

The complaint

Mr A complained to Advantage Finance Ltd (“AF”) that it didn’t treat him fairly when it terminated his hire purchase agreement.

What happened

AF entered into a credit agreement with Mr A on 21 October 2020 to acquire a used car. The cash price of the car was £7,750 and the total amount owing under the agreement (including interest and fees) came to £14,088. This was to be paid with an advance of £250, followed by 59 monthly instalments of £227 and a final payment of £427 (all figures rounded).

The credit to buy the car was granted by AF under a hire purchase agreement meaning Mr A would own the car when the credit had been repaid. AF was the owner until that point and Mr A was, in essence, paying for the use of it. As the owner of the car bought from the dealership, AF was responsible for the quality of the car.

Mr A’s direct debit payments for December 2020 and January 2021 were returned. He made these payments later in January paying £455 by card. His February direct debit payment was returned, and he made this payment of £227 in early March, again by card. No payment was received for March or April and by mid-May 2021 AF had terminated the agreement and sold the car back to the dealer. It credited the sale proceeds of £4,500 to Mr A’s account leaving an outstanding balance of £8,743, including late fees (as shown on the statement of account).

Mr A complained to AF saying it should not have sold the car without giving him an opportunity to settle the matter. He said that the car was faulty and although it had been checked by the selling dealership in November 2020, he wasn’t happy to make his payments until the repairs had been carried out. He felt it was unsafe to drive. He stopped his payments in 2020 and 2021 because of this issue. The car was repaired by the dealer in the week of 12 to 16 April 2021.

AF says that it was informed by the dealer on 20 April 2021 that the car had been repaired the previous week but the dealer had not been able to get in touch with Mr A to arrange collection. It told Mr A that it confirmed with the dealer on 10 May 2021 that the car still hadn’t been collected and that storage fees were increasing on a weekly basis. AF told Mr A *“Our reasoning for subsequently terminating your finance agreement is due to the vehicle being abandoned at the dealership.”* AF offered Mr A a settlement amount of £3,853.53 to resolve his complaint.

Mr A didn’t accept this response and referred his complaint to us. One of our investigators looked into Mr A’s complaint. They found that the car hadn’t been of satisfactory quality when the agreement began and so Mr A was entitled to ask for it to be repaired. It seems that this had happened in April 2021 and our investigator found that Mr A hadn’t acted reasonably by then leaving the car in the garage for over three weeks. They concluded that AF didn’t act unfairly when it terminated Mr A’s hire purchase agreement and didn’t recommend that his complaint be upheld.

Mr A didn't accept this recommendation. He asked for his complaint to come to an ombudsman to decide and it came to me. AF had since confirmed that its offer of a reduced payment still stands.

I sent out a provision decision on 29 September 2022 explaining why I thought Mr A's complaint should be upheld. In this I set out my understanding of what had happened, the information I'd relied on, and my provisional conclusions. I allowed time for both parties to comment on what I'd said or provide any new information they wished me to consider when making a final decision. I've had no response from either party. This is my final decision on the matter and will be legally binding should Mr A accept it.

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 reviewed everything and having no further comment or new information from either party, I remain of the view that Mr A's complaint should be upheld. I'll set out my reasons why again in this final decision.

As with my provisional decision, I have taken into account the law and relevant regulatory rules. These included, for example, the Consumer Credit Act (CCA) 1974, the Consumer Rights Act (CRA) 2015 and the Financial Conduct Authority's Consumer Credit Handbook (CONC) which set out regulations and guidance for lenders such as AF about what should happen before and during credit agreements. The overarching requirements were that AF needed to treat Mr A fairly with due regard to his interests, and to provide him with information that was clear, fair and not misleading.

Bearing all this in mind, the main questions I need to consider are did AF treat Mr A fairly in its dealings with him, for example when he raised a complaint about the quality of the car or when it terminated his account? Did AF provide clear, fair and not misleading information to Mr A about his account, for example, and his options and what was happening? Did AF treat Mr A unfairly in any other way?

The information I've relied on

Mr A and AF provided me with information and their perspectives on what happened. AF has provided its customer contact notes, a statement of the account and a VAT invoice from the dealership for the part it said was required for the car. Mr A has provided photos and videos of the car and email correspondence with AF. This is not an exhaustive list.

Some of the information I have is conflicting. For example, AF told us that the car had passed an MOT in September 2020 with no advisories and a mileage of 106,606. The photos Mr A provided seem to show varying mileage figures from 101,308 to 108,348, but some of the photos are unclear. I have been unable to check the car's tax or MOT online. In another example - the dealer told AF on 5 March 2021 that they'd had the required part for six weeks but the VAT invoice they later provided shows a tax point of 9 April 2021. The dealer also told AF that the required part was an EGR valve when the invoice was for a lambda sensor.

AF sent many communications to Mr A about his account over the time he had the car and he had discussions about his complaint with several people. I have focussed on what I think are the main dates but have been mindful of this context. Other contextual

information is that the dealer told AF on 5 March 2021 it had provided Mr A with a top-up loan of £1,000 to acquire the car which he hadn't been repaying – I don't know if this was a secured loan and I have no further details about it. And Mr A told AF on 30 March that he had stopped the insurance on the car as he was driving another. AF noted on 20 April that the car wasn't insured.

What happened

What seems to have happened here is that Mr A withheld his payments for 10 December 2020 and 10 January 2021 because he said the car had a fault. The dealer had checked it over in November and told Mr A he needed to order a part for it and it was safe to drive in the meantime. Mr A didn't feel it was safe to drive. Mr A caught up with his missed payments in late January and told AF then about the issues he was having with the car. Mr A didn't make his February payment, but paid it on 4 March. He had a long conversation with AF (as per the customer notes) and explained his issues with the car. AF waived some of the late payment fees that it had charged to the account as a good will gesture at that point.

I understand that from 4 March to 17 April Mr A's account was on hold while the issues with the car were sorted out.

In its final response to his complaint (about the quality of the car) issued on 6 April 2021, AF told Mr A that it had given him the option of a repair or an independent inspection. It said it was his responsibility to get the car back to the dealers for repair as they had agreed to fix the issues and said *"We also offered another option to you which was to instruct an independent inspection on the vehicle, but advised it may result in the report outcome not being in your favour if it is determined that the vehicle was fit for purpose at the point of sale."*

Mr A didn't respond to AF to tell it what he wished to do. I understand he brought the car to the dealer for repair on or around the 9 April. According to the dealer the car was repaired at some point during the week of the 12 to 16 April.

On 14 April AF told Mr A that if he was complaining about a new fault that the dealer wasn't willing to repair, it could look into it for him. Mr A told AF on 20 April that he wanted to raise a new complaint. He remained unhappy with the car because he felt more work was required to fix the issues he'd experienced. He also said that the dealer was taking too long to repair it. Later that day AF spoke with the dealer who said that he had repaired the car as requested, had told Mr A that the work had been carried out and that the car had been ready for collection for a week. AF told Mr A that his rights had been enforced and there was, essentially, nothing further that he could do beyond accepting this repair.

Mr A hadn't made his March or April payments. AF had sent Mr A a notice of arrears on the 12 April. On 20 April AF sent Mr A a summary resolution email and letter regarding the new complaint he wanted to raise. Mr A disagreed with the outcome. On 22 April AF emailed Mr A to say that an independent inspection was no longer an option, the car had been repaired as he'd requested and his complaint was closed. It also sent him a first reminder letter on that date.

The email AF sent to Mr A on the 20 April 2021 said:

"We've spoken to the dealer ship this afternoon and they've advised the vehicle has been repaired. The issue was an EGR valve which has been replaced. The technician called you last week to advise the car was ready for collection but you did not respond. We would request you call them to discuss picking the vehicle up as repairs are

complete. As the repairs have been done and the vehicle has been confirmed as working we will close the complaint as nothing to investigate."

The email AF sent to Mr A on the 22 April 2021 said:

"I have reviewed your response and we will not be instructing an independent inspection on the vehicle, as per my previous email we gave you two options on how you would like to proceed with your complaint, the first was to instruct an independent inspection to ascertain if the vehicle was faulty at the point of inception. If the report supported you we would enforce repairs to be carried out by the dealership. The second option was for you to arrange for repairs to be carried out by the dealership, this was the option you chose and as such we are not instructing a report. The dealer has adhered to his obligations under The Consumer Rights Act 2015 and the vehicle has now been repaired as per your request, therefore we consider the matter closed. Should you have any further issues then you would be expected to provide proof of fault, but for now the complaint is closed."

On 7 May, the dealer offered to buy the car. It told AF that the car hadn't been collected and that it was charging weekly storage fees. On 10 May a price of £4,500 was agreed and AF requested payment of this. AF terminated Mr A's agreement later that day and sent him notice of this. It told him on 11 May that legal action could be taken to recover the outstanding balance and that it would tell him what that outstanding balance was once the sale proceeds had been received.

AF calculated an early settlement figure of £8,380 on 10 May. It gave Mr A a shortfall figure of £3,853.53 on 13 May and let him know that the dealer had bought the car.

Car quality issues

AF told us that when Mr A raised a complaint regarding issues with the vehicle *"the dealer accepted responsibility for the faults and repaired the car at no cost to him. Under The Consumer Rights Act 2015, the rights Mr A was intitled to were enforced."* It seems to me that AF accepted that the car was faulty from the outset.

Mr A has been consistent in his description of the faults with the car. He told AF in January that the engine management light came on after he'd had the car for a few days and that it wasn't stable when turning left. The car had been at the garage in November 2020 and he'd been told he needed a part replaced. He said that the problem worsened in February and he felt it was more than just a single part replacement that was needed.

I am satisfied from everything I've seen that there was a fault with the car, which was present when the agreement began. However, bearing in mind this was a used car which was ten years old when Mr A acquired it, it doesn't automatically follow that it was of unsatisfactory quality or unfit for purpose. The fault could have been as a result of normal wear and tear and not unexpected for the car in question. I understand that the dealer told Mr A in November that although a part was required for the car it remained safe to drive.

When Mr A remained unhappy with the dealer's repair, AF told Mr A that he didn't have the option of having an independent inspection of the car to decide whether there was a fault with it that meant it was of unsatisfactory quality or unfit for purpose. It told him that it was up to him to provide proof of the fault he was now complaining about. As far as I am aware, Mr A didn't provide any proof to AF beyond his description of the issue.

It doesn't seem to me that AF gave Mr A the option of pursuing his complaint about this. It

didn't tell Mr A what steps he needed to take or what evidence he needed to provide for the issue to be looked into. When Mr A eventually asked for an independent inspection, AF said that was no longer an option for him as he had chosen to have the car repaired by the dealer.

We asked Mr A for evidence of the fault he remained worried about. I haven't had any evidence from Mr A to support his view that there was something wrong with the car which replacing a part wouldn't solve. Mr A has sent us photos of the dashboard lights, but this doesn't evidence that further repair was required beyond what the dealer said it had carried out. Mr A also told us that the car was recovered from a motorway to his home in February due to shaking whilst driving but didn't provide anything further about this incident or, as far as I know, mention it to AF.

It may be that there was an issue with the car which required more than a part to put right. I haven't seen any evidence from AF, the dealer or Mr A to show what repairs were carried out on the car, beyond a VAT invoice for a lambda sensor with a date of 9 April.

Mr A didn't have an opportunity to see if the dealer's repair had solved the issue. As it stands, it's difficult to now determine whether or not the car was of unsatisfactory quality or not fit for purpose when Mr A acquired it, and so I have not made this finding.

Agreement termination due to abandonment

The dealer told AF that the car had been deemed ready for collection in the week of the 12 April. Even accepting this to mean the end of that week, the car still hadn't been collected by 10 May, over three weeks later.

Mr A said: *"Why I left the car in garage had two reasons, firstly Covid restrictions (which are still practiced in many areas) So just by giving date/telling they were not in place, doesn't mean they can be ignored. Secondly, the storage story & storage charges were brought up on 11th May 2021. The car was there for repairs, it was not left abandoned."* Mr A said that the restrictions were still practised in many areas and he had been stopped and questioned by the police on one occasion. Mr A also said that he had been waiting five months for the car to be repaired and leaving the car at the garage for three weeks wasn't a disproportionate period of time in this context.

Leaving aside whether or not the pandemic had impacted on Mr A's willingness to pick up the car, it seems to me he didn't want to collect the car until the fault had been dealt with to his satisfaction. He tried to raise another complaint with AF on 20 April – the contact notes say that he'd had a long conversation with AF. I don't know the detail of that conversation but there isn't anything in the notes which suggest to me that Mr A was made aware that if he didn't collect the car AF could potentially consider that it had been abandoned and was at risk and might act to recover the car irrespective of what was happening regarding his payments. As mentioned Mr A had left the car in for repair around Friday 9 April. The contact AF had between then and the agreement termination on the 10 May was centred on restarting payments.

AF told us that it made the decision to repossess the car as the storage charges were increasing. AF also said that Mr A put its goods at risk by abandoning it at a dealership who did not want the vehicle on their premises. It said it confirmed with the dealership on the 10 May 2021 that the vehicle hadn't been collected and that storage fees were increasing on a weekly basis. AF said it had to act to stop further fees being incurred and so terminated the agreement. I'm afraid I find it difficult to accept this argument from AF, given it was in negotiations with the dealer to buy the car at that point and I've seen no

evidence that AF was charged these fees or that they were added to the account.

Mr A had mentioned to AF on a call on 30 March that the vehicle wasn't insured. This was a breach of the terms and conditions of the agreement as Mr A was required to keep the car comprehensively insured. Mr A told us that he wasn't driving the car at the time and was driving another car, which was insured, and it didn't make sense to him to insure two cars. AF reminded Mr A that he needed to insure the car on 30 March but didn't take any further action in this regard though it later noted again that the car wasn't insured. I don't know if Mr A subsequently insured the car, either before or when it was with the dealer.

Based on the available information, in the context of this case, I don't think it was fair of AF to terminate the agreement, without warning, on the basis that the car had been abandoned and was at risk, even though it had the right to do so under the agreement if Mr A hadn't insured the car. My understanding is that Mr A hadn't actually refused to collect it. It seems to me he was unaware that he might be incurring storage charges until after the car had been sold and unaware of the consequences of not collecting the car.

Agreement termination due to arrears

AF told us that the second reason it terminated the agreement was that Mr A wasn't making his monthly instalments. As mentioned Mr A hadn't made his payments in December, January or February. AF sent Mr A default notices on 22 December, 11 January and 11 February. By 4 March 2021 Mr A had caught up with his monthly payments for these months and some of the late fees had been waived.

AF sent another default notice on 15 March when Mr A didn't meet his 10 March payment. AF sent Mr A an arrears notice on 12 April after he missed his April payment. As mentioned, my understanding is that Mr A's account was on hold during this time while AF dealt with his complaints. AF sent Mr A a first reminder on 22 April. From the information I have, I can't see that AF sent Mr A a default notice after this before terminating his agreement. It seems to me that AF didn't let Mr A know what he now owed, what action he needed to take and by when in order to stop his account being terminated or the car repossessed.

AF says that it issued a default notice in December 2020 which wasn't satisfied. But in March Mr A had caught up with his payments and had charges waived as a good will gesture.

As AF will know, it was required to send Mr A a default notice before terminating the agreement or seeking repossession of the car. I appreciate that it sent text messages and emails to Mr A in April asking him to get in touch and had sent previous default notices. I haven't been provided with copies of the arrears notices or default letters. Altogether, based on the information I have, I can't say that AF did what it was required to do regarding default notices before terminating the agreement.

The contact notes show that AF defaulted the account on 10 May with a default sum of £13,243.10. It also generated a settlement figure of £8,380 and noted unpaid charges of £87 and arrears of £682 (presumably for the months of March, April and May 2021). It generated a second settlement figure of £3,853.53 on the 13 May, after it received the £4,500 from the dealer. AF sent Mr A a default sum notice on the 19 May – I haven't seen a copy of this so I don't know what figure was used here.

Altogether, I've come to the conclusion that AF treated Mr A unfairly when it terminated

his agreement in this way. It didn't offer him the option of voluntarily terminating or surrendering the agreement or settling the agreement early, for example. I don't think Mr A would have chosen to end the agreement – he hasn't mentioned that he was in financial difficulty and had told AF in January 2021 that he had no problems with paying. However, I don't know enough about his circumstances to determine whether he would or would not have settled the agreement himself. It seems to me that AF decided to settle the agreement, having agreed a price with the dealer.

Did AF treat Mr A unfairly in any other way?

AF says that Mr A has not been in touch about the outstanding balance on his account and that he's showed no intention of settling the debt given his lack of engagement. Let me acknowledge at this point that AF has attempted to speak with Mr A on many occasions as evidenced by the communication records from November 2020 onwards. Mr A has proved very difficult to get in touch with over the course of these events.

AF sent Mr A a termination notice on 10 May. He got in touch on the 11 May and AF didn't initially let him know that the car had been sold to the dealer. I can see from contact records that Mr A couldn't understand how the car had been sold when he could see that it was still at the dealership. Mr A was told on his tenth call on 13 April that the car had been sold back to the dealer. He then spoke with a manager who explained that the dealer could sell the car for whatever price they wished and he was advised not to continue calling the office. Mr A says that AF showed complete disrespect in its telephone conversations with him on 11 and 13 April.

It seems from the call notes that there were several factious discussions after the agreement termination, however I have not been provided with any call recordings to consider this aspect further. Having considered this point carefully, I don't think an award for distress and inconvenience would be appropriate in this case.

My conclusions in summary

There was a fault with the car, which was there from the beginning, however I don't have enough information to decide that the car was of unsatisfactory quality or not fit for purpose when Mr A acquired it.

AF should not have terminated Mr A's agreement and repossessed the car in the manner in which it did. It didn't treat him fairly and with due regard to his interests when it did do.

AF didn't treat Mr A fairly in its dealings with him as it failed to give him clear, fair and not misleading information about what was happening with his account or with the car.

Putting things right

AF offered Mr A a settlement figure of £3,853.53, and confirmed this offer remains valid.

I understand that Mr A paid an advance fee of £250 and three instalments of £227. He had the use of the car from the last week in October 2020 until it was brought in for repairs on or around the 9 April 2021, about five months. Mr A said that he didn't consider the car to be safe to drive after an incident in February.

I appreciate that this will be very disappointing for AF but I've come to the conclusion that it now needs to waive the balance of the early settlement figure it has deemed Mr A liable for. I don't think it's fair that Mr A pays more than the amount he's already paid to have had the use of the car for five months.

I don't know how AF has reported Mr A's account to the credit reference agencies. I think it's fair that Mr A's credit record reflects how he managed the account up to the date of termination. I also think it's fair if the account is shown as having been settled, reflecting that AF accepted less than the full amount owed under the agreement.

In summary, AF should now:

- Waive the outstanding balance on Mr A's account and consider it settled.

My final decision

For the reasons I've set out above, I'm upholding Mr A's complaint about Advantage Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 December 2022.

Michelle Boundy
Ombudsman