DRN-5013776

Financial Ombudsman Service

The complaint

Miss S is unhappy that she's being held responsible for the outstanding balance after a car supplied to her under a hire purchase agreement with Advantage Finance Ltd was returned to them.

What happened

In October 2016, Miss S was supplied with a used car through a hire purchase agreement with Advantage. The agreement was for £4,000 over 54 months; with 53 monthly payments of £141.76 and a final payment of £316.76. Miss S says she took this agreement out under duress from her ex-partner as she was in *"an abusive and controlling relationship"* and when they split, he failed to maintain payments to the agreement. This resulted in the agreement going into arrears.

Miss S also says the car was defective and, in July 2019, she entered into a voluntary surrender ('VS') and returned the car to Advantage. This resulted in her being pursued for an outstanding balance of £3,244.56.

Miss S complained to Advantage, but they didn't uphold the complaint. They said they were unaware of the situation Miss S was in when the agreement started, and that, as Miss S signed the VS forms, she was liable for the outstanding balance. Unhappy with this, Miss S brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the agreement was taken out in Miss S's sole name, that the payments were collected from a bank account in her sole name, and that she signed the VS forms. As such, the investigator thought Miss S was reasonably aware that she would be solely responsible for making payments to the agreement. While the investigator acknowledged the situation Miss S was in when the agreement was taken out, they didn't think this changed the facts.

Advantage had offered to reduce the outstanding balance by 50%, and put an affordable payment plan in place, which the investigator thought was reasonable in the circumstances. So, they didn't think Advantage needed to do anything more.

Miss S didn't agree with the investigator's opinion.

I issued a provisional decision on 3 September 2024, where I explained my intention to uphold the complaint. In that decision I said:

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The basic facts of this case aren't disputed – the agreement was taken out in Miss S's sole name, the payments were collected from her account, and she signed the VS forms. It's also

not disputed that Miss S didn't make Advantage aware of her domestic situation at the outset of the agreement, or that the car was intended for the sole use of her now ex-partner.

In considering this case, I've obtained some additional information from Advantage about the process they followed when Miss S returned the car. I've noted the agreement that Miss S signed stated:

"TERMINATION: YOUR RIGHTS
You have the right to end this agreement. To do so, you should write to the person you make your payments to. They will be entitled to the return of the Goods and to half the total amount payable under this agreement, that is £3915.02. If you have already paid at least this amount plus have taken reasonable care of the Goods, you will not have to pay any more."

This clause is known as voluntary termination ('VT'). It differs from VS because with VS the goods are sold at auction and the sale proceeds are applied to the outstanding balance. If this still leaves an outstanding balance, then the customer remains liable for this.

The Statement of Account supplied by Advantage shows that, between the start of the agreement and VS, Miss S had paid a total of £4,415.48. This is more than the £3,915.02 required under the above stated clause. As such, Miss S was eligible for VT.

When Miss S asked about returning the car, Advantage sent her a letter dated 22 July 2019, asking her to complete a form. While this explains the possible outcome of a VS i.e., that Miss S may end up liable for a shortfall, it doesn't mention that she had the option to VT.

Advantage have acknowledged they never discussed VT with Miss S because she "advised that the vehicle was a non-runner [and] she would have incurred significant charges to return the vehicle to a running state." It's not disputed that, under the terms and conditions Miss S agreed to, she would be responsible for damage to the car outside of normal fair wear and tear. Which would include returning the car to a running state. However, Miss S also complained that the car was defective.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Advantage are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must confirm to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Advantage can show otherwise. So, if I thought the car was faulty when Miss S took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Advantage to put this right.

I've not seen anything to show me that Advantage took any steps to show that the reason the car wasn't running wasn't due to a fault that was developing or present when the car was supplied, or that it wasn't as a result of the car being insufficiently durable. As such, I'm not satisfied that Advantage making the assumption that Miss S saying the car wasn't running would mean that she would have to pay significant charges was correct.

What's more, I haven't seen anything to show me that the cost of repairing the car to a running state (if Advantage weren't responsible for this under the CRA), and the cost of any

damage to the car that fell outside of normal wear and tear guidelines (as determined by the British Vehicle Rental and Leasing Association ('BVRLA') guidelines) would've been more than the outstanding balance on the agreement when the car was returned.

Given this, I'm satisfied that Advantage failed to properly deal with Miss S's request to return the car by not providing her with all her options so she could make a fully informed decision. Therefore, I intend to ask Advantage to do something to put things right.

Without evidence, such as a copy of an independent engineer's report that states that the issues that made the car a non-runner were (1) not present or developing at the point of supply and/or (2) were not as a result of the car being insufficiently durable when it was supplied; I'm not satisfied that Advantage can charge Miss S for the repairs to the car.

What's more, without a report clearly stating damage to the car that falls outside of the BVRLA fair wear and tear guidelines, taking into consideration that the car was over six years old and had done 59,110 miles (according to the MOT record for 12 August 2016) at the point of supply; I'm also not satisfied that Advantage can charge Miss S for any damage to the car when it was returned.

As such, I intend to ask Advantage to:

- *recalculate the agreement as a VT in July 2019; and*
- *remove any adverse entries relating to this agreement from Miss S's credit file from the date of the VT onwards.*

If Advantage are able to provide an independent engineer's report (or similar evidence) and/or the end of contract damages report (as referred to above); and these show that Miss S owed repair and/or damages costs more than the amount outstanding on the agreement when the VS was processed, then the VS stands.

However, if the repair and/or damages costs is less than the amount outstanding when the VS was processed, then Advantage should process the VT and adjust the amount outstanding accordingly. For clarity, if Advantage are unable to provide any evidence that Miss S was liable for repair costs and/or end of contract damage charges, then I'm not satisfied they are able to charge Miss S anything upon VT, and they should write to her to advise her this is the case.

Responses

Miss S accepted my provisional decision, but Advantage didn't. They said that, when Miss S was supplied with the car it had done 59,110 miles, and when it was collected in July 2019 it had done 74,222 miles. As such, they said that, given how long Miss S had the car and the mileage she'd done, they didn't think any problems with the car on collection would have been present or developing at the point of supply.

Advantage also quoted details from the BVRLA fair wear and tear guidelines that said *"manual transmission – a noisy or sticky clutch and gearbox as well as excessive wear and clutch slipping are signs that you need to get the vehicle checked before return."* Advantage also said that the car wasn't roadworthy upon return as it required a replacement clutch. Therefore, they felt Miss S would be responsible for this cost.

Finally, Advantage said the car sold at auction for £220, when its estimated value, according to industry standards, was £3,000.

What I've decided – and why

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

Advantage have explained that the issue that made the car a non-runner when it was returned to them was that it needed a new clutch. I'm in agreement with them that, had the clutch been at the end of its normal life when the car was supplied to Miss S, she would not have been able to drive the car for almost three years and around 15,000 miles. Given this, and based on what is very limited evidence, I can't conclude the car was of an unsatisfactory quality when it was supplied to Miss S. And an independent engineer's report is not required.

However, while the BVRLA guidelines do state that a worn clutch should be checked before return, they don't say that a worn clutch falls outside of fair wear and tear – especially given the age and mileage of the car. What's more, Advantage haven't provided any post-collection report that states the condition of the car when it was collected, and how much any repairs would cost.

Advantage collected the car in July 2019. The MOT record for 22 July 2019 shows that the car initially failed due to the front windscreen washer providing insufficient liquid. This was fixed, and the car passed another MOT the same day, with a minor defect of an inoperative number plate light, and advisories that the presence of child seats meant the rear seat belts couldn't be fully inspected.

While the clutch isn't something that is checked on an MOT, the car must be running. As such, if the clutch was worn to the point the car couldn't be driven, I think it's highly unlikely that the car would have passed an MOT in July 2019. What's more, while Advantage have said the clutch needed replacement, they haven't provided any evidence this was the case.

Taking all this into consideration, I'm not satisfied that the clutch, while it would be road worn, needed replacement when the car was collected by Advantage. So, I'm still not satisfied they acted reasonably by failing to offer Miss S VT in July 2019, even though she was eligible for this. As such, I'm satisfied they should do something to put things right.

Putting things right

As I've said above, Advantage haven't provided any evidence the clutch needed replacement when the car was collected, or that this or any other damage to the car fell outside of normal wear and tear guidelines. The MOT failure for what was a relatively minor issue is to be expected in a car of this age and mileage, and certainly doesn't justify not offering VT. As such, I'm not satisfied that Advantage can charge for any damage or repairs to the car, even taking into consideration that the car sold for less than was expected at auction – this is one of the risks of selling a car at auction.

Therefore, Advantage should

- recalculate the agreement as a VT in July 2019, with nothing more to pay from Miss S; and
- remove any adverse entries relating to this agreement from Miss S's credit file from the date of the VT onwards.

My final decision

For the reasons explained, I uphold Miss S's complaint about Advantage Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss S to accept or reject my decision before 10 October 2024.

Andrew Burford
Ombudsman