

The complaint

Mr W complains that he was misled into believing his conditional sale agreement with Clydesdale Financial Services Limited trading as Barclays Partner Finance ("Barclays") had no mileage limit, so there would be no excess mileage charge when he gave the car back at the end of its term.

What happened

Mr W entered into a conditional sale agreement with Barclays in July 2016. This was a four year agreement to acquire a car. At the end of the agreement period in 2020 Mr W returned the car rather than making the final payment and keeping it. He then complained to Barclays about the excess mileage charges applicable after he had returned the car. This complaint was answered at the time and was referred to our service.

Whilst we were looking into this, Mr W wanted to clarify his complaint to say that he had been mis-sold the agreement and misled into taking it, as he believed the mileage allowance was supposed to be unlimited, as this was what he'd asked the dealership to quote him for.

When our service answered the original complaint in November 2020, our answer said that the excess mileage had been calculated fairly and confirmed to him that if he wished to complain about the agreement and the mileage amount being mis sold to him, that was a different complaint that he would need to raise separately with Barclays in the first instance.

He raised this issue with Barclays in December 2020, but they didn't provide him with an answer. He re-raised it with them in March 2023, and they gave him their final response letter (FRL) in April 2023. They didn't uphold his complaint around the mis selling issue although they did uphold some separate customer service elements, recognising that they should have responded to him back when he raised this complaint in 2020.

Unhappy with this, Mr W brought this complaint to our service in April 2023. An investigator here investigated it and did not uphold it. They said that Mr W had signed the agreement confirming that the mileage limit for the agreement was 8,000 miles per annum, and confirming what charges were applicable were he to exceed this mileage.

On this basis, they were satisfied that if he had expected an agreement with an unlimited mileage allowance, he could have declined the agreement at that point. As he had signed the agreement to accept it at that time, they didn't feel Barclays needed to do anything further.

Mr W didn't agree with this view and asked for an Ombudsman to make a final decision.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for

broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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. Mr W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Mr W has complained that the agreement was mis sold to him. He says he asked for an unlimited mileage agreement, similar to one he says a friend of his had taken out with the dealership. This is a complaint about misrepresentation. When considering misrepresentation, I'm looking at two things – whether there was a false statement of fact and, if there was, whether it was the false statement of fact that induced Mr W to enter into the agreement for the car. I need to be satisfied that both parts of this test are met to uphold a complaint about misrepresentation.

Mr W has said that he told the salesperson at the dealership that he wanted an unlimited mileage contract, similar to one his friend had got from the same dealership. At the end of his four year agreement, he had covered around 20,000 more miles than permitted in the contract, and so was charged for this excess mileage as per his agreement.

I've thought about this, and if this conversation had occurred, what impact this had. However, I'm not persuaded that this potential conversation was a false statement of fact which induced Mr W to enter into the agreement.

The agreement and the pre contract detail themselves are very clear about the mileage limits and charges. On the first two pages of the pre contract information, it confirms that if he had decided to make the final repayment to keep the car, that would be all that he was required to pay, so no excess mileage charges.

But if he decided to hand the car back at this point, which he chose to do, excess mileage charges are explained at the top of the second page. They are under the bold heading "Excess mileage charges" and explain that Mr W was limited to 8,000 miles per annum, before paying the excess mileage charge for any further miles he drove. The section went on to outline what the charge would be in pence per mile for any excess mileage driven.

The details are then repeated on the first page of the conditional sale agreement itself, in a section titled "Mileage limit and excess mileage charge".

Even if Mr W had believed following a conversation with a salesperson that he was going to get an unlimited mileage agreement, he is responsible for reading the agreement before agreeing to accept it, and I am satisfied that the agreement is very clear on these charges. If Mr W expected an unlimited mileage contract, I'd have expected him to check the section on the agreement which he signed which was titled "Mileage limit and excess mileage charge".

Mr W has said that he didn't see this and it's small and he'd been told it was unlimited mileage so many times that he believed it. But it is a consumer's responsibility to read and accept the paperwork before signing the agreement, so I can't agree with this viewpoint. Further to this, if having unlimited mileage was so key to Mr W, it would be reasonable to expect him to have confirmed for himself that the agreement he was signing included this unlimited mileage.

I've also not seen any evidence of him being told he was getting an unlimited mileage agreement. Instead, he's provided screen shots of texts which he says show him asking the

salesperson for an unlimited mileage agreement. This is very different to being told he was getting one. From the test for misrepresentation discussed above, the first part is that Mr W would need to have been told he was getting an unlimited mileage contract, the “false statement of fact”. But I’ve seen no evidence of this.

But ultimately, when signing an agreement for a £19,000 car, it’s reasonable to expect Mr W to have read the paperwork. The details of the mileage charges were not buried in any small print but were outlined clearly in the front pages of both the agreement, and the pre contract information.

As such, I can’t agree that even if he had been given a false statement of fact about getting unlimited mileage, that this persuaded him to enter the contract. The agreement he was provided and signed is very clear on the mileage allowance and excess mileage charges, so at this point, this should have led him to question his own understanding of the agreement he was signing up for.

I’m satisfied that even if a salesperson had said something wrong or confusing, Barclays have provided clear paperwork with all the details on to correct any confusion before he entered the agreement. This would have allowed Mr W to recognise that the deal was not what he was expecting, and to decide not to go ahead. He didn’t do this and chose to go ahead with the agreement.

As such, I can’t agree that this agreement was mis sold to Mr W. Barclays originally offered Mr W £100 compensation for their customer service and upheld that element of his complaint. I am unaware whether Mr W accepted that offer, but he may wish to do so now, by contacting Barclays, if he didn’t do so already. I am satisfied that this was a fair offer by Barclays to recognise their error in not answering his complaint originally back in 2020. But I don’t agree that the agreement was mis sold to him, so I won’t be asking Barclays to do anything further.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 5 October 2023.

Paul Cronin
Ombudsman