

Complaint

Mr M is unhappy with what AutoMoney Limited ("AutoMoney") has agreed to do to put things right after it agreed it shouldn't have entered into a hire-purchase agreement with him without first carrying out further checks.

Mr M wants the remaining balance on the finance written off and his credit file amended.

Background

In October 2019, AutoMoney provided Mr M with finance for a used car. The cash price of the vehicle was £7,740.00. Mr M paid a deposit of £200 and applied for finance to cover the remaining £7,540.00. The hire-purchase agreement had interest, fees and total charges of £5,572.86 and the total amount to be repaid of £13,112.86 was due to be repaid by a first instalment of £289.09 followed by 52 monthly instalments of £240.09 and then a final instalment of £339.09.

In December 2020, Mr M notified Automoney that the engine on the vehicle had failed and that he'd taken it to a garage for repair. The required repairs ended up costing £6,720.00. However, as Mr M was unable to pay for the work that was completed, the repairs were removed from the vehicle and the garage ended up purchasing the vehicle from Auto Money for £2,000.00. AutoMoney considered this to mean that Mr M voluntarily surrendered the vehicle and applied a credit from the sale to his balance. Nonetheless, Mr M was left with a shortfall to repay.

In May 2023, Mr M complained that the payments to this hire-purchase agreement were unaffordable and so the finance should never have been provided to him. AutoMoney accepted that it ought to have carried out further enquiries into Mr M's circumstances when determining whether to lend to him and as it didn't, it agreed to remove all of the interest, fees and charges applied and effectively leave Mr M in the position where he'd only have to repay the amount he was lent.

Mr M was dissatisfied at this as he believed that the remaining balance should be written off and all adverse information removed from his credit file. He referred his complaint to our service as a result.

Mr M's complaint was considered by one of our investigators. She didn't think that AutoMoney's offer to put things right went far enough. She didn't think that Mr M should repay the full amount lent as AutoMoney had already sold the vehicle. Instead she thought that Mr M should only have to pay an amount for usage for the period that he had the vehicle.

AutoMoney accepted the investigator's conclusions. But Mr M was unhappy with this and asked for an ombudsman to review his complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr M's complaint.

As AutoMoney has already accepted that it should have carried out more checks and has effectively agreed that it shouldn't have lent to Mr M in the circumstances that it did, I do not need to consider whether Mr M's complaint should be upheld. I merely need to consider whether what AutoMoney has already done to put things right for Mr M is fair and reasonable in all of the circumstances of the complaint.

Our typical approach to putting things right

It might help for me to explain that in broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean AutoMoney putting Mr M in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. This is especially the case where goods are involved. In this case, Mr M did enter into the agreement and was given the car in question.

There is also no dispute that he also had use of the vehicle for fourteen months before he notified AutoMoney that it needed repairs which he couldn't afford to pay for. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr M back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

Why Mr M repaying the capital amount AutoMoney lent wouldn't result in a fair and reasonable resolution in this instance

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

So, in this case, this would mean Mr M paying back the £7,540.00 originally lent and any interest, fees and charges he actually paid being refunded (along with interest at 8% simple a year) to him. I do think that a refund of the interest, fees and charges Mr M paid (plus interest) is useful starting point and I will return to why this is the case further on. But for the moment it's worth me saying that I don't think that merely deducting all of the interest from the amount AutoMoney says Mr M owes is fair and reasonable.

I say this because a reduction along these lines, doesn't take into account the fact that AutoMoney effectively took possession of the vehicle in December 2020 when it accepted the £2,000.00 from the garage Mr M took the vehicle to. And a refund of the interest, fees and charges alone, would effectively place Mr M in the position he would be in having paid the full amount lent for a car in circumstances where he doesn't have ownership of the vehicle and therefore clearly hasn't had the benefit of £7,540.00.

The position in Mr M's case and what I think AutoMoney should do to put things right

As Mr M repaying the capital lent doesn't provide a fair and reasonable resolution in this instance, I've given careful thought to how else it might be fair and reasonable to put things right for Mr M.

It's also worth noting that in circumstances where goods are involved – i.e. such as where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, like here - it is usually appropriate for the car to be returned and the agreement ended. I've already explained that Mr M's car was effectively returned to AutoMoney in December 2020 and the agreement was ended at this point.

So clearly there is no need for Mr M to now return the car. I already explained why Mr M should not pay the full amount lent. But that doesn't mean that he shouldn't pay anything at all, or that what's been paid so far is sufficient.

I need to consider that Mr M did have use of the car for a period of time. And simply writing off the balance in the way Mr M is suggesting AutoMoney should be might not necessarily reflect this, in circumstances where it would be fair and reasonable to take account of the fact that Mr M had the use of a vehicle of his choosing for a period of time.

Our investigator settled upon a monthly usage figure of £145. She concluded that Mr M should pay £2,030.00 for having had use of the vehicle for fourteen months. As I've explained, AutoMoney accepts that this is fair and reasonable. But Mr M does not as he says that he shouldn't have to pay anything further. Although while Mr M argues that the balance remaining should be written off, he hasn't really disputed that £2,030.00 is a fair amount to reflect his usage of the vehicle during this period, or instead offered any alternative basis for calculating the value of his usage.

Nonetheless, I've considered what Mr M should pay for having had use of the car for fourteen months. As the investigator has explained, there isn't an exact formula for working out fair usage. But in deciding what would be fair and reasonable here, I've thought about the amount of interest charged on the agreement, Mr M's usage of the car and what sort of costs he might have incurred to stay mobile if he didn't have this car.

In doing so, I'm mindful that Mr M doesn't appear to have had a car when he entered into this agreement. For example, I can't see a part-exchange or anything else to indicate that this was the case. Furthermore, it would be remiss of me not to take into account that Mr M was provided with a prestige branded vehicle of his choosing.

I also recognise that the fair usage amount suggested thus far (which AutoMoney has accepted) will see AutoMoney receive considerably less in total (including what it received from the garage which it sold the car to), than it lent Mr M to begin with.

Bearing in mind all of this and there isn't anything plausible here that indicates Mr M would have been able to stay mobile with a vehicle of the type funded by AutoMoney for less than £145 a month, I'm satisfied that a monthly usage figure of £145 month is a fair and reasonable amount. Therefore, I think that Mr M should have to pay no more than £2,030.00 in total to reflect the period of time that he had use of the vehicle.

As I understand it (and this is confirmed by the statement of account), Mr M has made £589.09 in payments to AutoMoney. Furthermore, Mr M also paid a £200 deposit to the motor dealer which he purchased his vehicle from, which AutoMoney would ordinarily be expected to refund to him as a result of the complaint being upheld.

Bearing in mind Mr M has paid less than the amount that he needs to pay AutoMoney, I don't think that it should refund this £200 and that it should instead deduct this from what Mr M now owes. I understand that Automoney is also prepared to add a sum of £65 to the £200 deposit.

This means that I'm prepared to accept that Mr M has effectively made £854.09 in payments to AutoMoney and this means that his balance owing should be £1,175.68.

Should AutoMoney make a further reduction to Mr M's outstanding balance

I've also thought about whether the balance remaining should be written off in full, in light of the distress and inconvenience that Mr M says he's experienced. In particular, Mr M has referred to the stress and harassment of being pursued for such a large debt and the impact this agreement has had on his credit file.

I'm sorry that Mr M feels that he was harassed for payment. But as far as I can see AutoMoney has simply taken steps to recover an outstanding debt. Furthermore, even as a result of a successful complaint Mr M has been left with a balance to repay. I can understand why Mr M may have felt that AutoMoney actions amounted to harassment when it was letting him know that he had an overdue balance at a time when he didn't have the funds to pay it.

However, it wouldn't have been reasonable to have provided Mr M with an indication that the amount no longer was due, when AutoMoney didn't consider this to be the case. Furthermore, I've not seen anything here to indicate that AutoMoney's actions amounted to harassment or that it did anything other than take legitimate steps to contact Mr M about a balance that was owing.

As this is the case and while I'm sympathetic to Mr M's position, I nonetheless satisfied that AutoMoney's actions in pursuing a legitimately owed debt does not mean that I should require it to write off the outstanding balance.

I now turn to what Mr M has said about the effect that this agreement has had on his ability to obtain credit elsewhere. Mr M has said that he has been unable to rent, look at buying a home or obtain a mobile phone contract because of the impact that this agreement has had on his credit file.

I've thought about what Mr M has said. But I'm not persuaded that AutoMoney's actions are responsible for Mr M's creditworthiness. I say this because the reason AutoMoney has accepted it should have carried out more enquiries before lending to Mr M is because of what it saw on Mr M's credit file at the time. Having looked at the information, I can see that Mr M had three defaulted accounts and two county court judgements ("CCJ") recorded against him before entering into this agreement.

In these circumstances, I simply cannot reasonably conclude that his access to credit would have been significantly better, but for AutoMoney's actions in lending to him. Lenders typically consider a number of factors when determining whether to lend to a prospective borrower. However, in my experience multiple defaults and CCJs are more likely to cause a lender not to provide a mortgage, or concern a prospective landlord when deciding whether to accept a tenant.

And given the amount of adverse information already present on Mr M's credit file, I'm not persuaded it is reasonable to hold AutoMoney responsible for any difficulty Mr M has had in obtaining further credit – after all Mr M's argument here is that he shouldn't have been lent to because he could afford to make repayments.

It seems to me that it would be somewhat illogical for me to accept that this is the case and then direct AutoMoney to pay further compensation, for any inability Mr M may have had to obtain further credit, which his actions and arguments suggest would also have been unaffordable.

As this is the case, I'm satisfied that this is not a reason for AutoMoney to write off the outstanding balance either. And this means that it would be fair and reasonable for Mr M to repay the remaining £1,175.68. AutoMoney should contact Mr M to arrange a suitable repayment plan for this amount. I would encourage Mr M to get in contact with and cooperate with AutoMoney to reach a suitable agreement for this.

Mr M's credit file going forward

Finally, I turn to Mr M's credit file going forward. Mr M argues that any adverse information regarding this agreement should be removed from his credit file. I've thought about what Mr M has said and I do sympathise with what he's told us. I fully appreciate why he's unhappy with adverse information being recorded on his credit file and he's worried about the impact this will have.

But I have to take account of the fact that a balance will remain outstanding here. Asking AutoMoney to remove all adverse information here will effectively see it needing to record that this balance no longer needs to be repaid (in circumstances where I've already explained why it would be fair and reasonable for it to be), or that Mr M is up-to-date with his payments.

This would see AutoMoney recording information that doesn't reflect the position that Mr M is in and is wholly inaccurate. In my view, recording such information would not only be inaccurate but it would also arguably be counterproductive and not in Mr M's interests or that of any future lender, as a future lender would not be able to factor this balance owing into any decision on whether to lend to Mr M.

So I'm satisfied it is fair and reasonable for any adverse information to be recorded about Mr M's hire-purchase agreement to remain for the period an outstanding balance remains. Although AutoMoney should ensure that it is not reflecting that Mr M owes more than he now will as a result of the outcome of his complaint. Should Mr M consider that it would be fair for any adverse information to be removed, if and when he repays the outstanding balance, this is a matter that he should take up with AutoMoney at that point.

Overall and having considered everything, I'm satisfied that what AutoMoney has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of his complaint. So I'm not requiring AutoMoney to do anything more or anything further. I now leave it to Mr M to decide whether he wishes to accept the resolution put forward.

I appreciate this will be very disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what AutoMoney Limited has agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this complaint. So I'm not requiring it to do anything more, or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 4 March 2024.

Jeshen Narayanan
Ombudsman