

The complaint

Ms W complains that Lendable Ltd trading as Autolend was irresponsible to enter into a hire purchase agreement with her and that it failed to treat her fairly and reasonably when she contacted it to say she wanted to return the car and 'cancel' the agreement.

Ms W is represented by a third party, but for ease of reading I'll only refer to Ms W in my decision.

What happened

On 19 June 2023 Ms W entered into a hire purchase agreement with Autolend for a used car costing £9,248. The car was supplied by a dealership that I will call "S" and the finance was brokered on Ms W's behalf by a credit intermediary that I will call "M".

Under the terms of the agreement, everything else being equal, Ms W undertook to pay a cash deposit of £515 followed by 59 monthly repayments of £216.48 and 1 monthly repayment of £250.68 making a total repayable of £13,538 at an APR of 18.32%.

Shortly after taking delivery of the car Ms W decided she would like to return it and 'cancel' the agreement.

Following Ms W's decision that she would like to return the car and 'cancel' the agreement she contacted S, M and Autolend on a number of occasions to (try) and do so but was unsuccessful.

On 15 and 17 August 2023 Autolend advised Ms W that she could sell the car to S, sell it privately, or voluntary surrender it. It also explained to Ms W what the likely financial consequences of the three options would be.

On 21 August 2023 Autolend wrote to Ms W to confirm that it was prepared to accept the voluntary surrender of the car and the implications of it doing so.

On 31 August 2023 Ms W signed and returned to Autolend a voluntary surrender consent form. In doing so Ms W confirmed that she understood that she would *"still be responsible for paying any remaining balance on [her] account with Autolend if the net sale proceeds from the sale of the [car were] not sufficient to settle the outstanding balance"*.

On 15 September 2023 the car was sold by Autolend at auction. Autolend received £4,740 for the sale, this being a gross sale price of £4,950 less £175 auction commission.

On being advised of the above sale and that she still owed £3,993 (capital sum advanced of £8,733 less the net auction sale proceeds of £4,740) Ms W complained to Autolend that it should never have lent to her and it was neither fair nor reasonable to hold her liable for a debt of £3,933.

Autolend considered Ms W's complaint but didn't uphold it.

Because Autolend didn't uphold Ms W's complaint she referred it to our service.

Ms W's complaint was considered by one of our investigators who came to the view that Autolend had done nothing wrong. In other words they didn't uphold Ms W's complaint.

Ms W disagreed with the investigator's view so her complaint has been passed to me for review and 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 can confirm that I've come to the same overall outcome as the investigator and for broadly the same reasons. There is also very little I can usefully add to what has already been said.

I would like to make clear that I've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point (including those made by Ms W in her substantive response to the investigator's view) or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. Our rules allow me to do this, reflecting the fact that we are an informal free service set up as an alternative to the courts.

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

Ms W's irresponsible lending complaint

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

Autolend needed to make sure it didn't lend irresponsibly. In practice, what this means is Autolend needed to carry out proportionate checks to be able to understand whether Ms W could afford to repay the finance she was applying for.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high.

Autolend said it only agreed to lend to Ms W after:

- it had verified her declared monthly income of £1,300 by way of a current account inflow check with a credit reference agency covering a 12 month period
- a credit check it undertook with a credit reference agency showed she had no adverse information recorded against her of any kind (including, but not restricted to, county court judgements, defaults, missed payments and payment arrangements) going back up to 6 years
- a credit check it undertook with a credit reference agency showed she only had £75 of existing debt
- it had estimated her essential living costs as being £770
- it had estimated future car running costs as being £110

- taking into account a monthly agreement repayment of £217

Given the above and given the size and term of the loan, the APR and the monthly repayment I'm satisfied that Autolend carried out proportionate checks and didn't need to do anything further before it agreed to lend.

Ms W also submits that Autolend shouldn't have lent to her on the grounds of her mental health status in June 2023. But like the investigator I'm satisfied that Ms W didn't declare that she had, amongst other things, just escaped from an abusive relationship and living in temporary accommodation to Autolend (or M) when she made her application or that she acted in such a way that Autolend (or M) should have gone on to make further enquiries in this respect.

Therefore I'm satisfied that Autolend did nothing wrong in this respect.

Ms W's request to return the car and 'cancel' the agreement

I appreciate Ms W wanted to return the car, but the dealership was under no obligation to accept its return, at least in the absence of any fault with it.

Now Ms W did have the right to cancel the agreement within the first 14 days. But in the absence of the dealership accepting the car's return (and the agreement being 'unwound') this required Ms W paying Autolend, within 30 days, £8,733 plus interest at £3.69 a day for each day the sum of £8,733 went unpaid, something Ms W was unable to do.

So with the above in mind I can't see that Autolend did anything wrong in explaining to Ms W that her options were to:

- sell the car back to S for £6,000 (payable to it) and to settle the agreement shortfall that this sale would result in
- sell the car privately, pay the proceeds of the sale to it and to settle the agreement shortfall that this sale would likely result in
- voluntary surrender the car to it for sale at auction and to settle the agreement shortfall that this sale would likely result in

Now I can understand why Ms W elected to voluntary surrender the car to Autolend, rather than electing to take one of the other two options, and her disappointment in the price achieved for the car when it was sold by Autolend at auction. But I'm satisfied, based on what both parties have said and submitted, that Ms W wasn't pressured into taking one option over the other and was aware that there was no guarantee as to what the car could or should achieve by way of an auction sale price. I would also add that when placing the car for sale at auction Autolend was under no obligation to set a reserve price.

For the sake of completeness I would also add that although the option to voluntary surrender the car resulted in a bigger 'loss' accruing than the other two options would have done – everything else being equal – this wouldn't have been known at the 'outset'. Furthermore, it was just as much in Autolend's interest that the car achieve the best possible price on its sale (whether to S, privately or at auction) as it was to Ms W.

Therefore I'm satisfied that Autolend did nothing wrong in this respect.

Whilst I've a great deal of sympathy and empathy with the situation Ms W was in and is in, I'm satisfied that Autolend hasn't done anything wrong here and I'm not asking it to take any further action. Autolend may therefore seek to recover from Ms W the sum recorded in its 'books' as due and owing to it from her, but if it does so, I would remind it of its obligations to treat Ms W positively and sympathetically and show her forbearance.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 2 July 2024.

Peter Cook
Ombudsman