DRN-3128017

The complaint

Mr A has complained that Vauxhall Finance plc ("Vauxhall" or "the lender") was irresponsible to have agreed car finance for him in 2016. Mr A also complains that Vauxhall was responsible for the sale of the car following it being impounded because it had failed to register its interest in the car by way of an HPI marker.

What happened

In May 2016 Vauxhall entered into a hire-purchase agreement with Mr A, through an intermediary, in order for him to acquire a car. The cash price of the car was £14,604. Mr A also purchased GAP insurance at a cost of £459, so the total sale price came to £15,062. He paid a deposit of £3,300 and borrowed the balance of £11,763, which cost £1,294 in interest and charges. The agreement was for a total of £16,357. This was to be repaid by monthly instalments of approximately £230 over 35 months, with a final payment of £5,022. (I've rounded figures to the nearest pound.)

Mr A had the option of voluntarily terminating the agreement at any point and returning the car. This option would limit Mr A's total liability to £7,935 (as set out in the agreement) if he'd taken reasonable care of the car. The agreement also stipulated that once Mr A had paid £5,290 Vauxhall would not be able to take the car unless it had obtained a court order allowing it to do so.

It seems Mr A had problems making his repayments from the outset – the account history shows six returned direct debit payments within the first six months – and fell into arrears in late 2017. The account was held briefly by a third party collector in early 2019 before being passed back to Vauxhall to initiate repossession proceedings – the customer notes record that Mr A had said that he would no longer make his repayments and wanted to voluntarily surrender the car.

Vauxhall terminated the agreement on 25 March 2019, almost three years from the outset, but it made an arrangement with Mr A to take payments, which he paid from March to September. Mr A missed his October payment and on 18 November 2019 Vauxhall issued Mr A with a Return of Goods (ROG) notice. A hearing took place on 4 February 2020, Mr A attended and offered to pay £460 a month going forward. This was declined by Vauxhall and the hearing was adjourned for 28 days.

It seems from the customer contact notes that the car was impounded by the police before the next hearing, which had been set for the 3 March 2020. Vauxhall's notes record that it found out in March 2020 that the car had in fact been sold in January at auction and the buyer collected it sometime later. Vauxhall deemed the buyer to be an innocent party as the car wasn't shown as being financed on a credit reference agency search at that point, in other words there wasn't an HPI marker on the file. Vauxhall subsequently relinquished all interest in the vehicle, but Mr A was sent a letter advising him to attend court for a ROG hearing in May 2020. Vauxhall confirmed it cancelled that court hearing.

Mr A says that Vauxhall should not have entered into the agreement with him as it

was unaffordable. He explained that he was often in receipt of state benefits (jobseekers' allowance), could barely afford his living costs and his application was initially declined.

Mr A also complains that the car would not have been sold if Vauxhall had registered their interest in it (by way of an HPI marker) and he remains convinced that Vauxhall gave permission for the sale. Mr A also says that he shouldn't be held liable for any court costs that Vauxhall incurred.

Mr A said *'When my vehicle was impounded because I reported it stolen and because it didn't have insurance Vauxhall finance was contacted which is why when I went to pick my car up I wasn't allowed to do so. Vauxhall finance thought they would do things the wrong way round by granting the vehicle to be sold at auction without my permission which they did ask for in writing.'*

Vauxhall disagreed that it was irresponsible to agree finance for Mr A and it said *"We can confirm that an HPI marker was not added on the vehicle. However we are not legally obliged to do this. We were unaware that the vehicle had been sold and did not receive any proceeds from the sale. With no payment being received we prepared to apply to the court for a return of goods, when it because apparent there was no asset to repossess the order was vacated. However the solicitors who had worked on the case on our behalf charged for their time. This cost was then passed to Mr [A] which we are allowed to do."*

I understand that the proceeds of the sale (presumably minus any monies owing for tax or insurance) were paid by the police directly to Mr A. Vauxhall records the new owner stating they paid £4,422, Mr A says the refund he received amounted to about £3,000. It seems the police accepted Mr A as the legal owner of the car, and so I don't think it's appropriate for me to comment further on this aspect of the matter.

One of our investigators looked into Mr A's complaint and recommended that it be upheld because they found that Vauxhall was irresponsible to have entered into the agreement with him. However, our investigator found that Vauxhall hadn't treated Mr A unfairly regarding the repossession of the car. To put things right for him, they recommended that Mr A should only be liable for the capital he borrowed and that any interest charges or fees he paid should be used to clear the outstanding balance. They also recommended that if the refund didn't clear any remaining capital balance Vauxhall should discuss a suitable repayment plan with Mr A.

Vauxhall accepted our investigator's recommendations and confirmed that an outstanding balance would remain following the redress. Mr A didn't agree with our investigator's recommendations. Mr A said that Vauxhall didn't have his permission to repossess the car without a court order and so feels he should be refunded all his payments under the agreement, along with compensation for the stress this matter has cause him. Mr A feels very strongly that the car should not have been sold and says that he paid over £12,000 and has no car to show for it. He asked for his complaint to come to an ombudsman to review and resolve and so it came to me.

I issued a provisional decision on the 20 September 2021 explaining that I was planning to uphold Mr A's complaint in part. I agreed with the investigator's conclusion that Vauxhall was irresponsible when it agreed finance for Mr A. I also found that it didn't treat him fairly when he fell into arrears and it didn't give him clear and fair information about his account. However, I didn't have enough information to say that it had done something wrong regarding the repossession and sale of the car.

To put things right, I thought that not only should Vauxhall limit the amount Mr A owed

under the agreement to the capital he borrowed, but that it should pay him some compensation to reflect the impact its other errors had on him. I also thought it was fair that Vauxhall retain the monthly payments Mr A made under the agreement to reflect that he'd had the use of the car for almost three and a half years.

Bearing in mind Mr A had received the proceeds from the sale, I felt that the simplest way to resolve this complaint was, instead of paying Mr A a refund of his deposit and compensation, for Vauxhall to write off the outstanding capital balance and close his account. I said it should also remove any negative information about the account from Mr A's credit file and mark it as settled.

Vauxhall said that it had nothing further to add in response to my provisional conclusions and proposed redress. Mr A was unhappy with my proposals to put things right for him. He said that:

- I should recommend a refund of the monthly payments he made as this would put him back into the position he would have been in had the agreement not happened; and
- Vauxhall repossessed the car without a court order and sold it without his permission which is a breach of its terms and conditions, which say it needs a court order to recover the car; and
- Vauxhall has acted so wrongly in its actions when approving the agreement, and since, that he should be entitled to receive a refund of all his payments as well as his deposit, along with compensation for the stress this matter has caused him as it's impacted on his health and family life.

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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I want to reassure Mr A that I have carefully considered what he's said in response to my provisional decision. Having reviewed the matter again, my conclusions remain the same and I am still of the view that my proposed redress is the fairest way to put things right.

For completeness, I'll set out below my reasons for upholding Mr A's complaint. This is my final decision on the matter and it will be binding on both parties should Mr A chose to accept it.

As I'd said in my provisional decision, the credit to buy the car was granted by Vauxhall under a hire purchase agreement meaning Mr A would own the car when the credit had been repaid. Vauxhall was the owner until that point and Mr A was, in essence, paying for the use of it.

Vauxhall needed to check that Mr A could afford to meet his repayments sustainably before agreeing credit for him. In other words, it needed to check he could repay the credit out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Mr A's circumstances, and Vauxhall needed to take proper account of the information it gathered.

Vauxhall also needed to take a proportionate and considered approach to Mr A's arrears difficulties. So when Mr A fell into arrears, Vauxhall should have given him the opportunity to repay the arrears, potentially deferring payment or accepting token payments for a

time.

CONC 7.12.2(R)(3) stated that a firm must not refuse to deal with a customer who is developing a repayment plan, unless there is an objectively justifiable reason for doing so. And operating a policy of refusal is not a justifiable reason.

The regulator was also clear that firms must not put pressure on consumers to pay their debt in a single payment or pay more than they can reasonably afford and it would be unfair to pressure them to take action that adversely impacts on their financial circumstances.

CONC 7.3.10(R) stated that a "*firm must not pressurise a customer:*

(1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;

(2) to pay a debt within an unreasonably short period of time; or

(3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

The overarching requirement is that Vauxhall needed to pay due regard to Mr A's interests and treat him fairly.

In coming to a decision on this case, I thought about the following questions:

- did Vauxhall make a fair lending decision, in other words did it complete reasonable and proportionate checks when assessing Mr A's application to satisfy itself that he would be able to repay the finance in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Vauxhall provide clear, fair and not misleading information about the credit before and during the term?
- did Vauxhall act unfairly or unreasonably in some other way, for example when Mr A had difficulty meeting repayments?

Our investigator found that Vauxhall was irresponsible to have entered into the agreement with Mr A and it has accepted this finding. I have reviewed this and am in agreement with this conclusion and for broadly the same reasons our investigator explained in their view. A proportionate check was likely to have shown that Mr A wouldn't be able to meet his repayments sustainably over the term of the agreement. As I mentioned above, it seems Mr A struggled from the outset to maintain his repayments and continues to have financial difficulty, for example his rent arrears in 2019 resulted in a court order in November 2019.

I also considered whether Vauxhall treated Mr A unfairly when he had difficulty making his repayments. Vauxhall provided its customer contact records and I can see that it had frequent contact with Mr A regarding payments from the outset. As mentioned, Mr A struggled to repay his arrears having missed a payment in late 2018. A default notice was sent to him and his account was passed to a third-party debt collector that December.

By 16 January 2019 Mr A's arrears had amounted to almost £700. Vauxhall records that the debt collector visited Mr A in February 2019 and a customer note says *' The customer has also stated that he cannot really afford the asset. The agent then discussed that the asset should really be returned to the clients. The agent left his*

contact details for the customer who said he wanted to consider his options. The agent spoke further to the customer on the 12.02.2019 and reiterated that he must make an arrangement to clear the arrears in full or VS [voluntarily surrender] *the asset.'*

A customer contact record from 12 February says *'…customer was unhappy that he feels he has not been given a chance to pay. I agreed the following - He will pay £100 tomorrow (13/02) and then a minimum £500 by 18/02 and then he has ptp remaining arrears by the end of FEB. I emphasized that is his last chance and we WILL go for a ROG if any of these payments are missed or he does not VS.'*

A further note from the 20 February states: '*Customer called in to say he started a job today, he will be paid 01/03 he will pay at least £200 then he is looking at £200 a week I don't think this is affordable long term so advised him he would need to make a payment of at least £200 by 01/03 and then agree an arrangement with us.'*

A note from the 28 February states that the third-party report included that Mr A had been in contact with a national advice charity and he deemed himself to be a vulnerable consumer and as such wouldn't be making any further payments. Despite this, Mr A paid the £100 in February 2019, then £200 on 1 March, £100 on 11 March and a further £100 on the 27 March. On the 27 March it seems an arrangement was made where Mr A would pay two lots of £230 a month, which he managed in April. He paid a total of £330 in May, £460 in June and £230 in each of July, August and September.

Meanwhile, Vauxhall had terminated the agreement on the 22 March 2019.

I don't think Vauxhall treated Mr A fairly here. I can't see that it considered Mr A's means before coming to a mutually agreed repayment amount, and simply gave him the option of paying his arrears in full or voluntarily surrendering the car or else it would apply to the courts for repossession. I think the threat of repossession put pressure on Mr A to pay more than he could afford without experiencing undue difficulty. Mr A was having wider financial problems, as mentioned, he was struggling to pay his rent, which eventually resulted in a court order for repossession of his accommodation in November 2019 unless he paid over £2,000 in arrears and court costs.

Mr A has also complained that Vauxhall should not have allowed the car to be sold because he'd repaid over a third of the amount owing, he didn't give his consent for it to be repossessed and Vauxhall didn't have a court order for repossession. In its final response letter to Mr A Vauxhall said *" As the return of goods order has been granted by the County Court, we are satisfied that this is beyond the Jurisdiction of the Financial Ombudsman Service but for the avoidance of doubt we have included their details below."* I can't see from the available information that Vauxhall acquired a court order for the return of the car. It applied for one in December 2019, but the hearing in February 2020 was adjourned for 28 days without the order being granted and Vauxhall postponed the rescheduled hearing on 4 March because there was no vehicle to repossess and it vacated the 5 May hearing.

Mr A is adamant that Vauxhall facilitated the sale of the car because he says it was aware that the car had been impounded. He says that he wasn't allowed to recover his car and he was told that the police were discussing it with the finance company, and that Vauxhall gave permission for the car to be sold. Vauxhall's customer contact notes suggest it was confused as to the whereabouts of the car and were not aware that it had been sold. In the absence of any further information, I don't have enough to say that Vauxhall got something wrong regarding the repossession or the sale of the car.

As I mentioned ealier, Mr A feels very strongly on this point. However, I haven't been provided with any new information about what happened. So I still can't find that Vauxhall

did something wrong here. I do however, think that its communication on this point to Mr A was misleading and unfair.

In summary, I've concluded that Vauxhall was irresponsible when it agreed finance for Mr A, it didn't treat him fairly when he fell into arrears and it didn't give him clear and fair information about his account.

I think Mr A has lost out financially by paying interest and fees on an agreement that shouldn't have been set up and he has been emotionally impacted by his unfair treatment. Mr A says this matter caused him a lot of stress and that repaying the finance caused him to build up rent arrears which almost lost him his home. He feels that he managed to repay a large proportion of the money owed under the agreement and yet ended up without a car. Mr A says that the matter continues to impact on his health and I think Vauxhall needs to pay Mr A some compensation to reflect that.

I've set out below what Vauxhall needs to do to put things right for Mr A. It is up to Mr A whether or not he choses to accept my final decision on his complaint. If he choses not to, it would then be up to him and Vauxhall to come to an agreeable resolution together or allow a court to decide what's best.

Putting things right

Mr A wishes to have his deposit and monthly repayments refunded, along with compensation in order to resolve his complaint. Generally, where a consumer hasn't bought the vehicle under an agreement and it has been repossessed and sold, this Service's approach is to consider that the consumer ought to have their payments refunded minus an amount to reflect their usage of the vehicle over the time they had it. This is because they will usually have had some use of the vehicle and it will likely have decreased in value over this time, amongst other factors. I haven't seen anything which suggests I should not start with this general approach here, though this assumes that the lender has retained the proceeds of the sale to recoup money owed under the agreement.

Mr A paid a deposit of £3,300 and then £8,640 in monthly payments in the 41 months or so he had the use of the car. I understand that Mr A actually paid £1,800 of the deposit and the remaining £1,500 was a finance deposit allowance paid by the manufacturer. So, in effect, Mr A has paid a total of about £10,440.

There isn't an exact formula for working out what a fair proportion of Mr A's payments might be retained by Vauxhall to reflect his usage of the car. I am not aware of any problems with the car which might have impaired Mr A's use of it. I've considered the cash price of the car, the amount of interest charged on the agreement, how the agreement was structured and the likelihood of the car having decreased in value since the agreement's inception.

Having carefully thought about everything again, I've concluded as before that it's fair Vauxhall retains the monthly payments Mr A made, which amount to £8,640 in other words about £210 a month, as a fair usage charge.

The balance owed under the agreement was £5,254.36 as of the 2 July 2021. Mr A was charged £459 for GAP insurance, £1,294 in interest and £836 in overdue fees and solicitors' fees: a total of £2,589. I don't think Mr A should be liable for these charges as I think the agreement should not have been put in place. The outstanding balance should be reduced by this amount, which leaves a capital balance owing of about £2,665.

I've borne in mind that Mr A received the sales proceeds. I've also borne in mind that this matter has caused and is continuing to cause him distress. I've therefore concluded that

the fairest way to resolve this complaint is for Vauxhall to write off the outstanding capital balance (adjusted as I've set out above) instead of paying Mr A a refund of his payments above the fair usage charge or further compensation directly.

Vauxhall should also remove any negative information about the account from Mr A's credit file and mark it as settled.

My final decision

For the reasons set out above, I'm upholding Mr A's complaint about Vauxhall Finance plc and it should put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 November 2021.

Michelle Boundy
Ombudsman