

The complaint

Mr T complains that Oplo CF Ltd trading as 1st Stop Car Finance has acted unfairly in the way it managed a hire purchase agreement for a car that wasn't of satisfactory quality.

What happened

In June 2019 Mr T entered into a 60-month hire purchase agreement for a used car. The car was four years old and had a mileage of around 35,000. Under the agreement Mr T agreed to make 59 monthly payments of £251.88 and pay £271.68 in the 60th month. Mr T paid the monthly instalment due in June 2019.

Mr T says that having had the car for around two weeks he found it had numerous faults and he tried to speak to the supplying dealer about fixing them. Due to the lack of any action by the supplying dealer Mr T contacted Oplo in July 2019 and registered his concerns about the car. Mr T made no further payments under the agreement.

There then followed a number of discussions involving Mr T, Oplo and the supplying dealer as to the condition of the car and the needed repairs. Mr T told Oplo in November 2019 that he wanted to keep the car if the necessary repairs were sorted out and said, "*when complete I will continue to pay for the finance*". Mr T was warned by Oplo that the agreement could be terminated and the car recovered if payments weren't made.

In December 2019, a default notice was sent to Mr T due to the arrears that had built up on the account. Mr T was required to clear the arrears of £1,007.52 by the end of the month or the agreement may be terminated, and the vehicle recovered. Mr T didn't pay the arrears and the hire purchase agreement was terminated by Oplo.

In January 2020 Mr T had a phone conversation with an agent of Oplo's and it was again advised that the car could be repossessed as it was Mr T's responsibility to maintain the payments under the agreement. Oplo says Mr T said he would have the funds to clear the arrears once the issues with the car had been resolved.

The car was eventually repaired at no cost to Mr T in February 2020 and returned to him. At this point, Mr T contacted Oplo to confirm the repairs had been successful and said he was now happy to discuss the next steps going forward. Oplo issued its final response letter in respect of Mr T's complaint about the car's quality. It said that it now considered the complaint closed as the car had been fixed.

Mr T contacted Oplo and said that he didn't think that it was fair for him to now pay all the outstanding instalments when the car hadn't been working correctly. In March 2020 Oplo replied that Mr T remained liable for the outstanding payments. Mr T said he was unhappy at this response as he felt it was unfair, he said it would be fair either for the payments to be written off for the period the car hadn't been working or for the term of the agreement to be extended for that period of time. He confirmed he would be happy to pay for the car.

In May 2020 Mr T complained to Oplo about the arrears it was seeking from him. Oplo issued a final response letter to this complaint in June 2020. It said that under the agreement

he was liable to make the payments even though there had been issues with the vehicle. It said there were now 10 months of payments outstanding which amounted to £2,518.80, four months of which (£1,007.52) had accrued since the car had been repaired and returned to Mr T in February 2020.

Oplo said to prevent the car from being repossessed it would amend the outstanding arrears to reflect the four-month period, that is reduce them to £1,007.52 and this amount would require payment now. It said it would also extend the length of the agreement from 60 to 66 months so that the remaining six months of arrears didn't need to be cleared immediately and the monthly payments would remain the same. Oplo said it would reset the monthly payments and asked Mr T to discuss how the arrears would be paid.

Oplo also offered Mr T £150 compensation to reflect the amount of time that had been taken to resolve the matter.

Mr T rejected the settlement offered by Oplo and, as no payments had been made on Mr T's account, the car was repossessed and sold at auction in August 2020. The sales price for the car was credited against the outstanding balance on Mr T's account.

Mr T was unhappy at Oplo's response and complained to this service. He said he had been clear that he would not pay the monthly instalments for the car while it was faulty, and it had taken six months for Oplo to agree to pay for the repairs. Mr T said it was unfair to expect him to pay for a faulty car.

Mr T also said that although the car had been fixed in February 2020 it had then taken four months for Oplo to discuss a resolution with him and it was unfair to expect him to pay for a car during that time as he hadn't known whether he would be keeping it or if it would be repossessed.

Our investigator didn't recommend that Mr T's complaint should be upheld as he didn't think Oplo had acted unfairly.

Our investigator said he accepted the car had been faulty at its point of supply and that it had been agreed between the parties that these should be repaired at no cost to Mr T. He said the issue was whether Oplo had offered a fair settlement for the impaired usage of the car by Mr T during the six months it had taken to fix it. Our investigator said that the car had had some usage in that period, and he thought a 20% reduction for the monthly payments for that six-month period would be fair. However, he said that as Oplo had offered to re-work the agreement by extending its length, he thought this was fair to reflect the impact of using the car. And that together with the £150 compensation Oplo had offered Mr T a fair resolution rather than reducing the monthly payments for a period.

Our investigator said Mr T hadn't been entitled to stop payments under the agreement even though there had been a breach of contract and it had been reasonable to expect him to keep these up while the car was in his possession. He said Oplo had always been clear about the consequences of not making payments.

Mr T disagreed with the view of our investigator. He said that the car had developed faults within a very short time of him acquiring it and he had not been able to make proper use of it. When the car had been repaired, Mr T said he had offered to agree to Oplo placing that six months of arrears at the end of the agreement but it had initially refused him, and then taken a further four months to later agree to this. He said he had been left in limbo for this four-month period. Mr T said this was very unfair of Oplo and it had been reasonable for him not to make any payments as he didn't know if or when the car might be collected from him.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

I didn't think it was disputed that the car had been found to have faults within a short time of Mr T acquiring it. Unfortunately, it had then taken around six months for these faults to be fixed at no cost to Mr T. I'd seen that these repairs appeared to have been successful.

I therefore thought the car hadn't been of satisfactory quality at its point of supply, but although that was a breach of the contract between Mr T and Oplo, that didn't mean Mr T had then been entitled to stop making any payments under the agreement. I thought the terms of the hire purchase had been clear that Mr T was obliged to make monthly payments for the car, and it also set out there would be consequences for failing to do so.

I'd seen that during the various calls between Mr T and Oplo, Mr T had informed Oplo that he intended to catch up on his payments once the repairs were sorted out. However, despite this offer, I didn't think Oplo had acted unfairly when it issued the default notice to Mr T in December 2019. By this time, the agreement had been in arrears for around four months, Mr T having made only one payment. The default notice had set out what would happen if the arrears weren't cleared by a set date. No payment or contact was made by Mr T until after the account was terminated due to the default. Again, Mr T had then reiterated he would not be paying until the repairs had been undertaken and Oplo informed him that he was liable for the payments. I couldn't reasonably say that Oplo hadn't been able to terminate the agreement for Mr T having defaulted on his payments. However, at this time Oplo didn't seek to collect the car from Mr T and he was clear he wanted to keep it.

I'd seen Oplo had continued communicating with Mr T. The repairs had been carried out in February 2020 and the car had been returned to Mr T. Mr T had then said to Oplo that he was open to discussing the way forward. Mr T said he had suggested that it would be acceptable to him for the hire purchase agreement to be extended by six months, but that Oplo had at first declined this. He said Oplo had then taken four months to respond about the way forward and in that time, he hadn't made any payments as he was unsure as to whether the car would be collected or not. He said it would be fair for these four months to now be removed from the outstanding balance.

The car was collected in or around August 2020 as no payments had been made by Mr T. It was later sold at auction and the proceeds credited to the outstanding balance. At this point Oplo hadn't received any payments for the car for around 12 months. Mr T had also rejected its offer to restructure the agreement by extending the hire purchase term by six months, recommence payments from June 2020 and clear the four months of arrears that had built up since the repairs. Looking at this, then I thought Oplo repossessing the car hadn't been unfair.

As I didn't think Oplo had acted unreasonably by terminating the agreement and repossessing the car, I wasn't going to ask it to remove the charges that had been added to Mr T's account for collecting it. But I did need to consider whether it was fair that Mr T remained liable for the full remaining balance of the account.

I'd seen that Mr T had the car in his possession for the majority of the time up until it had been repossessed. And he had been able to make use of it both before and after it had been fixed in February 2020. However, I accepted that his ability to use the car would have been impacted by its being faulty. So, his use of the car over the six-month period up to February 2020 would have been spoiled and not as he had reasonably expected. But although Mr T had been uncertain whether he would be able to keep the car after it had been repaired, I didn't agree that it had been reasonable for him to pay nothing and not resume his payments or that he shouldn't be liable for any payments due in this period. He'd had full use of the car

at that point.

Oplo's offer to clear the six months of arrears and increase the term of the hire purchase agreement by six months would have meant Mr T had remained liable for the full amount of the credit agreement and I thought that was unfair. This was because this arrangement didn't take into account that during that six-month period before the car was repaired Mr T's use of it had been impaired due to its faults. So, I didn't think he should remain liable for the full amount of the credit agreement or that Oplo's offer to extend the agreement had been sufficient to cover Mr T's restricted use of the car.

So, although I thought Mr T should pay the full amount of the monthly payments that had been incurred from February 2020, I thought there should be a reduction of the payments that had been due from June 2019 until February 2020 because of the condition of the car.

As set out above, I was satisfied that Mr T's use of the car would've been limited and I thought a reduction of the amount that had been due each month under the agreement would be fair to reflect the impact of not being able to use the car as he had expected.

I'd not seen any evidence that the car had been unusable by Mr T during this six-month period, and he had added around 3,200 miles to the car's mileage between June 2019 and January 2020. I therefore thought that a 50% reduction of the monthly payments due between June and January 2020 (eight months) should be calculated and removed from the outstanding balance.

I also thought that Mr T had suffered distress and inconvenience due to having to deal with the faulty car and liaise with Oplo in having the repairs undertaken. I thought £150 as compensation would be a fair and reasonable amount to reflect this.

I'd seen that this agreement had been defaulted and had now been passed to a third-party company for collection. I thought it was likely this would have led to adverse information having been recorded on Mr T's credit file. But I wasn't going to ask Oplo to remove that information as I was satisfied Mr T hadn't been entitled to stop making payments under the agreement and Oplo had acted in line with the hire purchase's terms and agreements.

For the reasons given above, I was intending to partially uphold Mr T's complaint.

Oplo didn't agree with my provisional view. It said that part of the reason for the delay in the repairs was that the warranty for the car had expired and it had allowed Mr T to source a local dealership at his convenience. It also says that it paid for the repairs, had offered to put six months of the arrears to the back of the agreement and pay Mr T £150 compensation. Oplo said this had been a fair settlement.

Oplo also says that it doesn't accept that Mr T's use of the car had been restricted while it was awaiting repairs. It says that between June 2019 and January 2020 Mr T had added 3,200 miles to the car and when an MOT was carried out in November 2021, the mileage was recorded as 43,265 meaning only an additional 7,513 miles had been added from when the car had been supplied to Mr T in June 2019. Oplo says this indicates Mr T's use of the car was low even after it had been fixed so it can't be said he wasn't able to use it as he wished while waiting for the repairs. It says a reduction in the monthly payments for the period from June 2019 to January 2020 is therefore unfair.

Mr T also disagreed with my provisional decision. He says that he had found the car to have faults within a very short time of acquiring it but had then found himself unable to contact the supplying dealer. He says he agrees he wanted to keep the car but had wanted to do so "*in a fair way*" and the car hadn't been working until February 2020. He says he never agreed to

take an agreement with a car that didn't work.

Mr T says that he had made a fair offer to Oplo that the six months of arrears that had been built up should be put at the end of the agreement, but it had declined this and said the car would be repossessed. As the car was going to be taken, he didn't make payments. Mr T says Oplo had unfairly taken four months to agree to the offer he made in February and so a further four months of arrears had built up. He says he offered for these additional four months to also be put to the end of the agreement, but Oplo declined that and wanted those outstanding four months paid. Mr T declined this as he said it wasn't fair and the car had been repossessed. Mr T says he doesn't believe he should be liable for these four months' worth of arrears as he had exhausted all avenues in having the matter resolved.

Mr T says he thinks it would now be fair for the agreement to be terminated without any outstanding payments still due. He says he was bullied into having the car repossessed by Oplo.

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 have reviewed the evidence and my provisional conclusions, and although this will be of disappointment to both parties, I haven't changed my view as to what would be a fair outcome here.

I have seen that Oplo says some of the delays were due to Mr T and his sourcing of a local garage to repair the car, but Mr T says the delays were due to Oplo and its refusal to pay for those necessary repairs. However, I don't think I need to resolve this issue as to the exact cause of the delay since it's agreed the car had faults that needed to be repaired and that this took six months to sort out. Oplo has also offered compensation for the delay and the impact on Mr T so is accepting that the time taken to fix the car wasn't only due to Mr T's actions. As the car wasn't of satisfactory quality from June 2019 until February 2020 then the issue for me to resolve is what would be a fair resolution for that.

Mr T says he didn't agree to have a faulty car and while I can understand his view, as set out above, I don't agree that the situation with the car meant that he didn't have to make any payments under the agreement until the car was fixed. I still think the terms and conditions of the hire purchase agreement applied and that he was liable for each of the monthly payments as they fell due. I therefore still think that Oplo didn't act unfairly when it issued the default notice and later terminated the agreement due to the lack of payment by Mr T. I also think Oplo correctly advised him as to the consequences of his non-payment.

I've seen that Mr T strongly feels that after the car had been repaired, the delay by Oplo in setting out the way forward, led to the additional four months of arrears building up. But I'm afraid I disagree that Mr T acted reasonably when he failed to resume the monthly payments from February 2020 after the car had been repaired. From that point he had full use of the car. I don't agree that the possibility the car could be repossessed meant he wasn't required to make payments.

Looking at the evidence, I've seen that in February 2020 Oplo informed Mr T that it considered his complaint closed as the car had been repaired and returned to him. While I appreciate that for Mr T there remained the issue as to the accrued six months of arrears that he wanted solved, I think it would have been reasonable for him to commence paying the monthly payments as the car had been fixed. Oplo had advised him about the consequences of not paying.

Mr T and Oplo continued to have some communication in the following four months regarding the payments due under the agreement. Oplo then agreed to Mr T's original offer of putting the six months' worth of arrears to the back of the agreement. However, by this point the arrears actually stood at 10 months. As I don't think Mr T had acted reasonably in failing to make any payments from July 2019 under the agreement and, in particular, should have made payments from February 2020, I don't think Oplo acted unfairly in requiring these four months' worth of arrears cleared and the payments resumed. Mr T declined this offer and I think Oplo was entitled to consider that due to the lack of payments under the agreement for a significant period it should now repossess the car.

Even though I don't think Mr T acted reasonably in not making any payments for the car save for one month, I still think that adding the six months to the end of the agreement wasn't a fair solution even if Mr T had also suggested it. This is because I think Mr T's use of the car for the period the repairs were outstanding was impacted and spoiled and that there should be a reduction on the monthly payments for that period to reflect this.

Oplo says that the mileage added to the car indicated Mr T would always have made limited use of the car and so I can't say his use was restricted by the car's condition, but I disagree that the evidence it's relying on is clear. Mr T used the car for an additional 3,200 miles between June 2019 and January 2020. The car had then travelled around a further 4,300 miles by November 2021 when it had an MOT. However, it was repossessed from Mr T and sold at auction in August 2020. I have no information as to the mileage at the point of sale nor any information about the user of the car after the sale. It is possible the majority of those miles were driven by Mr T.

As set out, it isn't disputed the car was faulty and needed repairs so I think it's fair to consider that it's more likely than not that Mr T wasn't able to use the car as he would have wished while waiting for the repairs to be agreed and sorted out between June 2019 and February 2020. And while I agree with Oplo that Mr T is liable to pay for the use he had of the car I still think it's fair that the monthly payments due in that period are reduced to reflect the impact of the condition of the car and I still think a 50% reduction remains fair and reasonable.

However, I also think that Mr T is liable for the full monthly payments from February 2020 to the car's repossession together with any charges incurred for taking the car back and selling it on.

So, I am partially upholding Mr T's complaint.

Putting things right

I'm asking Oplo to do the following:

- Reduce the amount of the payments due between June 2019 and January 2020 by 50% and credit this amount against the outstanding balance of Mr T's account. This is to reflect the period in which Mr T was restricted in his ability to use the car.
- Pay Mr T £150 for the inconvenience and distress caused by having to deal with the faulty car.

My final decision

While I appreciate my decision will be of disappointment to Mr T, I'm partially upholding his complaint.

I'm asking Oplo CF Ltd trading as 1st Stop Car Finance to do the following:

- Reduce the amount of the payments due between June 2019 and January 2020 by 50% and credit this amount against the outstanding balance of Mr T's account. This is to reflect the period in which Mr T was restricted in his ability to use the car.
- Pay Mr T £150 for the inconvenience and distress caused by having to deal with the faulty car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 February 2023.

Jocelyn Griffith
Ombudsman