complaint

Mr T complains that after he voluntarily terminated a hire purchase agreement, FGA Capital UK Limited (FGA) is unfairly asking him to pay excess mileage charges. He says that this is contrary to section 100 of the Consumer Credit Act 1974 ('the Act').

background

Mr T entered a hire purchase agreement with FGA to purchase a car in July 2011. In December 2013 Mr T voluntarily terminated the agreement. FGA advised that he remained liable for £58 damage to the car and £1,846.47 in excess mileage charges.

Mr T accepted that he was liable for the damage charge and sent FGA a cheque for £58, advising that the payment was in full and final settlement. The business did not inform Mr T that it had not accepted the payment as settlement of the agreement but continued to pursue him for the outstanding excess mileage charge.

Our adjudicator did not recommend the complaint should succeed. She considered that the excess mileage charge was in accordance with the terms and conditions of the agreement, therefore she concluded that Mr T was liable for the additional mileage charges.

Mr T disagrees with our adjudicator's assessment. In summary, he says that the excess mileage charge is not in accordance with section 100 of the Act. This complaint has been passed to me for final determination.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I do not uphold the complaint.

Mr T does not dispute that he was liable for the £58 damage charge and he has already sent FGA this payment. However, Mr T says that the excess mileage charge is invalid as he had paid over 50% of the finance agreement and in accordance with the Consumer Credit Act; he has nothing further to pay.

Section 100(4) of the Act merely says that reasonable care must have been taken of the goods; I consider that in addition to damage beyond wear and tear, mileage limitation is also a fair measure of what is 'reasonable care' of a car. Therefore, it follows that I do not consider excess mileage charges to be contrary to the Act.

I am satisfied that the hire purchase agreement which Mr T has signed clearly states an excess mileage charge of 12p per mile will be payable should he exceed 27,000 miles per year. I am also satisfied that Mr T would have had a fair opportunity to inspect the hire purchase agreement before agreeing to be bound by its terms. I do not consider this particular mileage limitation term to be unfair, and had Mr T been unhappy with it he could have decided not to enter the agreement.

Overall, I am not satisfied that the charges are unreasonable or contrary to the Act. I also agree with the adjudicator that the charges have been fairly applied. Whilst I note that FGA did not inform Mr T that it had not accepted his cheque in full and final settlement of the agreement; I do not consider that there are any grounds for me to instruct FGA to waiver the additional mileage charges. It follows that I have no grounds to instruct the FGA to pay any legal costs incurred by Mr T, pursuant to his complaint.

I appreciate that Mr T will be disappointed with my decision. However, he does not have to accept my findings and may pursue this matter by alternative means, such as court, should he wish to do so.

my final decision

My final decision is that I do not uphold this complaint.

Karen Dennis-Barry
ombudsman