

## **The complaint**

Mr F is unhappy that, when he was supplied with a car by Listers Group Limited trading as Listers Toyota, the invoice and subsequent finance agreement were incorrect.

## **What happened**

In July 2023, Mr F was supplied with a used car through a hire purchase agreement. Listers acted as both the supplying dealership and credit broker in this transaction.

Mr F said that, in June 2023, before the agreement was signed, he took his existing car to Listers, who were trading under a different name at that point. He said that Listers offered him £100 part exchange for his existing car, which he expected to be taken off the price of the car they were arranging finance for.

However, when he came to sign the agreement, Mr F says that the £100 part exchange value hadn't been accounted for, and there was also a £30 fuel charge. He says he was told the fuel charge could be removed, but this would've meant a new agreement would be needed, which would delay matters. So, Mr F chose to sign the agreement as it was and proceed on that basis.

Mr F subsequently complained to Listers about the missing part exchange and the fuel charge. In their complaint response letter, while Listers didn't uphold the complaint, they offered Mr F £150 - £100 as a goodwill gesture and £50 for any distress or inconvenience he'd been caused. Mr F told Listers that they had taken more than 8-weeks to respond to his complaint, and they didn't advise him of his rights to escalate the matter to the Financial Ombudsman Service. In recognition of this, Listers offered a further £50 for their complaint handling.

Mr F was unhappy with Listers offer, saying that Listers apology was hollow and their offer of compensation insulting. So, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, while there was no evidence to suggest the part exchange was ever to be included, the fuel charge was clearly stated on the original order form. The investigator also said that Mr F chose to go ahead knowing that there was no part exchange included and a fuel charge was being applied – he could've asked for the agreement to be amended to reflect what he thought was the correct figures.

So, the investigator didn't think Listers had done anything wrong. What's more, they thought Listers offer of a total of £200 compensation was fair and reasonable in the circumstances, and they didn't need to do anything more.

Mr F didn't agree with the investigator's opinion. He said that any delays to him collecting the car would've been inconvenient, even though the car was eventually delayed regardless of this. He said that, although the £100 Listers offered honoured the original part-exchange value, it didn't account for the additional interest he would have to pay over the term of the finance agreement.

Mr F provided evidence of him asking Listers to remove the fuel charge and he said he challenged the costs as soon as he was aware of them. So, he asked for an ombudsman to make a final 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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. In arranging a regulated consumer credit agreement, Listers were acting in their capacity as a credit broker. As credit broking is also a regulated activity, this means we're able to investigate complaints about it.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. I note Mr F is unhappy with how Listers handled and responded to his complaint. But complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. As such, the way Listers handled Mr F's complaint hasn't been considered as part of my decision.

I've seen an extract from the order form completed by Listers. I understand this was completed in June 2023 and, based on the phone calls I've listened to, it's not disputed that Mr F also signed this form. The order form extract shows the retail price of the car to be £12,490, with a £30 charge listed under 'dealer options'. This brings the total price of the car to £12,520. Crucially, the section headed "*Part Exchange Vehicle(s)*" is blank, with no part exchange listed, so keeping the total price as £12,520.

The order form goes on to breakdown that the £30 charge (£25 plus VAT) is a fuel charge, that Mr F was paying a £500 deposit and that there was a dealer contribution of £500. This meant that Mr F was financing £11,520. I've seen a copy of the hire purchase agreement Listers arranged for Mr F. This shows the cash price of the goods as £12,520, and the total amount of credit as £11,520.

Based on the above, I'm satisfied that the hire purchase agreement Listers arranged for Mr F reflects the order form he signed. I've also noted that, when Mr F signed the finance agreement a few weeks later, he queried the amount being financed. In a call that took place on 7 July 2023, the fuel charge was explained to him, and he accepted this rather than wait for the agreement to be refinanced. In this call, Mr F didn't raise the issue of the missing part exchange amount.

I don't doubt that Mr F believed Listers were taking his old car in part exchange, so it would be reasonable for him to expect that the agreed part exchange value would be applied against the value of the car they were supplying him. However, from the evidence I've seen, especially what was discussed on some phone calls, the car Mr F wanted to part exchange had broken down and was a non-runner. I've noted that, on 10 November 2023, Mr F also advised us that Listers had written to him asking him to collect the car he left at their

premises, otherwise they would look to sell it. Listers also provided Mr F with the legal basis under which they were allowed to do this.

It's therefore clear to me that, while Mr F may have believed his existing car was being given in part exchange, this wasn't Listers understanding. And their not including the part exchange value and subsequent actions to try and get Mr F to collect the car shows this.

In a phone call on 18 January 2024, Mr F advised the investigator that, while he had left the car with Listers and reasonably assumed this meant they had accepted the car in part exchange, he also said that Listers had advised him they would need to examine the car and run any necessary diagnostics first. This, and the calls I've been provided between Mr F and Listers which only deal with Mr F's request for the removal of the fuel charge and not the missing part exchange value before the new car had been collected, satisfies me it's more likely than not that Listers agreed to consider taking the old car in part exchange but, after examination, decided not to.

As such, I'm not satisfied that Listers did anything wrong by not applying a £100 part-exchange value against the finance agreement. I also understand that Mr F's old car remains at Listers, waiting for him to collect it. As such, he hasn't lost out as he's still able to either keep, sell, or scrap the car.

Turning to the fuel charge., this is for fuel that was added to the car when Mr F collected it. Had there been no fuel in the car, Mr F would have needed to add (and pay) for this himself. As such, the fuel charge was essentially something that, had it not been included, Mr F would've needed to pay anyway by fuelling the car following collection. I've also noted that, in the call of 7 July 2023, Mr F agreed to accept this fuel charge i.e., he agreed that Listers would add £30 of fuel to the car before he collected it.

Given this, I'm also not satisfied that Listers did anything wrong by charging Mr F for the fuel they added to the car.

In his comments on the investigator's opinion, Mr F has said that, by not applying the part exchange value to the hire purchase agreement, he has essentially had to pay extra interest. I've roughly calculated that, over the term of the agreement at the specified interest rate, Mr F borrowing £100 more than he would if Listers had agreed to the part exchange would result in approximately £30 additional interest.

In resolution to his complaint, Mr F was offered £150 by Listers (plus an additional £50 for their shortcomings when dealing with his complaint, which, as I've said, doesn't form part of my decision). Given this, and that Mr F has had the option to collect his old car since at least November 2023, so hasn't lost out by not having the car he wanted to part exchange, I'm satisfied this offer was fair and reasonable in the circumstances. And it's for Mr F to decide whether to now accept this.

### **My final decision**

For the reasons explained, I don't uphold Mr F's complaint about Listers Group Limited trading as Listers Toyota.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 November 2024.

Andrew Burford  
**Ombudsman**

