

## The complaint

Mr K is unhappy with how AutoMoney Limited trading as AutoMoney Motor Finance ('AMF') treated his situation when he got into financial difficulty.

## What happened

In May 2021 Mr K took a hire purchase agreement with AMF to fund the cost of a car. The car cost £21,490. The amount of credit was £19,888.42 and the total payable was £32,974.80. Mr K was due to pay an initial repayment of £562.78, then £513.78 for 58 months, followed by a final repayment of £612.78.

Unfortunately, Mr K explained to AMF that he had lost his job in February 2022. AMF said it asked for details of Mr K's employment and income and expenditure the same month. It said Mr K told it he would receive £140 every two weeks from benefits, and he offered to pay £40 from this towards the agreement. AMF said it asked Mr K for evidence of this and explained this wasn't a suitable arrangement over the long term as this wasn't sustainable.

AMF then issued a default explaining £1,070.02 needed to be paid by 25 March 2022. This explained the total amount required to pay under the agreement, including a rebate allowance, was £11,395.45. This default notice said any amount from the sale of the car if it was repossessed would be deducted from the amount of £11,395.45.

Mr K didn't contact AMF before the default expired. AMF then defaulted the agreement. It sent Mr K a notice of intended vehicle repossession that explained his right to voluntarily surrender ('VS') the car.

Shortly after this, Mr K told AMF he had begun training for a new job. But, AMF said he didn't provide evidence of this or the salary.

Later in April 2022, Mr K provided AMF with a conditional offer of employment. AMF said it asked Mr K for his pay date, a wage slip and an offer of payment and explained this was necessary to avoid the car being repossessed. It said it didn't receive a response to this and so a decision was made to repossess the car on 10 May 2022.

The car was then sold at auction for £15,863.20 and Mr K was told he had to pay a shortfall of £11,388.60 in June 2022. Mr K complained to AMF saying it shouldn't have repossessed the car and he shouldn't owe the balance.

AMF issued its final response in July 2022. It said, in summary, that it didn't need to get a court order to repossess Mr K's car due to the amount paid towards the agreement. It said it offered Mr K the chance to get the car back by paying £1,977.58, but Mr K said he couldn't get this amount. It said the amount listed on the default notice that Mr K paid towards the agreement was incorrect, but it didn't think it had done anything else wrong. It offered Mr K £100 as a gesture of goodwill.

Mr K referred the complaint to our service. He said, in summary, that AMF repossessed the car without a court order when it shouldn't have, despite him being on a payment plan. He

said the car was collected when he had evidence of a job offer. He said the amount he was told he owed was wrong.

As a resolution, Mr K said he should get back any money he paid to the agreement, three month's salary from a job he lost and £10,000 for the emotional trauma caused.

Our investigator issued an opinion and didn't uphold the complaint. In summary, she said £100 was fair to reflect the incorrect information in the default notice. She said Mr K paid £5,319.58 towards the agreement and so hadn't paid over one third of the total due. She said this meant AMF didn't need a court order to repossess the car. And she didn't think Mr K had lost his potential job because of what happened.

Mr K disagreed. He said he had employment pending and AMF didn't need to repossess the car. Our investigator explained this didn't change her opinion, so the case was passed to me to decide.

I sent Mr K and AMF a provisional decision on 4 May 2023. My findings from this decision were as follows:

*Mr K complains about a hire purchase agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity. So, I'm satisfied I can consider Mr K's complaint about AMF.*

*What I need to consider here is whether AMF treated Mr K fairly and reasonably under the circumstances.*

*When considering what's fair and reasonable, I need to take into account relevant law, regulations and good industry practice from the time. So, I've firstly thought about what guidance and obligations AMF had to follow.*

*There are a number of requirements set out by the Financial Conduct Authority ('FCA') in the Principles for Business handbook (PRIM).*

*PRIM 2.1.1 6 sets out that:*

*"A firm must pay due regard to the interests of its customers and treat them fairly"*

*The FCA also sets out responsibilities in the Consumer Credit Sourcebook (CONC).*

*CONC 7.3.4 sets out:*

*"A firm must treat customers in default or arrears difficulties with forbearance and due consideration"*

*CONC 7.3.5 goes on to give some examples of treating a consumer with 'forbearance':*

*"considering suspending, reducing, waiving or cancelling any further interest or charges"*

*"allowing deferment of payment of arrears"*

*"accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock"*

*It's also worth explaining here that AMF should've considered Mr K's personal situation at the time. I say this as he'd told it he'd lost his job when he got into financial difficulty.*

*The FCA published its finalised guidance for firms on the fair treatment of vulnerable customers in February 2021 – so this applied when Mr K told AMF about his financial difficulty.*

*This gives the definition of a vulnerable consumer as:*

*“someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care”*

*Given Mr K had lost his job, he met one of the ‘life events’ associated with being a driver for vulnerability in the guidance. So, AMF needed to also consider Mr K’s situation.*

*There are a few different aspects to this complaint, so I’ll address these in turn.*

### *Repossession*

*Mr K complains that AMF repossessed the car without a court order. AMF would’ve needed to have obtained a court order to repossess the car if Mr K had paid at least a third of the total amount payable under the agreement.*

*Looking at the total amount payable, one third of this would’ve been around £10,858.79.*

*From the statement of account and deposit, it appears Mr K had paid a total of £5,659.58 towards the agreement. It follows this that I’m satisfied AMF didn’t need a court order to repossess the car.*

*I’ve thought about the overall circumstances that led to the repossession. It isn’t in dispute that Mr K didn’t meet the terms of the default notice that was sent to him. And, while he did explain to AMF close to the time the car was repossessed that he had a job offer, I do need to consider that this was a “conditional” offer. And I don’t think it was unreasonable for AMF to ask for the further details about this that it did.*

*So, in broad terms, I don’t think under the circumstances that AMF repossessed the car unfairly. But, I do think it should’ve done more to look into any other options Mr K had. I’ll come onto this below.*

*When considering the repossession, it’s worth noting the default notice that Mr K was sent. I appreciate AMF has already acknowledged this contained incorrect information and it has apologised for this.*

*But, I need to consider what this said. This explained that any net proceeds from the sale of the car would be deducted from the amount of £11,395.45. I appreciate this figure is incorrect, but I don’t think this letter makes it clear that Mr K would also be liable for the interest due in this situation. So I can see why Mr K was confused when the car sold for several thousand pounds more than this, but he was still left with a significant debt. While I don’t think it was unfair to repossess the car, I’m satisfied AMF gave Mr K misleading information about what would happen if the car was repossessed.*

### *AMF’s overall obligations*

*When considering the overall situation, I’ve considered if AMF acted fairly and reasonably here.*

*When Mr K told AMF about his situation, I appreciate it asked him for some more details about this. But, I can’t see it did anything further than this or offered any other help.*

*I've also considered AMF's actual 'losses' here. The cash price of the car was £23,480. AMF received £15,873 from the sale at auction. And Mr K, as above, appears to have paid £5,659.58 towards the agreement. So, this means AMF has 'lost' about £1,947.42 from what's happened.*

*So, this means the vast amount of what AMF is now saying Mr K owes it is interest, on money lent that was largely returned to it when the car was sold.*

*Thinking about this, it doesn't seem fair and reasonable to hold Mr K liable for over £11,000 when AMF has had a loss of much lower than this. I say this as I'm satisfied this is not acting with due regard to Mr K's interests, treating him fairly nor treating his situation with forbearance and due consideration.*

*That being said, I do appreciate AMF has had another 'loss' for the time where Mr K owed it funds and AMF was entitled to interest, but it didn't receive payments.*

#### **Distress and inconvenience**

*Mr K says because the car was repossessed, he lost an offer of employment. But, I haven't seen enough to persuade me this was most likely the case. That being said, I do think he's been caused some distress because of what happened. I think AMF should've done more to meet its obligations set out by the FCA. By not doing, and by holding Mr K to account for the full amount of interest due, I think he's been caused upset.*

*Mr K says he thinks he should be given £10,000 because of this. But, I don't think this is reasonable. As above, I don't think it's reasonable to charge Mr K the whole amount of interest. But, I do think there was a period when interest was legitimately due on the agreement and wasn't paid. I don't know what this exact figure is. But, thinking about what's fair and reasonable, along with Mr K's situation, rather than making a separate award for distress and inconvenience I think AMF should limit Mr K's liability to the £1,947.42 that it 'lost out' on from the situation.*

I gave both parties four weeks to respond with any further comments or evidence.

AMF didn't respond.

Mr K got in touch. He made several points and sent in some evidence. In summary, Mr K said he still thought the car was repossessed illegally and this caused him a lot of stress. He said AMF didn't make him aware the car was being repossessed and he'd just put fuel in it. Mr K said he shouldn't owe AMF anything and it should compensate him.

#### **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've also considered everything Mr K sent in response to my provisional decision.

Firstly, I was sorry to hear about Mr K's recent health issue and I wish him a speedy recovery.

I know how strongly Mr K feels that this situation has lost him employment. But, I still haven't seen enough to persuade me that AMF have directly caused this. So, I still don't think it is responsible here.

I also think Mr K's argument that he shouldn't owe AMF anything wouldn't be reasonable. I'm satisfied I've explained why this is the case above and I still think my opinion here is fair.

Mr K also feels strongly that he should be compensated by AMF for what happened. I should make it clear to Mr K that I'm satisfied my decision means he *is* getting compensated for the distress and inconvenience caused. As above, AMF have legitimately lost out on interest due here, and I appreciate it may have other costs involved in lending the money to Mr K that weren't mentioned. But, I still think rather than AMF directly paying compensation to Mr K, and instead not passing these costs onto him, fairly compensates him for the situation.

I'm satisfied the other points Mr K made and the evidence sent in has already been considered in my provisional decision which is set out above – so I won't repeat myself here. But I do want to reassure Mr K that I've carefully thought about everything he told us in his response and considered all of his comments.

Having thought about all of the information on this case again, along with Mr K's response, I still think this complaint should be upheld. And I still think what I previously set out is fair and reasonable to put things right. This is due to the reasons I explained in my provisional decision and set out above.

### **My final decision**

My final decision is that I uphold this complaint. I instruct AutoMoney Limited trading as AutoMoney Motor Finance to put things right by doing the following:

- Limit Mr K's liability under the agreement to £1,947.42\* \*\*
- Update Mr K's credit record to reflect this

\* I have assumed Mr K hasn't made further payments towards this agreement. If he has, AMF should reduce this amount by what's been paid

\*\*I would politely remind AMF that the FCA's guidance about financial difficulties, and the guidance about vulnerable consumers, may apply to Mr K's current situation. It should treat this with forbearance and due consideration. This should include setting up an affordable repayment plan for this amount, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 July 2023.

John Bower  
**Ombudsman**