

## **The complaint**

Mr S complains about a number of problems he has experienced with his car (after it was seized by the Police in late June 2022) and about the administration and management of his finance agreement by Aldermore Bank Plc ("Aldermore") in respect of it.

## **What happened**

In May 2019 Mr S entered into an agreement with Aldermore for a used car costing £42,995.00. Under the terms of the agreement, everything else being equal, Mr S undertook to pay a deposit of £5,000.00 followed by 48 monthly payments of £517.96 and 1 monthly payment of £20,825.00 – making a total repayable of £50,687.08.

On 19 August Mr S contacted Aldermore asking for an agreement payment holiday because his car had been seized by the police in late June 2022.

On 22 August 2022 Aldermore sent Mr S an agreement termination notice.

On 12 September 2022 Aldermore advised Mr S that reinstatement of the agreement might, in certain circumstances, be possible.

On the same day the police advised Aldermore that it could collect the car which was, and had been for some time, with a third party – a third party that I will call "A".

On 10 October 2022 the car was collected by an agent appointed by Aldermore – an agent that I will call "F" – from A for onward sale at auction.

On 14 October 2022 Mr S contacted Aldermore to say he had a number of personal possessions in the car he would like returned.

On 19 October 2022 the car was inspected by F who identified £535 of damages.

On 20 October 2022 Aldermore confirmed to Mr S that on certain conditions being met the car (and any belongings in it) could be collected by him from F.

On 21 October 2022 F issued Aldermore with an invoice for £1,086.00 broken down as follows:

- storage costs paid to A      £648.00
- cost of collecting car from A   £438.00
- total                                £1,086.00

On the same day Aldermore advised F that the car could be returned to Mr S and that he would be collecting it. Aldermore agreed to the car being returned to Mr S after he had paid it £2,121.92 broken down as follows:

• September 2022 agreement instalment	£517.96
• October 2022 agreement instalment	£517.96
• F's invoice dated 21 October 2002	£1,086.00
• Total	£2,121.92

On the same day Aldermore sent Mr S an agreement reinstatement notice, reinstatement being subject to certain conditions being met.

On 25 October 2022 Mr S complained to Aldermore that the car (whilst in the custody of police) had suffered damage and that a number of his personal possessions were missing from it. He also complained about having to travel so far to collect the car (at a cost) and that Aldermore had collected the car rather than he being able to do so.

On 19 December 2022 Aldermore issued Mr S with a final response letter ("FRL"). Under cover of this FRL Aldermore said it wasn't upholding Mr S' complaint.

On 19 May 2023 Mr S complained to our service.

Mr S' complaint was considered by one of our investigators who came to the view that it should be upheld in part. In summary she said:

- Aldermore had done nothing wrong in terminating the agreement or in not advising Mr S that the police had confirmed, on 12 September 2022, it no longer had an interest in the car and it could be collected.
- It's both fair and reasonable that Mr S should have to bear the storage costs paid by Aldermore for the period before 12 September 2022.
- It's neither fair nor reasonable that Mr S should have to bear the storage costs paid by Aldermore for the period after 11 September 2022 and the sum paid by Mr S in this respect should be refunded to him together with interest.
- It's neither fair nor reasonable that Mr S should have to bear the transport costs paid by Aldermore of £438.00 and this sum (paid by Mr S) should be refunded to him together with interest.
- Aldermore can't fairly or reasonably be held liable for the personal possessions Mr S says were in the car (at the time of seizure by the police) but not in at the time of collection of it by him from F.
- Aldermore can't fairly or reasonably be held liable for the damage to the car that Mr S says occurred whilst the car was out of his possession.
- Aldermore can't fairly and reasonably hold Mr S liable for the £535 of damages identified by F and if Mr S has paid any of this sum to Aldermore it should be refunded to him together with interest.
- Aldermore should pay Mr S £125.00 for the distress and inconvenience this whole matter has caused him and for which it's responsible.

Aldermore didn't confirm whether it accepted the investigator's view or not, whereas Mr S submitted he should be awarded more by way of compensation.

Because of Aldermore's lack of a response and Mr S submitting he should be awarded more in compensation Mr S' complaint was passed to me for review and decision.

In January 2024 I issued a provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

Finally, I would like to make clear that I'm only considering in this decision what Aldermore (or its agents) did or failed to do, not the police.

The agreement signed by Mr S is headed "*Unregulated Hire Purchase (Variable Rate)*". But like the investigator, and for the same reasons, I'm satisfied that regardless of how this agreement has been headed it can and should be treated as a regulated one and one that isn't exempt. This means that I'm satisfied that I've the power to consider Mr S' complaint, at least to the extent it relates to the management and administration of the agreement.

For ease I will address each point that I believe needs to be addressed separately and in turn.

#### termination of the agreement

Term 3.6 of the agreement states:

*"you will keep the Equipment in your possession and under your control and shall keep the Equipment free from any lien, pledge, charge, hypothec or other encumbrance..."*

Term 10 of the agreement states:

*"The hiring of the Equipment under this Agreement will terminate on Aldermore giving written notice to this effect to you and Aldermore may repossess the Equipment at any time following the occurrence of any of the events below..."*

*...you breach any other term of this Agreement..."*

Given that on 19 August 2022 Mr S confirmed to Aldermore that the car had been seized by the police, meaning it was no longer in his possession as required under term 3.6, and given that on 22 August 2022 Aldermore sent Mr S an agreement termination notice as required under term 10 I'm satisfied that Aldermore did nothing wrong in this respect.

Aldermore's failure to advise Mr S that the car had been released by the police and could be collected

On 12 September 2022, when the police advised Aldermore the car could be collected by it, Mr S' agreement had been terminated, and correctly so. Therefore Aldermore was under no obligation to advise Mr S as to what it had been advised by the police and I'm satisfied that Aldermore did nothing wrong in this respect.

storage costs to 12 September 2022 inclusive

Like the investigator I'm satisfied that Aldermore can't be held responsible for the car being seized by the police or the costs accrued for storing it up to and including 12 September 2022. So I'm satisfied that Aldermore did nothing wrong in holding Mr S liable for these costs.

storage costs from 13 September 2022

The investigator came to the view that given the car was available for collection on 12 September 2022 and wasn't collected until 10 October 2022 Aldermore was wrong to hold Mr S liable for these costs.

I agree that it's unfair that Mr S should have been held liable for all these costs. But in my view it's unreasonable to assume that Aldermore could and should have collected the car on 12 September 2022. In my view arranging collection of a car in these circumstances takes some time. So thinking about this very carefully I think that Aldermore could have (and should reasonably have) arranged collection of the car by 19 September 2022 (a period of seven days) meaning that I'm of the view that Aldermore should refund to Mr S the storage costs paid by him to it representing the period 20 September 2022 onwards.

transport costs

The car was collected by F (on behalf of Aldermore) on 10 October 2022. At this point in time the agreement had been terminated and no arrangement had been reached with Mr S to have the agreement reinstated and the car returned to him. With this in mind and given:

- term 6.1 of the agreement Mr S signed states:

*"you agree to indemnify Aldermore against all loss, actions, claims, demands, proceedings (whether criminal or civil), costs, legal costs (on a full indemnity basis), insurance premiums and calls, liabilities, judgements, damages or other sanctions whenever arising directly or indirectly from you hiring, possession, operation or use of the Equipment under this Agreement or otherwise from your failure or alleged failure to carry out your duties under this Agreement or by any reason of any loss, injury or damage suffered by any person including without limitation Aldermore from the presence of the Equipment or the delivery, possession, hiring, transportation, condition, use, operation, removal, return, sale or disposal by Aldermore or any defect in the Equipment or the design, manufacture, testing, maintenance, or overhaul of it or Aldermore exercising any right in respect of the Equipment or its ownership or hiring. The provisions of this clause 6.1 shall continue in full force and effect notwithstanding the termination of this agreement for any reason."*

- Mr S agreed to pay this sum to have the agreement reinstated and the car returned to him

...I'm satisfied that Aldermore did nothing wrong in holding Mr S liable for these costs.

### repair costs

Mr S says he incurred a number of repair costs after he collected the car which should be refunded to him. But having considered everything that has been said and submitted, in particular the time everybody accepts the car was in possession of the police (or its agents) rather than Aldermore (or its agents) and the contents of F's inspection report dated 12 October 2022, I'm simply not persuaded, on the balance of probabilities, that these incurred costs are due to something Aldermore (or its agents) did or failed to do.

### costs incurred by Mr S in collecting the car

Mr S says he incurred costs in collecting the car. But I'm not persuaded that this is something I can reasonably hold Aldermore (or its agents) responsible for. Furthermore Mr S has been inconsistent in his testimony about what these costs were and has been unable to provide any persuasive evidence in support of them. Therefore I don't uphold this aspect of Mr S' complaint.

### missing belongings

Like the investigator I'm satisfied that there is simply insufficient evidence for me to be able to conclude that Aldermore (or its agents) are responsible for what Mr S says were items that were in the car when it was seized by the police but not in it when he collected it.

### damage

I note that on 19 October 2022 the car was inspected by F who identified £535 of damages.

Notwithstanding that I've seen no persuasive evidence that Aldermore was responsible for this damage, I've seen no evidence that Mr S was invoiced for this damage or that he paid for this damage. Therefore I can't see that this particular point has, in itself or currently, caused Mr S a loss.

### distress and inconvenience

The investigator came to the view that Aldermore should pay Mr S £125 for the distress and inconvenience its actions, or inactions, caused him. But having reviewed everything that has been said and submitted I'm satisfied that Aldermore dealt with Mr S both fairly and reasonably and it need not pay him this sum.

I appreciate Mr S will be disappointed by my decision. But in summary I'm currently of the view that to settle this complaint all that Aldermore is required to do is to refund to Mr S the storage costs he paid covering the period 20 September 2022 onwards.

Aldermore responded to my provisional findings to say that it accepted them.

Mr S, after asking for more time to respond to my provisional findings, reiterated his earlier submissions to our service that items that were in the car, when it was seized by the police, weren't in it when he collected 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.

Mr S says that he should be compensated for a number of items that were in the car, when it was seized by the police, which weren't in it when he collected it. But I can't see that Aldermore need not compensate Mr S for this.

I say this because Mr S has been unable to provide any documentary evidence that the lost items he is claiming for were ever in the car, or that they went missing when the car was in the custody of Aldermore (or its agents) rather than in the custody of the police.

Furthermore, I note that an email from the police to Mr S confirms that the only item in the car, when it was seized, was "*a brown folder*" (available for collection) but nothing else, suggesting to me that when the car was collected by Aldermore (or its agents) there was nothing in it.

I appreciate Mr S will be disappointed but given what I say above and given that Aldermore has accepted my provisional findings I can confirm that I see no good reason to depart from them and I now confirm them as final.

Finally, and for the avoidance of doubt, I would add that I'm satisfied that Mr S has had sufficient time to provide everything he would like me to take into account and it's entirely reasonable for me to issue the final decision now, rather than later.

### **My final decision**

My final decision is I uphold this complaint in part and find that Aldermore Bank Plc must refund to Mr S the storage costs he paid covering the period 20 September 2022 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 March 2024.

Peter Cook  
**Ombudsman**