

The complaint

Mr J complains that Listers Group Limited, trading as Listers Toyota (who I'll call Listers) misrepresented a finance agreement they brokered for him.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Mr J, but I agree with the investigator's opinion. I'll 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.

Misrepresentation is an untrue statement of existing fact or law made by one party to another party that induced that party to enter into a contract. Mr J says there were several false statements of fact provided by Listers when they brokered his finance agreement for him. He says the Annual Percentage Rate (APR) was wrong, the annual mileage allowance was incorrect, and the part exchange value was false.

Mr J's complaint email to Listers (5 March 2023) explained that he raised the issues with their customer representative before he took receipt of the car. It seems, therefore, that he was still prepared to take receipt of the vehicle even with the misrepresentations he says had been made. So, I don't think he was induced to enter into the contract because of the misrepresentations he suggests were made and I don't, therefore, think the test I've set out can be said to have been met.

But, in case I'm wrong about that, I will go on to consider the misrepresentations that Mr J says were made.

The APR

The APR calculation is a complicated one, it's set out in the Financial Conduct Authority's (FCA) Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) at MCOB 10.3.1A. Our Service wouldn't usually calculate or check APR's: we'd expect the business's auditors to do that, and we understand that the calculation is automated.

Mr J has supplied his own calculation of what the APR was, but he's not used the correct calculation, and I'm not persuaded I have sufficient information to suggest the APR calculation that has been applied is wrong.

The total amount payable that is shown on the finance agreement includes a manufacturer's deposit contribution of £1,400 that is not referenced on the Pre Contract Credit Information (PCCI). That deposit has no bearing on the amount Mr J had to pay. His repayments were calculated on the total amount of credit that was to be supplied after the deposits were deducted from the sales price and the interest was added.

I can understand Mr J's confusion over Lister's explanation of the "Total Amount Payable" given in their final response. They say that amount is calculated by adding "A" (the cash price of the goods) to "B" (the deposit) and then to "C" the interest payable. That, as Mr J has correctly pointed out, would lead to a Total Amount Payable of over £34,000. But the correct calculation is to add the total credit £21,422.61 (which should be "A") to the deposit ("B") and then to the interest payable "C". That calculation generates a Total Amount Payable of £29,746.91 which is set out correctly on the original finance agreement.

So, I'm not persuaded that the finance agreement calculations were misrepresented to Mr J.

The annual mileage allowance

The hire purchase agreement that Mr J signed explained that he was entitled to drive 8,000 miles but Mr J says he was told that would be 10,000 miles.

Mr J has explained that he queried the PCCI as it suggested he would be entitled to 8,000 miles per year and not 10,000 miles. But the next day he signed the finance agreement in which the mileage was listed as 8,000 per year (28,000 over the course of the 42 month agreement). I think it's likely Mr J would have been on high alert to check the mileage allowance listed on the final finance agreement he was committing to. On balance, I'm persuaded the evidence suggests an allowance of 8,000 per year was agreed.

And, regardless, Listers accepted that there had been some confusion over the mileage, and they offered a payment of £408.40 which they said would have been the difference in the future value of the car if the 10,000 allowance had been applied. That seems to me a fair resolution in the circumstances, and I'm not asking Listers to take any further action in that regard.

The part exchange

The part exchange valuation agreed in October 2022 was reduced by £500 when the finance agreement was agreed in February 2023. I don't think that was unreasonable as Mr J had continued to use the car in the interim and its value would have been likely to have depreciated. And, as I've already explained, I don't think that would suggest a misrepresentation as Mr J raised the issue before he took receipt of the vehicle and he still proceeded with the deal. That suggests any misrepresentation that may have occurred (and I don't think one did) didn't induce him to entering the agreement; he was prepared to do so regardless.

Ultimately, I'm not persuaded the agreement was misrepresented to Mr J and I'm not asking Listers to take any further action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 29 January 2024.

Phillip McMahon
Ombudsman