

## **The complaint**

Mr and Mrs J are unhappy that Stellantis Financial Services UK Limited trading as Vauxhall Finance (Vauxhall) are pursuing them for an amount they say is outstanding under a consumer hire agreement for a car that was returned in December 2021.

For ease of reading I will refer only to Mrs J.

## **What happened**

In August 2020 Mrs J was supplied with a car through a consumer hire agreement with Vauxhall. The agreement was for four years, with 48 monthly payments of £222.31.

Mrs J said issues began when she changed the direct debit date. She said Vauxhall tried to collect payments on the wrong date. She said she never received any notification that her account was in arrears.

Mrs J said that she found out there was a problem when she was contacted by a third party debt collector in June 2021 about arrears on the account. She said she cleared the arrears. She said she was contacted again by the third party in November 2021 and told she had to return the car. She said the car was collected on 29 November 2021. She said Vauxhall took no more payments from her and she received no letters from them.

She said that Vauxhall wrote to her in August 2022 informing her that payment of £13,800 had been received and the agreement was now terminated.

She said she heard nothing more until January 2024 when Vauxhall wrote to her informing her that she owed them £9,256.50.

She said Vauxhall told her that she should've continue to make the monthly payments as the agreement was a hire agreement and not a hire purchase agreement. She said she hadn't been aware there were different types of agreements. She said she was mis-sold the agreement, and wasn't given a copy of the agreement. She said she never received a default notice.

In their final response letter Vauxhall said that the car that was the subject of the agreement had been repossessed in December 2021 and sold at auction in September 2022. They said that due to an error, they failed to inform Mrs J that there remained an amount due of £9,256.50. This was the amount they were now pursuing.

They said Mrs J had signed the leasing agreement, and this indicated she had read and understood the terms and conditions of the agreement.

Mrs J was unhappy with this response, so she referred her complaint to our service for investigation.

Our investigator said that Mr and Mrs J remained liable for the arrears and the amount outstanding under the agreement. So she didn't think it was fair to ask Vauxhall to write off the amount outstanding.

But she didn't think it was fair that the demand for payment was sent after such a long period of time. So she said Vauxhall should pay £250 to compensate Mrs J for the stress and inconvenience this had caused.

Mrs J didn't agree with the investigator. She said she had paid the arrears and the car was sold at auction for more than she said she owed at the start of the agreement. She said none of the payments on the statement provided by Vauxhall were correct.

Because Mrs J didn't agree, this matter has been passed to me 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, as it is in this case, 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. Mr and Mrs J were supplied with a car under a consumer hire agreement. This is a regulated consumer hire agreement which means we are able to investigate complaints about it.

Before I explain why I've reached my decision, I think it's important for me to set out exactly what I've been able to consider here, and how. Mrs J told us that Vauxhall terminated the agreement after payments were missed. I'm not considering whether or not Mrs J breached the agreement or if repossession of the car was appropriate.

Mrs J's main complaint is about Vauxhall belatedly contacting her about an outstanding amount they said she owed. That is the issue I shall cover.

Before I consider that point, I will address Mrs J's complaint that she wasn't told the agreement was a lease agreement. She said she thought her previous car was being used as a deposit on a hire purchase agreement, as she had done previously. This was a discussion in person so there's little evidence of what was asked and what was said in reply.

I can't hold Vauxhall responsible for information that may or may not have been provided by the supplying dealer. That's because the relevant legislation, section 56 of the Consumer Credit Act, does not apply to consumer hire agreements unless the creditor or owner acts as negotiator in respect of antecedent negotiations. I've not been provided with any evidence to show that Vauxhall were involved in the discussions before Mrs J acquired the car that was the subject of this agreement.

So I've relied on the documentation that Mrs J kindly provided. She has supplied me with pages of the agreement that she entered into. This includes the signature page, and it's appears that both she and Mr J signed the agreement. Although there is no date on the

document I'm satisfied it is more likely than not it is their signatures on the document and that it would have been signed before they entered into the agreement.

The statement they signed makes clear that this is a "*Hire Agreement*". She has also provided the page that includes clause 2. This is titled "*Hire of the vehicle*" and explains that Vauxhall "*let to you (and you take on hire from us)*" – making clear that the car is let or hired, and not purchased.

Because the document was signed by Mr and Mrs J I'm satisfied it was more likely than not that she was provided with the necessary information that would have informed her about the type of agreement she was entering into.

Mrs J's main complaint is that she wasn't aware that the debt was still outstanding, and the amount of time that had passed before Vauxhall contacted her.

Vauxhall admitted the delay was due to an error. And they also said that an individual cannot gain because of a genuine error by the creditor. I agree. If Vauxhall can show that the debt is genuine and still outstanding, then individuals like Mr and Mrs J, still have to pay that debt.

That's because under the terms of the agreement, they are still liable for it. Section 8.3 of the agreement Mr and Mrs J entered into states,

*"If this agreement ends following default or termination under Clause 8.1 of this agreement, you must pay:*

*8.3.1 the arrears which were due on termination*

*8.3.2 (as agreement damages) an amount equal to the monthly payments which immediately before termination had not yet fallen due: and*

*8.3.3 any other sums due under this agreement".*

And because it appears that they are still liable it wouldn't be fair or reasonable to ask Vauxhall to write off any legitimate amount outstanding.

### **Putting things right**

It's clear that being told by Vauxhall that they still owed several thousand pounds approximately two years after the car had been repossessed caused Mr and Mrs J a great deal of stress. Mrs J has described the impact this had on her health, and on her credit file.

Vauxhall admit they made a mistake. My role is not to punish or fine them. But I do think they should pay Mr and Mrs J £250 in compensation to reflect the distress and inconvenience caused.

Mrs J hasn't challenged the amount Vauxhall say she owes. But she does dispute the amounts showing on the statement of account they provided to her. She's also commented on the amount raised at auction and compared this to the original debt.

Despite asking for relevant information from both parties, I haven't seen any calculations so I'm unable to comment on the accuracy of the amount Vauxhall say is outstanding. So in this instance they should provide Mrs J with a full statement of account, copies of default notices they issued, and explain to her how the amount outstanding was calculated. If Mrs J is unhappy with the information provided, or disagrees with the amounts provided, that will need to be the subject of a new complaint.

**My final decision**

For the reasons explained, I uphold Mr and Mrs J's complaint about Stellantis Financial Services UK Limited trading as Vauxhall Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 6 February 2025.

Gordon Ramsay  
**Ombudsman**