

The complaint

Mr W complains that the car supplied to him through a hire purchase agreement with Mallard Leasing Limited wasn't of satisfactory quality. He also complains that Mallard Leasing Limited irresponsibly granted him the agreement which he couldn't afford to repay.

What happened

In April 2021, Mr W acquired a used car financed by a hire purchase agreement from Mallard Leasing. Mr W paid a deposit of £800 and was required to make 47 monthly repayments of £140 and a final payment of £340. The total repayable under the agreement was £7,700.

Mr W says that soon after purchase, he noticed the car making a knocking noise. This was investigated and a report produced saying it was likely there was an issue with one of the front suspension strut mountings. A repair was carried out, but Mr W says this didn't resolve the issue. Mr W asked to hand back the car and it was collected on 20 September 2021, but Mr W was left with a balance to pay.

Mr W also says that Mallard Leasing didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Mallard Leasing didn't agree. It said that it carried out a thorough assessment which included a credit report check and assessing three months of Mr W's bank statements.

Our investigator didn't uphold Mr W's complaint about the car not being of satisfactory quality, but he did uphold the complaint about irresponsible lending. He thought Mallard Leasing ought to have realised the agreement wasn't affordable to Mr W.

Mallard Leasing agreed with our investigator's view about the car being of satisfactory quality. It didn't agree that the agreement was provided irresponsibly and said it had followed the relevant guidelines in carrying out its affordability checks. It said Mr W's application and bank statements were reviewed by experienced staff. It said the view that a £98 surplus wasn't adequate was just an opinion and said Mr W's Individual Voluntary Arrangement (IVA) company thought the payments were affordable. It said Mr W's bank statements didn't show any bounced payments and that he didn't raise any affordability concerns until after his satisfactory quality complaint wasn't upheld.

The case has been passed to me for 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.

There are two different parts to this complaint. The first issue is about whether the car was of satisfactory quality and the second about whether the agreement was responsibly lent. I have addressed each part separately.

Satisfactory quality

Under the regulations – and of particular relevance is that the Consumer Rights Act 2015 – Mallard Leasing can be held liable if the car supplied under the hire purchase agreement wasn't of satisfactory quality at the point of supply. When assessing satisfactory quality factors such as the age and mileage can be taken into account. In this case the car was over ten years old and had been driven almost 73,000 miles at the time of acquisition.

Mr W acquired the car on 23 April 2021. He reported a noise and a report was carried out 21 May 2021. The report confirmed an intermittent noise and said it was likely this was due to worn suspension. A repair was carried out by a third-party garage, but Mr W says this didn't resolve the issue. On balance, given the consistency of Mr W's testimony, and the notes from a discussion between Mallard Leasing and the repairing garage from 4 June saying the noise was still present, I find it reasonable to accept that the repair didn't fully resolve the issue of the noise.

However, for me to uphold this part of Mr W's complaint, I would need to be able to say that this issue meant the car wasn't of satisfactory quality at the point of supply. Given the age and mileage of the car at acquisition it is reasonable to accept that it would have suffered some wear and tear. The report carried out on 21 May said the car was in average general condition and that the issue identified was likely due to worn suspension which given the age and mileage of the car I don't think meant the car wasn't of satisfactory quality. I accept that the repair didn't resolve the issue but based on the findings of the May report and noting that the car passed an MOT in April 2021 at the time it was supplied, I think it more likely than not that the issue with Mr W's car was due to wear and tear. Further investigation isn't now possible as the car was returned and sold and, based on the evidence I have seen, I do not find I have enough to say the car wasn't of satisfactory quality at the point of supply.

I note the comments Mr W has made about being told not to contact the dealer and not being able to use his warranty but these are separate and new issues and I have nothing to show that Mr W was prevented from making a claim.

Overall, in this case I do not find I can say that the car wasn't of satisfactory quality at acquisition, so I do not uphold this part of Mr W's complaint.

Affordability

Mallard Leasing will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Before granting the finance, I think Mallard Leasing gathered a reasonable amount of evidence and information from Mr W about his ability to repay. I say this because it completed a credit check, gathered data from external third parties and had sight of three months of bank statements which detailed Mr W's income and regular commitments. However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

The credit check Mallard Leasing completed showed two defaults and it was also aware that Mr W was in an IVA. I think this ought to have indicated that Mr W had previously experienced financial difficulties and was likely to be struggling financially. It therefore would have been proportionate for Mallard Leasing to have got a more thorough understanding of Mr W's financial circumstances before lending.

Mallard Leasing says it calculated Mr W's expenditure using statistical data which it says gives average household expenditure figures specific to Mr W's circumstances and it also gathered information about rental costs. The regulator has said firms can estimate expenditure unless it knows or there are indicators to suggest an estimate is unlikely to be accurate. As Mr W provided copies of his bank statements and noting the information Mallard Leasing was aware of regarding Mr W's previous credit history, I think it reasonable that the information in his bank statements was used to verify his income and expenditure.

I've reviewed three months of bank statements leading up to the lending decision. The statements show that Mr W's income was from benefits of around £215 a week, giving an equivalent monthly income of around £930 although I note due to the timing of payments in some months it would be less than this and other months more.

Mr W's committed expenditure was around £465 a month for supermarket or similar spending which Mr W has explained included his food but also paying his rent and energy bills through prepay cards. He paid around £140 for other costs such as insurance, other utilities and household costs and was paying £80 a month towards his IVA. This left Mr W with a net monthly income of around £245. The agreement required monthly payments of £140 leaving Mr W with around £105 a month. This amount doesn't take into account Mr W's costs of fuel or any increases in his insurance costs and factoring these costs in would further reduce his already limited disposable income. I also note the final payment of £340.

Therefore, on balance, while I note the comments Mallard Leasing has made about Mr W's disposable income, noting the term of the agreement and the limited funds available to Mr W I do not think it should have considered this agreement sustainably affordable.

Putting things right

As I don't think Mallard Leasing ought to have approved the lending, it should therefore refund all the payments Mr W has made, including any deposit. However, Mr W did have use of the car for around five months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £140 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr W's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr W should pay is £73 for each month he had use of the car. This means Mallard Leasing can only ask him to repay a total of £365. Anything Mr W has paid in excess of this amount should be treated as an overpayment.

To settle Mr W's complaint Mallard Leasing should do the following:

- End the agreement.
- Refund all the payments Mr W has made, less £365 for fair usage.
 - If Mr W has paid more than the fair usage figure, Mallard Leasing should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mr W has paid less than the fair usage figure, Mallard Leasing should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Mallard Leasing has received the fair usage amount, it should remove any adverse information recorded on Mr W's credit file regarding the agreement.

*HM Revenue & Customs requires Mallard Leasing to take off tax from this interest. Mallard Leasing must give Mr W a certificate showing how much tax it's taken off if Mr W asks for one.

My final decision

I uphold this complaint and direct Mallard Leasing Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 August 2022.

Jane Archer
Ombudsman