been led to believe it was very similar to the one which he'd previously identified. However, upon driving home after collecting the vehicle he says it had become apparent the vehicle wasn't as powerful as he'd expected or required. He says he asked to return the vehicle but this request was refused.

SMFL didn't issue a final response letter before the complaint was referred to this service.

Our adjudicator recommended the complaint should be upheld. In a comprehensive view letter of 30 October 2019 he said he thought the vehicle had been misrepresented as C had been led to believe that the vehicle with which he was supplied was very similar to the more powerful vehicle he'd indicated he was happy to buy. He felt that important facts about the vehicle hadn't been provided to Mr M and that if he'd been made aware of the lower horsepower (HP) (95HP as opposed to 120HP) compared to the vehicle he'd identified he wouldn't have proceeded with the agreement. He thought Mr M should be allowed to reject the vehicle.

Following further comments by C, our adjudicator replied saying that the vehicle supplied had only been brought to Mr M's attention by C. And that he (Mr M) - before agreeing to choose this vehicle - had relied upon information given by C which had omitted important facts.

SMFL didn't agree with this outcome and as it's not been possible to resolve this complaint an ombudsman's been asked to make the 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.

I'm sorry that Mr M has experienced such a difficult time after entering into this agreement and finding the vehicle supplied was not as he'd expected. And this upset and inconvenience has been exacerbated as he's needed to source an alternative vehicle whilst the complaint has been investigated. This appears to have led to financial difficulty.

Mr M's hire purchase agreement is a regulated consumer credit agreement and our service is able to consider complaints relating to it. SMFL supplied the vehicle and it's therefore responsible for a complaint about the quality of the vehicle. That would include being fit for any purpose the consumer had indicated, expressly or by implication, was the reason they were contracting for the goods. Whilst I don't apply the law - directly - I do take it into account. And relevant law here includes the Consumer Rights Act 2015 (CRA).

Additionally, the effect of section 56 of the Consumer Credit Act 1974 (CCA) means that if there's been a misrepresentation by the credit broker (C) regarding the agreement or the goods, SMFL would potentially be liable for any losses Mr M incurred as the result of the misrepresentation.

Put briefly, Mr M's complaint amounts to an allegation of misrepresentation regarding the specification of the vehicle with which he was supplied. He says he'd identified a vehicle which he was happy to acquire. But after discussions with C's sales agent he states that he'd been persuaded to choose a different vehicle albeit one with the same manufacturer and vehicle type. Mr M says this was a vehicle suggested by the agent and described to him as being very similar to the one he'd originally indicated. But he says that having collected it and driven it home he'd immediately found it was much less powerful than he'd expected and wasn't suitable for the amount of annual mileage he covered.

A misrepresentation is a false statement of fact which induces a consumer to enter an agreement and to suffer loss as a consequence of the misrepresentation. But a misrepresentation can also occur by omission. As an example, this might happen in the case of a "*half truth*". So that a statement which is true as far as it goes, nonetheless can amount to a misrepresentation if it fails to disclose a material factor.

I've been provided with a substantial amount of information by the parties. And if I don't refer to each item separately it's not that I haven't taken it on board. It's simply that I don't need to refer to it separately in order to reach my final decision. And where facts are in dispute or information is unclear - as some of it is here - I'm required to make my decision on the balance of probabilities.

It's fair to characterise the nature of the discussions between Mr M and C - which led up to the agreement - as involving a degree of "*toing and froing*". There were numerous vehicles that came under consideration before the final choice was made. And Mr M had initially provided a written list comprising of several vehicles in which he might be interested. All the vehicles listed were high powered vehicles from 1.6L engine size upwards. And the last vehicle on this list was marked with asterisks and was identified as having a 1.6L engine with 120 Horsepower (HP). I think this gave sufficient indication of the sort of vehicle Mr M was interested in acquiring.

I've also listened to various phone calls which took place between Mr M and C's sales agent. These recordings were identified in the adjudicator's first view, in which he gave a detailed summary of the contents of these calls. I shan't repeat that as both parties have seen it but I concur with his opinion in relation to the contents of the calls.

When considering the issue of misrepresentation I think it's right to view these circumstances in totality. And it's important that in order to give a true context I take account of *all* the information that was exchanged in the time leading up to the agreement and not just that contained in the final call prior to it being completed.

Despite several different vehicles having been discussed it's clear that Mr M's choice quickly narrowed to focussing on two vehicles. These were the vehicle he'd identified in an email dated 6 February 2018 which he'd asked C to follow up. And the vehicle which was brought to his attention by C's sales agent and which was ultimately supplied.

I think it's clear from the phone recordings that Mr M was in two minds as to which vehicle to choose. But the reason for this indecision was that he thought both were virtually the same. In relation to the vehicles the agent had said:

*"Same colour, same age, pretty much the same mileage, both Petrol, and both five doors."*

But there's no mention of the power rating of the vehicle. This proved to be 95HP (as opposed to 120 HP of Mr M's identified vehicle). Bearing in mind the previous exchanges between Mr M and C's agent - including Mr M advising his annual mileage was around 50,000 miles and the list of high powered vehicles which he'd originally sent - I think it should've been apparent that this issue was an important consideration for him. And I don't think it was unreasonable for Mr M to think the agent would've only been referring him to vehicles with similar power and which were suitable for the employment needs he'd disclosed.

I should emphasise that I'm not suggesting that the sales agent was intentionally misleading Mr M. I accept she was trying to assist him to acquire a suitable vehicle. But even where incorrect statements and/or material omissions are *"innocent"*, if the effect is to induce the consumer into entering an agreement it can nonetheless amount to a misrepresentation.

It's also unfortunate that the finance agreement which Mr M e-signed doesn't identify the precise specification of the vehicle. It refers only to manufacturer and model. And Mr M wasn't supplied with the V5 registration document when he collected the vehicle. So it wasn't until he'd actually driven the vehicle that the power issue was identified.

Mr M made his complaint promptly and I find it somewhat disappointing that a more proactive stance wasn't taken by SMFL. The issue was raised within a few days and it's hard to see why the agreement couldn't have been unwound. Even a cursory enquiry would've established the high probability that either a genuine mistake of fact had occurred in relation to the vehicle - or there'd been an innocent misrepresentation. The vehicle had only travelled a few extra miles so the agreement could've been ended with little detriment to either party. And the fact that the vehicle has since remained unused is ample proof that Mr M would never have entered an agreement to acquire it if he'd been given all the relevant information.

In summary, I find that it's more probable than not that there was a misrepresentation of this vehicle. And it was also not fit for the purpose of travelling the extensive mileage in the course of employment which Mr M had made known was his purpose in acquiring it.

I'm upholding this complaint and finding that Mr M is now entitled to reject the vehicle and end the agreement. I'm not sure how many payments have been made towards the vehicle but these should all be refunded.

### **my final decision**

For the reasons given above my final decision is I'm upholding this complaint.

I require Specialist Motor Finance Limited to take the following action:

1. End the agreement and accept Mr M's rejection of the vehicle;
2. Arrange collection of the vehicle at no cost to Mr M;
3. Refund all payments made under the agreement together with simple interest at the rate of 8% per year from date of payment to date of settlement;
4. Arrange to have all details of the agreement removed from Mr M's credit file;
5. Pay Mr M £200 for distress and inconvenience;

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 April 2020.

Stephen D Ross  
**ombudsman**