

## **The complaint**

Ms D complains that Toyota Financial Services (UK) PLC, trading as Lexus Financial Services, mis-sold her a hire purchase agreement, and about some related issues.

## **What happened**

In March 2022 Ms D visited a dealership and agreed to part exchange her car, a Range Rover, for a Lexus. She paid a deposit of £200. She was told that the Lexus would be ready in June. Meanwhile, in April, she agreed with the dealership to end her agreement and return the Range Rover early, and to hire a temporary car until the Lexus was ready. After a delay, she was given a Vauxhall Corsa in early May. That car was too small for her needs in the long term, but she agreed to accept it as a stop-gap vehicle until June.

However, instead of a brief hire agreement, the dealership executed a four year hire purchase agreement instead.

Unfortunately, when it was time for the Lexus to be delivered or collected, it was more than 90 days since Ms D's initial enquiry in March, and so Lexus Financial Services ("LFS") carried out a new credit check. It decided that she could no longer afford the Lexus. In August Ms D stopped making her monthly payments, left the Vauxhall at the dealership with the logbook and keys, and told the DVLA that she no longer had it. She complained about the extra search which has been reported on her credit file.

LFS accepted that this agreement was mis-sold, and that the dealership was acting as its agent, so that LFS is responsible. It cancelled the agreement with nothing further to pay, removed it from her credit file, and offered to refund one of her monthly payments (£198).

Being dissatisfied with LFS's response to her complaint, Ms D brought this complaint to our service. She said that instead of her original vehicle or the new car she wanted, she has ended up with one she didn't want. She also said that her Range Rover had been undervalued by about £3,500. She asked for refunds and compensation adding up to over £12,000, which included £5,000 for her inconvenience, £3,500 for under-valuing the Range Rover, and also the cost of hiring a car since August 2022.

Our investigator upheld her complaint in part. He agreed that the agreement had been mis-sold, and he thought that £400 would be fair compensation for that, instead of LFS's offer. He also said that LFS should refund the £200 deposit, the deposit of £178 that she had paid for the Vauxhall, and £19 in fees that her insurance company had charged her for changing the vehicles on her policy. He said interest should be paid on the refunds at 8% a year. But he did not accept that the Range Rover had been undervalued, because LFS had provided evidence of its market value; he also pointed out that LFS had written off nearly £2,000 in negative equity.

LFS accepted that decision; Ms D did not. She said that £400 was not enough, and she should get at least £5,000. She said the insurance company had charged her £39.50, not £9.50, each time she had changed the vehicle on her policy, and she said she had changed her car three times.

Since no agreement had been reached, the investigator referred this case for an ombudsman's 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.

Having done so, I uphold this complaint to the same extent as the investigator, and for broadly the same reasons.

LFS has provided a screenshot from a third party's website showing that the Range Rover's value was £36,500, which is the figure LFS used in May 2022. I've also seen evidence that the Vauxhall was worth £9,219. I accept both of those figures. The invoice for the Vauxhall says that its cash price was £9,295, so it wasn't under-valued either.

That invoice also says that the finance settlement figure for the Range Rover was £38,383, meaning that there was negative equity of £1,883, which was written off. Since the Range Rover is no longer available to return to Ms D, I think that fair compensation would normally be to refund her its value instead, but since she owed her finance provider more than it was worth, I think that no further compensation need be paid for this part of her complaint. For that reason, I agree that £400 (as well as cancelling the agreement and removing adverse information about it from Ms D's credit file) is fair compensation for executing the wrong kind of agreement.

I won't require LFS to refund the cost of the vehicle Ms D has used since August 2022. That is because if nothing had gone wrong, she would still have been paying for a car every month; but if LFS refunded everything she has paid for the car she has now, then she would effectively have had a free car since August 2022. That would not be fair, because it would be putting her in a better position than she would have been in but for the dealer's actions. And for essentially the same reason, I won't require LFS to refund her monthly payments for the time she had the Vauxhall.

I have seen Ms D's insurance provider's terms and conditions, which include a list of fees. The only fee of £39.50 relates to the cancellation of a policy. Removing a vehicle from a policy is £29.50, and changing any other motor policy details made online is £9.50. Ms D has provided a payment schedule from her insurance provider, dated the day after she acquired the Vauxhall, showing that she was charged a fee of £9.50 and no other fees. I infer that she would have been charged the same fee when she returned the Vauxhall and replaced it on the policy with whatever she has been driving since. I have seen no evidence of a third change of vehicle. So I'm satisfied that £19.50 is the correct figure for the insurance costs.

### **My final decision**

My final decision is that I uphold this complaint in part. I order Toyota Financial Services (UK) PLC, trading as Lexus Financial Services, to:

- Arrange to remove any adverse information relating to the hire purchase agreement from Ms D's credit file (if it hasn't done so already),
- Refund Ms D's deposits of £200 and £178,
- Refund Ms D's insurance fees of £9.50 on 11 May 2022 and £9.50 in August 2022,
- Pay interest on all of the above refunds at the rate of 8% a year simple, from the dates of payment to the date of settlement,
- Pay Ms D £400 for her trouble.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 23 October 2023.

Richard Wood  
**Ombudsman**