complaint

Mr T complains that Arnold Clark Automobiles Limited ("Arnold Clark") led him to believe he was entering into a different type of loan agreement than they eventually sold him. He says he was therefore mis-sold the finance.

background

I issued my provisional decision in June 2019. I explained why I was planning to uphold Mr T's complaint. An extract of that provisional decision is set out below:

In June 2015 Mr T took receipt of a new vehicle. He thought he'd financed the vehicle through a Personal Contract Purchase (PCP) agreement which would allow him to voluntarily terminate his contract when he'd paid half of the sum due. But he was disappointed in 2018, when he went to look at new car options, to be told his agreement was a fixed sum loan with no rights to voluntarily terminate the deal.

Mr T complained to Arnold Clark. He explained that the document entitled "a basic explanation of your finance proposal" that he'd been given at inception, showed he was looking to finance the vehicle under a PCP deal and he said they'd therefore mis-sold him a fixed sum loan that he wouldn't have accepted if he'd been told about it at the time.

But Arnold Clark didn't agree with Mr T. They said the contract he'd signed was for a fixed sum loan and this was clearly shown on the documentation he'd been given. They said that he had been advised about his 14 day cooling off period within which he could've withdrawn from the arrangement but they noted that he hadn't chosen to do so. Arnold Clark didn't support Mr T's complaint.

So Mr T referred his complaint to this service and our investigator provided his opinion. He noted that the vehicle order summary document set out the original finance proposal but explained that "…the type of finance product you are proposed for may change during the proposal process". He was happy that this was part of the initial proposal before the transaction was agreed. He noted that Arnold Clark did subsequently propose a PCP deal but this deal was declined by the finance provider. But the provider was prepared to offer a fixed sum loan and the investigator; having reviewed the final agreement and finance documents was satisfied this was for a fixed sum loan and not a PCP. Whilst he understood that Mr T didn't think this was the case he didn't think it would be fair to suggest Arnold Clark had done anything wrong as the documentation was clear.

But Mr T was still dissatisfied. He said the vehicle order agreement had also set out that the car was to be financed under a PCP. He said he and the business signed this document to agree it was a legally binding agreement between them. So he couldn't understand why the adjudicator would suggest it wasn't mis-sold. He said he hadn't been made aware that a PCP application had been made for him and rejected and he couldn't be expected to know the difference between the financial products offered.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I don't currently agree with the investigator's view and I'm expecting to uphold this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The relevant law says that the finance product should not have been misrepresented to Mr T. If he was told something that was incorrect, and if he relied on this information when deciding to enter into the contract with Arnold Clark, then I would think it fair and reasonable that they were responsible for this and I would ask them to put things right.

was Mr T told something that was incorrect?

My starting point is the contract information. I can see that the finance agreement signed by Mr T on 3 July 2015 was for a "fixed sum loan" and I've been provided with a document entitled "your credit agreement explained" that also sets out that the finance is for a fixed sum loan. A further form called "pre contract credit information" explains who will provide the credit and again it explains this is a fixed sum loan. The last two documents aren't signed or dated but I think it's fair to suggest and probably the case, that these were provided to Mr T at the time he signed the fixed sum loan agreement on 3 July 2015.

The proposal documents are just that – a proposal. And whilst I understand they refer to a PCP deal, I also note that they explain the finance product may change. I can see Arnold Clark initially discussed this with the finance provider but the provider preferred to offer a fixed sum loan. I don't think there's anything wrong with that. Whilst Arnold Clark may have proposed this as a way forward it was for the finance provider to make a commercial decision about the type of credit they would offer and then for Mr T to decide whether he was happy with that.

But Mr T says the subsequent vehicle order agreement that was created on 28 June 2015 set out that the finance was to be a PCP. I've reviewed this document and I agree. It explains that the finance product is a "manufacturer's PCP". There's a breakdown of the balance due to the finance company and the instalment premiums. It's signed by Mr T and Arnold Clark and it's explained that this is a binding agreement.

I've also seen a screen shot from Arnold Clark's system taken on 29 June 2015. This says that a "manufacturers PCP" agreement has been proposed and lists the status as "accepted". The agreement number listed is the same agreement number that was subsequently used by the finance provider for the fixed sum loan agreement they eventually asked Mr T to sign on 3 July 2015, a few days later. So it seems that four days before taking receipt of the car, Mr T signed an agreement with the business that explained the finance was a PCP and set out how that PCP would work.

So I asked Arnold Clark to explain why the vehicle order agreement and the proposal screen seemed to suggest a "manufacturer's PCP" deal had been agreed and accepted.

They said the "basic explanation of your finance proposal" form explained the manner in which a proposal is initially considered. Mr T received this prior to the proposal being made and they said the finance company would only accept Mr T's proposal on the basis of a fixed sum loan.

They said that before Mr T signed the fixed sum loan agreement he was provided with two forms:

- *Your Credit Agreement – Customer Explanation*
- *Standard European Consumer Credit Information (SECCI)*

They said these documents fully explained the type of finance agreement he was entering into and that the screen print from their internal systems was only based on the initial proposal and wouldn't reflect that the finance company would only accept a fixed sum loan.

Arnold Clark say the PCP proposal was rejected by the finance provider. If that was the case I would've expected to see more communication between them; the finance provider and Mr T. But I haven't been provided with that.

They say that the screen print wouldn't reflect the finance company's decision but it's clearly listed as "accepted" and that's not been explained. In the absence of any further clarification it would seem probable that the PCP had been accepted and I'm supported in that finding by the fact that the agreement number wasn't changed when the fixed sum loan was set up. I'd have thought it most likely that, if this were a different finance agreement, it would have a different, unique, identification number. Otherwise it would be difficult to distinguish the PCP proposal from the fixed sum loan agreement and that could lead to mis-communication.

I think that, regardless of any paperwork presented on the day, Mr T would've been expecting to be financed through a PCP agreement because he'd already signed, only a few days earlier, to say he agreed to that and the document was binding on both him and the company.

It wouldn't be sensible to ask Mr T to agree to be bound by an agreement that included a provision for PCP finance if there was a chance this could change. I've not seen evidence that Arnold Clark communicated a change in the finance with him at any point until he signed the final agreement with them on the day.

So I think it's most likely that Mr T was told he would be financed through a PCP agreement and I'm persuaded that, if he had been correctly advised this was a fixed sum loan, he wouldn't have entered into the agreement. I say that because it's clear he anticipated voluntary termination when he visited the dealership before his agreement ended and it's clear he's upset about losing the opportunity to hand the car back early. He's also explained that he has previously voluntarily terminated a PCP finance agreement and has had several PCP deals in the past. His current deal on another car is a PCP.

So I think it's most likely he would have been considering that PCP option here as well. And it's clear his previous preferred finance option was PCP and not a fixed sum loan so I think it's most likely he'd have wanted a similar deal this time.

to put things right

Mr T tells me he has now sold the car. I've seen evidence he received £5,500 for it and settled his finance agreement for £6,120.70. He had to fund the £620.70 difference from his own funds.

It's clear to me this wasn't the deal Mr T wanted or would've accepted. So had Mr T not sold the car I would've asked Arnold Clark to settle the agreement on his behalf and take his car back. They'd have been able to use the proceeds from the sale of the car to offset the cost of settling Mr T's agreement.

But as the car has been sold and Mr T has settled the finance himself, I think the best option now is for Arnold Clark to reimburse him the £620.70 he's had to pay from his own funds to release himself from the deal he didn't want.

Mr T has been inconvenienced by the experience and I think it would be reasonable, in the circumstances, to ask Arnold Clark to pay him £300 in recognition of this.

He would also have wanted to voluntarily terminate his deal and didn't want to keep his current car for so long. I think it's reasonable to suggest this has further inconvenienced him and in recognition of that I think it would be fair to suggest Arnold Clark pay Mr T an additional £200.

But Mr T has had the continued use of the car and it seemed to have been functioning correctly. So it wouldn't be fair for me to suggest Arnold Clark return any of the finance payments he's made.

my provisional decision

Overall, I'm expecting to ask Arnold Clark Automobiles Limited to:

- *reimburse the £620.70 Mr T has had to fund to release himself from his finance agreement*
- *pay him £500 to compensate him for the distress and inconvenience caused*

Arnold Clark provided their opinion on my decision. They said that if Mr T had been given a PCP deal his right to voluntary termination would've been when half of the total sum due was paid. They said that would've been after 41 monthly instalments had been paid which would have been on 3 December 2018.

They explained that the dealership had offered to do this. But they said Mr T had declined and had sold the car himself, later, taking receipt of his new car on 24 December 2018.

So they said if Mr T had taken up their offer he would have been able to achieve the same outcome but without the need to incur a charge of £620.70 to settle his finance.

And they went on to dispute the additional £200 compensation I'd suggested for inconvenience. They said I'd explained this was because he "*didn't want to keep his car for so long and would've been inconvenienced"* and they explained that, as they had offered to allow him to exchange on 41 months he hadn't needed to keep his car for too long.

Mr T was happy with the provisional decision but he had a different view of the dealership's offer to allow him to hand his car back early. His recollection was that they wanted to sell him another car, not hand his back. He couldn't understand why they would think he would be prepared to go back to them nine months after he'd raised a complaint against them to agree a deal on another vehicle.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm not persuaded that any offer from the dealership to allow Mr T to return his car early was the same as being allowed to voluntarily terminate a finance agreement as he would've been able to under a PCP. I've not seen the offer in writing but I can see that Mr T refers to it in an email to the dealership on 12 may 2018. I think the detail of it was, from the evidence I have, never made clear to Mr T. It appears that Mr T thinks it may have been an offer to part exchange his vehicle and if that were the case I wouldn't think it comparable to the voluntary termination rights he would have had under a PCP whereby he could've simply handed the car back.

And regardless, the usual remedy when there's been a misrepresentation is to put the consumer back in the position he would've been in had the misrepresentation not been made and not to put him in the position he'd have been in had the misrepresentation been true.

So I'm not persuaded to change my decision that Arnold Clark should reimburse the money Mr T paid to settle his finance agreement.

I'm also not persuaded that I should change my decision on the additional inconvenience payment either. I don't think there was ever any detail behind the offer to settle on 41 months. I think it's clear that Arnold Clark have always disputed that a PCP was offered and if they were really prepared to offer a voluntary termination the complaint would not have been necessary.

So my provisional decision remains the same.

my final decision

For the reasons I've given above I uphold this complaint and tell Arnold Clark Automobiles Limited to:

- reimburse the £620.70 Mr T has had to fund to release himself from his finance agreement
- pay him £500 to compensate him for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 August 2019.

Phil McMahon
ombudsman