

complaint

Mrs M has complained that Arnold Clark Automobiles Limited (Arnold Clark) mis-sold her a personal loan.

background

Mrs M and her daughter (A) went to Arnold Clark in order to get a car on finance. Mrs M says she was under the impression that she was only going to be a guarantor for the loan, but that everything would be in A's name, and that it was A who would be responsible for the repayments.

A part-exchanged a car with Arnold Clark for £4,000, and wished to take out finance for the remaining balance of £2,697.50 for a new car. During the sale, Mrs M and A say that they were also told they could get a warranty and service plan for free. Mrs M signed all the paperwork, but could only provide her bank card and statement as identification, as she didn't have a driving licence or passport. So A provided *her* driving licence and passport, and they drove away with the new car.

When the finance was set up, all the documentation relating to the loan and vehicle were put in Mrs M's name. This included the loan agreement, the vehicle and all associated registration documents, as well as a vehicle replacement insurance (VRI) policy. A says she was under the impression that everything was in her name, including the car. But it wasn't until the vehicle was damaged in an accident outside A's home that she realised it was in Mrs M's name.

Mrs M has complained that she wasn't aware she had taken out a personal loan in her name, as she thought she was acting as a guarantor. She feels that Arnold Clark acted fraudulently because they used A's driving licence as identification. Mrs M also says that the warranty and service plan they were promised were not actually free of charge, and that she was further mis-sold the vehicle replacement insurance. A says she isn't happy because she was not made the owner of the car, meaning that her car insurance may not have been valid while driving. She wanted to trade in the new car for her old one, but was advised by Arnold Clark that it had been sold.

Arnold Clark had made various offers and refunds to Mrs M as a gesture of goodwill. It refunded the cost of the warranty/service plan, as well as all money paid so far towards the VRI policy (two monthly payments). It also offered to take back the vehicle from Mrs M and end the finance agreement, while refunding the money from the part-exchange, as well as reimbursing three months of finance payments. If Mrs M wanted to keep the vehicle, they offered to make arrangements to have bodywork repairs undertaken. But Mrs M didn't accept these offers.

Mrs M says that the loan should never have gone ahead given that she didn't provide her driving licence or passport. She wants the finance contract to be declared void, and for her daughter to be able to keep the car.

Our investigator felt that the loan documentation was clear, and that Mrs M ought to have been aware of what she signed up to and who would be responsible for the repayments. With regard to the issue of fraud and voiding the finance agreement, the investigator felt it was outside the remit of this service to make such a direction in the circumstances. Mrs M disagreed, so the complaint has been passed to me.

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've decided not to uphold Mrs M's complaint. I'll explain why.

warranty, service plan and VRI policy

Mrs M maintains that during the sale, they were told by the Arnold Clark agent they could have the warranty and service plan free of charge. Mrs M says that she was told it would appear on the paperwork that the related costs for these products had been charged. They later discovered it wasn't free.

Arnold Clark says it has found no record of any promise being made to offer these products free of charge. But as a gesture of goodwill it has since refunded the cost of both products to Mrs M. So I need not consider the matter further as, even if the allegations were proven, there is no loss for us to remedy.

Mrs M also claims she shouldn't have been sold the VRI policy as she doesn't drive or have a licence. The policy was cancelled two months after it was taken out and, in any event, Arnold Clarke has since returned all the premiums paid towards the policy. So, again, there is no material loss.

was Mrs M aware she was taking out a personal loan in her name?

Mrs M says she went to Arnold Clark expecting to be a mere guarantor for A, but came out with a personal loan and a vehicle in her name. So the issue I need to consider is whether Mrs M was or ought reasonably to have been aware of what she was signing up to.

Arnold Clark has provided copies of the documentation completed at the point of sale, and says that Mrs M initially completed an order pack on 21 February 2017 to be proposed for hire-purchase finance. But this proposal wasn't accepted. One week later, Mrs M was subsequently able to secure the finance on a personal loan basis, and signed the credit agreement to this effect.

Given that the basis of the finance changed from a hire-purchase agreement to a personal loan in the initial stages, I think this would've most likely been discussed with Mrs M at the time, as I think she would've at least been informed about how the vehicle was being financed.

Mrs M further signed a declaration to confirm that she had been provided with an initial disclosure document, pre-contract credit information, and the key features of the credit agreement. The declaration also confirmed that the agent at Arnold Clark explained the payments Mrs M would have to make, along with a finance proposal report confirming who the application for finance had been placed with. Mrs M has not disputed ever receiving these documents, so I think it's likely they would've been provided as reflected in the declaration.

The documentation I've seen relating to Mrs M's finance agreement also clearly sets out that it is a personal loan being taken in her name. There is no mention of her being a guarantor, and nor is there any mention of A being a party to the loan. Mrs M also completed a direct debit mandate for payments to be taken from a TSB account in her name. And all of the documentation has been signed by Mrs M. But she says that she didn't look at any of the documentation, or know what she was signing, as she didn't have her reading glasses.

As Mrs M was signing legal documents, it was her responsibility to make sure she understood what it was she was signing. And if she didn't have her reading glasses, she could've opted to sign the paperwork at a later date when she did have them. Even if she thought she was only guaranteeing the loan, I think it's reasonable to expect her to read the agreement carefully to ensure the details were correct, not least as a guarantor would've remained legally liable for the debt in the event that A stopped making payments.

As Mrs M didn't raise any concerns at the time, I consider it was reasonable for Arnold Clark to believe she was happy to go ahead. If Mrs M thought she was only acting as guarantor for this loan, or if she had any other concerns about it or the way it was set up, I would have expected her to say so at this time. She didn't, and I'm satisfied this was because Mrs M accepted she had taken out the loan and was responsible for it.

I note that A is unhappy that she was not named as the owner of the car, and that this may have meant she was driving it without the proper insurance. But I do not consider this to have been the responsibility of Arnold Clark. Given the obligations of all drivers under the Road Traffic Act 1988, it was for A to make sure she gave accurate information when applying for insurance, which includes checking the relevant documentation to make sure she was in fact the owner rather than registered keeper of the car before choosing to take insurance on that basis.

identification used to take out the loan

The other focus of Mrs M's complaint is that Arnold Clark used A's driving licence and passport to satisfy the identification requirements of the loan. A feels Arnold Clark acted fraudulently in doing so, as the finance wasn't in her name. She says that the finance agreement should be declared void, and that Mrs M should get to keep the car. A also raised other concerns regarding the sales process, including the fact that she was able to trade in a car that wasn't held in her name.

As Mrs M doesn't hold a driving licence or passport, she used her bank cards and bank statement as proof of address. Different people from Arnold Clark have given varying accounts of whether they would require a driving licence or passport in order for the finance to be approved. But I note that the finance company wrote to A on 15 June 2017 explaining that they didn't actually receive her licence or passport as part of Mrs M's finance application. They also confirmed that they do not require a licence for the finance to be approved, and that a debit card can be used for identification purposes.

Arnold Clark says that they would've asked for A's licence and passport in order to take the vehicle for a test drive. But I also note that the sales declaration for the loan states that a licence has been seen and is valid. I cannot say for sure whether Arnold Clark followed all of their internal processes as they should have, or indeed for what purpose they used A's licence. And whether or not they should've allowed A to trade in a vehicle that wasn't in her name would fall outside the remit of what I can consider as that's about motor retail activities not regulated financial services. But in any event, I'm satisfied that Arnold Clark fulfilled the identification requirements, as set out by the finance company, with Mrs M's bank cards.

Even if Arnold Clark hadn't fulfilled the requirements, or should never have proposed Mrs M for the finance in the first place, it wouldn't be the case that the agreement would be declared void. It isn't within Arnold Clark's remit to void a contract to which it's not privy, as only the other contracting party, the finance company, can take such action.

Mrs M has also proposed that Arnold Clark repay the loan to the finance company instead. But in any event, we wouldn't ask a company to do this if it means the customer would get to derive some form of betterment as a result, such as a car that can be sold, as this wouldn't be fair. It appears that A no longer has the vehicle that was the subject of Mrs M's finance agreement, which Arnold Clark suspect has since been traded in again. So if Arnold Clark were to repay the loan as Mrs M has requested, she would then be in a better position than if the finance had never happened, which wouldn't be fair.

I also note that Arnold Clark have in fact made numerous offers to try to end the finance agreement and offer a refund of the original vehicle exchanged if Mrs M were to return the new vehicle. They also offered to refund three months' worth of payments, despite the fact that Mrs M and A had use of the vehicle over that time.

Given the circumstances, and given that Mrs M is complaining that she shouldn't have been sold the loan in the first place, I think the offer Arnold Clark has made is reasonable. But neither Mrs M nor A chose to accept, which means the agreement will remain in force and Mrs M will continue to be responsible for the repayments.

my final decision

My final decision is that I do not uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 February 2018.

Jack Ferris
ombudsman