



complaint

Mr A complains that FirstRand Bank Limited (trading as Motonovo Finance) is asking him to pay an excess mileage fee.

background

Mr A entered into a hire purchase agreement with Motonovo in March 2012 for the purchase of a vehicle. When he later returned it, Mr A was asked to pay the following charges for the following issues:

- Lost second key
- Roof panel dent
- Scratch on door
- Excess mileage fee

Mr A disputed the above sums and brought a complaint to us to consider.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. She considered Motonovo was entitled to ask for payment for the excess mileage costs under the terms of the agreement. Mr A had driven the vehicle over the maximum mileage limit of 12,000 per annum. The adjudicator noted that Motonovo had agreed to waive the other charges it had originally asked him to pay.

Mr A does not agree. He says that the other fees were waived as Motonovo could not show he caused the damage, and he did not receive a second key. Mr A points out he did not sign to agree to an excess mileage fee. He did not receive a copy of the terms and conditions containing this fee until he returned the car.

my provisional view

After considering all the evidence I issued a provisional decision on this complaint to Mr A and to Motonovo on 18 December 2014. Where the evidence was incomplete, inconclusive, or contradictory (as it was here in relation to whether the terms and conditions relating to the mileage fee were given to Mr A before or when he entered into the agreement), I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and in the wider circumstances.

My findings were as follows:

Damage to car

Motonovo originally asked Mr A to pay for damage to the car and for a missing key. After discussions with our adjudicator, it agreed to waive these fees. This was because it could not prove that Mr A had caused the damage to the car. Further it did not have any records of whether a second key was given to Mr A. In the circumstances, I considered that it was fair that Mr A was not asked to pay these sums.

Mileage fee

The remaining issue was the excess mileage charge of £1,654.65. Motonovo said that it was entitled to ask Mr A to pay this as the fee was set out in the terms and conditions of the hire purchase agreement. Mr A says that he was not given these terms when he entered into the agreement. This meant he was not aware of the fact he could be asked to pay an excess mileage fee if he drove the vehicle over 12,000 miles a year. Mr A says that he was not given these terms until he returned the car, and complained about the fee. He says the only document he was given was a two page agreement. He signed this but there was no mention of the excess mileage fee in it. Mr A says he did not receive any other documents.

We asked Motonovo for proof that Mr A was given a copy of the terms containing the fee when he agreed to enter into the hire purchase agreement. It pointed out that the document he signed draws his attention at the end of the document to clause 8 in the terms and conditions. Clause 8 did not concern the mileage fee. Motonovo says that the reference to the terms and conditions shows that Mr A received a copy of them.

I was not persuaded that this was the case. I did not find that the reference to clause 8 indicated that Mr A was given a copy of the terms in which this was contained. Similarly, I did not find that the mileage fee clause was drawn to Mr A's attention. There was no reference to it in the document signed by him.

Motonovo pointed out that Mr A was sent a letter dated 13 March 2012 which referred to the terms and conditions. They were not however enclosed with the letter. As such, I did not consider that this could be reliably relied upon to show that Mr A received a copy of the terms which set out the mileage fee.

On balance therefore, I was not persuaded that Mr A was given a copy of the terms and conditions which set out the excess mileage fee. Given this, I did not find that it was fair or reasonable for Motonovo to ask Mr A to pay this charge. I noted that Mr A said he would not have entered into the agreement if he had known about it.

My provisional decision was that I was minded to uphold this complaint. FirstRand Bank Limited (trading as Motonovo Finance) should waive the excess mileage fee it had asked Mr A to pay. It should also remove any adverse information it may have recorded on Mr A's credit file.

Motonovo and Mr A both agreed with my provisional decision.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. The further representations that Moneybarn has made do not alter my opinion about what would be the fair outcome to this complaint given that both parties agree with the provisional decision.

my final decision

My decision is that I uphold this complaint. FirstRand Bank Limited (trading as Motonovo Finance) should waive the excess mileage fee it has asked Mr A to pay. It should also remove any adverse information it may have recorded on Mr A's credit file.

Under the rules of the Financial Ombudsman Service, I am required to ask to accept or reject my decision before 11 March 2015.

Rosemary Lloyd
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