

## **The complaint**

Mr H complains about the quality of three cars supplied to him by CA AUTO FINANCE UK LTD ("CA") and its decision to lend to him.

## **What happened**

Mr H entered into three separate hire purchase agreements between January 2023 and March 2023 in order to acquire three different cars. The finance was provided by CA AUTO for each of the three agreements.

In January 2023, Mr H acquired a used car ("C1") under a 60 month hire purchase agreement with CA AUTO. The cash price of the car was £13,709.05. Under the agreement, Mr H was required to make 59 payments of £318.66, followed by a final payment of £328.66 if he wanted to keep the car. The total amount payable was £19,129.60.

In February 2023, Mr H traded in C1 and acquired different a used car ("C2") under a 60 month hire purchase agreement with CA AUTO. The cash price of the car was £12,000 and because Mr H had traded in C1, there was negative equity of £5,904.13 carried over and added to this agreement. Under the agreement, Mr H was required to make 59 payments of £416.20, followed by a final payment of £426.20 if he wanted to keep the car. The total amount payable for C2, including the negative equity, was £24,982.

In March 2023, Mr H traded in C2 and acquired a different used car ("C3") under a 60 month hire purchase agreement with CA AUTO. The cash price of the car was £16,000 and because Mr H had traded in C2, there was negative equity of £7,405.66 carried over and added to this agreement. Under the agreement, Mr H was required to make 59 payments of £544.13, followed by a final payment of £554.13 if he wanted to keep the car. The total amount payable for C3, including the negative equity, was £32,657.80.

Mr H complained to CA AUTO in April 2023. He said he was happy with C1, but it developed six faults. He said C2 had issues with the wheels, C3 has heavy steering and the dealer wouldn't accept the return of C3. Mr H said the car he test drove isn't C3 and it wasn't within his price range.

CA AUTO issued its response to Mr H's complaint in June 2023. It said the dealer had said there were no issues identified with the steering of the car and Mr H had declined to have a diagnosis carried out. It said there was no evidence to show the car had a fault. CA AUTO said it didn't think it had mis-sold the agreements as all the relevant financial information was provided to Mr H and it carried out relevant checks before deciding to lend to Mr H. It also said there was no corroborating evidence to support that Mr H didn't get the car he test drove and it couldn't consider any faults Mr H reported for C1 and C2, as the cars were no longer available for inspection. It said that Mr H should contact it if he was experiencing financial difficulty.

Mr H said the day after he acquired C1, he couldn't open the bonnet of the car. He said the manufacturer repaired the latch on the bonnet but found six other faults, of which four needed to be urgently repaired. Mr H said the warranty provider wouldn't pay for the repairs. Mr H said he took it back and asked to acquire another car of the same make and model. However, Mr H says the dealer told him he couldn't have a car of the same make and model of C1. So he acquired C2, which was the same make but a different model. Mr H said C2 didn't last long because he found two faults with it and again the warranty company wouldn't

pay for the repairs as it would cost too much. So, Mr C took C2 back to the dealer and acquired C3. This was the same make and model of C1, but it was two years newer. Mr H said he told the dealer the monthly payment was steep. Mr H said C3 wasn't the car he agreed to acquire and he wanted a cheaper car. However, he said the dealer delayed things and didn't get back to him quickly. He said he was finally told the dealer couldn't help or give him another car and he wanted a cheaper car. Mr H said he put £10,000 down as a deposit. Mr H said he was behind with his payments and couldn't afford the monthly payment.

Unhappy, Mr H referred his complaint to this service. He said CA AUTO shouldn't have agreed to finance the negative equity which built up from the return of C1 and C2 and he was now being charged £30,000 which is double the cost of the car.

Our investigator looked into the complaint and said there was no supporting evidence to show that there were any faults with the cars. So, he thought the cars supplied to Mr H were of satisfactory quality. He also said whilst he didn't think CA AUTO had carried out reasonable and proportionate checks, Mr H hadn't provided his bank statements to demonstrate what a reasonable and proportionate check would have shown. Our investigator said there was nothing to show that Mr H had been supplied with a different car to the one he agreed to when he entered into the third agreement. He said Mr H agreed to the terms of the agreements for C2 and C3 and so, he didn't think CA AUTO needed to remove the negative equity from the agreement for C3.

Mr H provided a job sheet from January 2023 for work carried out on the car. He also said C1 had eight faults and he took the agreement out in 2021, not 2023. He disputed the figures our investigator had quoted for C2 and C3. Mr H said he was currently £5,000 in arrears and wanted the negative equity removed.

As Mr H remains in disagreement, the case has been passed to me to decide.

### **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.

It may help for me to explain that I will reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I must reach my conclusion based on what I consider is most likely to have happened in light of the evidence that is available as well as the wider circumstances.

I've read and considered the whole file and acknowledge that Mr H has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point 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. The rules of this service allow me to do this.

The finance agreements in this case are regulated hire purchase agreements. So, our service is able to consider complaints relating to them. CA AUTO is the supplier of the cars under these agreements and so is responsible for dealing with a complaint about their quality. It is also responsible for any representations made about the credit agreements by any of agents that brokered the credit agreements.

What I need to decide in this case concerns three different complaint points for each agreement. For each agreement, this is whether CA AUTO:

1. Lent responsibly to Mr H;
2. Supplied a car that was of satisfactory quality; and
3. Whether it acted unfairly or unreasonably in any other way.

For clarity, I'll consider each of these complaint points separately.

## ***Lending decisions***

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

CA AUTO needed to make sure that it didn't lend irresponsibly. In practice, what this means is that CA AUTO needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr H before providing it.

In this case, the overarching question that I need to answer in order to fairly and reasonably decide this element of Mr H's complaint is:

- Did CA AUTO complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the loans without experiencing significant adverse consequences?
  - If so, did it make fair lending decisions?
  - If not, would those checks have shown that Mr H would've been able to do so?

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay. I've carefully thought about what this means for Mr H's case.

### ***Agreement one***

CA AUTO has provided the information it obtained from carrying out a credit check on Mr H. This showed that Mr H had around four credit agreements and no outstanding mortgage. The monthly payments towards these four agreements were around £375. Mr H's credit file showed two missed payments on a previous car loan in 2021. However, the account had been brought up to date by the time the agreement ended in July 2021. There was no other record of adverse information showing.

It has also provided its system notes showing Mr H's income and that this was verified by carrying out a current account turnover check. CA AUTO calculated Mr H's disposable income at around £510.

### ***Agreement two***

I can see that for this agreement, system notes show Mr H's income was recorded as £300 less than agreement one. CA AUTO once again cross-checked Mr H's declaration using his current account turnover and his disposable income was recorded as around £690. The credit check information obtained by CA AUTO showed the same information that was obtained for agreement one.

### ***Agreement three***

I can see that for this agreement, CA Auto's system notes show Mr H's income was the same as agreement two. CA AUTO verified this again using Mr H's current account turnover and his disposable income was recorded as around £900. The credit check information obtained by CA AUTO was broadly the same as that was obtained for agreement one.

*Did CA AUTO complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay the loans without experiencing significant adverse consequences?*

I think CA AUTO should have carried out further checks before deciding to lend to Mr H. I say this because Mr H doesn't appear to have declared any monthly expenses as part of his

application and whilst CA AUTO has included a small calculation of the monthly disposable income for each application, it hasn't explained where it obtained the figures from. In addition, Mr H's income for the second and third agreement was recorded as being the same, but despite there being no change to the credit file information and the outstanding balances, the disposable income for agreement three was calculated at around £200 more for agreement three.

Having carefully considered this, I don't think the checks CA AUTO carried out were proportionate. I think it would have been reasonable for it to carry out some further checks to find out what Mr H's expenditure likely was and to satisfy itself that Mr H would be able to make the monthly repayments without experiencing significant adverse consequences.

In light of this, I've gone on to consider what I think proportionate checks would have likely shown.

I've thought about what a proportionate check could look like considering the terms of the agreements. In this case, each agreement was due to last around five years, the purpose of the lending was for an asset and the repayments were around £320 - £550. Given the amount of the monthly payments and that the payments were due to last for around five years, I think CA AUTO should have also asked for information about Mr H's expenditure.

This service requested Mr H provide information such on his financial circumstances – such as bank statements - in order to demonstrate what his finances were like at the time he made each of the finance applications. To be clear, I'm not saying that CA AUTO was required to obtain bank statements before lending to Mr H. I also accept that if CA AUTO had obtained information from Mr H about his income and his expenditure at the time the agreements were taken out, this may have shown something different. However, in the absence of anything else from CA AUTO to demonstrate what any other checks would have shown, I think it's reasonable to place considerable weight on the bank statements as an indication as to what the Mr H's circumstances likely were at the time.

Nonetheless, Mr H hasn't provided this service with a copy of his bank statements. So I am unable to determine what Mr H's financial circumstances likely were at the time the agreements were entered into and neither am I able to determine whether it would have still been fair and reasonable for CA AUTO to lend to Mr H if it had carried out additional steps to confirm his expenditure. In the absence of this information, I'm not persuaded that CA AUTO would have decided against lending to Mr H on each of the occasions, or that it ought to have done so either. It follows that I'm not asking CA AUTO to do anything further in respect of the lending decisions it made.

Having said this, I'd like to take this opportunity to remind CA AUTO of its obligation to treat Mr H with forbearance and due consideration as he's said he's suffering from financial difficulties. Having reviewed the notes provided by CA AUTO, it has confirmed its collections team is in touch with Mr H and will look to support him.

### ***Did CA AUTO provide Mr H with cars that were of satisfactory quality?***

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr H acquired cars that were used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Mr H has provided a vehicle health check report which was carried out 11 days after C1 was supplied to him. The mileage is not recorded. The health check shows the front discs are

lipped and the outside front check strap has excessive play. It also mentions that an air conditioning antibacterial cleanse is recommended, fuel treatment is carried out and rear brakes are replaced. It also confirmed a bonnet cable and latch were required.

A job sheet has also been provided from around 13 days after C1 was supplied to him. The mileage is reported as 102,465. I can see that Mr H complained about the car pulling to the left, but it was found that the wheel alignment was okay. All four of the wheels were realigned due to Mr H's concerns and this was paid for under warranty. The bonnet cable and the latch were also replaced under warranty.

From the health check and the job sheet, it's clear that C1 had faults with it at the time it was supplied to Mr H. This is because the bonnet cable and latch needed replacing. The front discs and outside front check strap also needed attention. The wheels were realigned upon Mr H's request.

I've gone on to consider whether these faults meant that the car supplied to Mr H was of unsatisfactory quality. Having done so, I don't consider they do. I'll explain why.

The mileage of C1 hasn't been provided at the time it was supplied to Mr H. However, an MOT check from September 2022 recorded the mileage as 102,096. The MOT from the time showed the front disc was worn but not seriously pitted. If I accept the car wasn't driven after the MOT was carried out in September 2022, which it doesn't appear to have been as it was listed for sale earlier in 2022 and only had a registered change when Mr H acquired the car, then by the time the car was repaired under warranty, Mr H had been able to travel around 350 miles in the car.

Having carefully considered this, given mileage of the car at the time it was supplied to Mr H, I consider that the faults with the brake discs, outside front check strap, air conditioning and fuel treatment were faults that are reasonable to expect for a car that had covered in excess of 100,000 miles when supplied. These are wear and tear items and it would be expected that Mr H would likely have to replace certain components or carry out maintenance to the car given its age and mileage. Mr H also paid substantially less for the car than if he had acquired it brand new.

I also consider that the issue with the bonnet not opening is likely a wear and tear issue. I don't think it's unreasonable to consider that the bonnet cable could stretch with use and the latch may also seize with use. But even if I was to accept there was a fault with the bonnet which made the car of unsatisfactory quality, Mr H appears to have accepted a repair to the car, without any cost to him as he collected the car and then retained it for around a month before acquiring C2.

Mr H has said C2 had two faults which is why he acquired C3. However, Mr H hasn't provided any supporting information to suggest there were faults with C2. Mr H has said his brother-in-law was present during his interactions with the supplying dealerships. However, this is uncorroborated and therefore the weight I can place on any statements if they had been provided is limited. In addition, CA AUTO has said no issues were identified with C2 and that Mr H declined a diagnostic check.

Overall, I'm not persuaded that the cars supplied to Mr H were of unsatisfactory quality. I appreciate Mr H feels strongly about this and has suggested this service allows dealerships to sell dodgy cars. However, the role of this service in considering Mr H's concerns in this complaint is whether CA AUTO supplied cars that were of unsatisfactory quality, not the dealerships. If Mr H is unhappy with the dealerships, he may wish to obtain independent legal advice or contact a relevant ombudsman scheme that may consider complaints against dealerships that supply cars.

***Did CA AUTO act unfairly or unreasonably in some other way?***

Mr H has said that his deposit wasn't carried over through the three agreements and due to the negative equity he can no longer enter into an agreement with other lenders. He also said that C2 wasn't the car he test drove and he was supplied with a car he didn't want.

The Financial Conduct Authority's Consumer Credit Sourcebook ("CONC") provides rules and guidance about what pre-contract disclosure and adequate explanations a lender needs to provide. I've taken this into consideration. It says:

*"CONC 4.2.5*

*(1) Before making a regulated credit agreement the firm must:*

*(a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation;*

*(b) advise the customer:*

*(i) to consider the information which is required to be disclosed under section 55 of the CCA; and*

*(ii) where the information is disclosed in person, that the customer is able to take it away;*

*(c) provide the customer with an opportunity to ask questions about the agreement; and*

*(d) advise the customer how to ask the firm for further information and explanation.*

*(2) The matters referred to in (1)(a) are:*

*(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;*

*(b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;*

*(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee;*

*(d) the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of credit and the circumstances of the customer:*

*(i) the total cost of the debt growing;*

*(ii) incurring any default charges or interest for late or missed payment or under-payment;*

*(iii) impaired credit rating and its effect on future access to or cost of credit;*

*(iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;*

*(v) repossession of the customer's home or other property; and*

*(vi) where an article is taken in pawn, that the article might be sold, if not redeemed; and*

*(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised."*

I've reviewed a copy of the hire purchase agreements provided to Mr H. Agreement one doesn't mention that a deposit was paid towards the agreement or that a previous car was part-exchanged and the value put towards the finance agreement. Agreements two and three also don't mention that any kind of deposit was paid. Agreement two states that negative equity of £5,904.13 has been carried over into the agreement and agreement three states that negative equity of £7,405.66 has been carried over. This is also confirmed on the pre-contract credit information for each of the agreements.

This suggests that Mr H was, or at the very least ought to have been, aware that agreement two and three had negative equity carried over into them. If the negative equity hadn't been carried over, Mr H's monthly repayments for agreements two and three would have likely been substantially lower. Generally the sooner a car is part-exchanged or sold after it has been acquired, the more likely it is that negative equity is likely to be carried over. This is because a larger proportion of the monthly payment goes towards covering the interest accruing in the early stages and so less is going towards reducing the outstanding capital. In these circumstances, the reduction in capital owed is less than the amount that the car will have depreciated by. In addition, the agreement and pre-contract information also confirmed that no deposit was paid towards any of the agreements. No sales invoices have been provided and neither has any supporting information been provided by Mr H to suggest deposits were paid such as receipts or bank statements.

In relation to C2 and C3 not being the cars Mr H said he test drove, there are conflicting statements about what happened. In light of this, I've considered the differing versions of events and considered what I think most likely happened, on the balance of probability.

For C2, Mr H said he placed a deposit for a certain car and then two hours later he test drove it. He said he was then told by the dealer that he couldn't have this car and another car would be brought to him. He said he wasn't told the reason why he couldn't have the car he liked and instead he was brought another car. He said the car was a nice car.

Mr H says when acquiring C3, which was supplied from a different dealership, he paid a deposit for a certain car. He says he was told it was washed and hoovered and after Mr H test drove it, he was told he couldn't have the car. He said he was told there were two other cars for him to look at but he didn't want any of them. He said he was told to either keep C2 knowing it was faulty and knowing he might not be able to drive home in the car, or to take C3. Mr H said he didn't have any choice, even though the monthly payment for C3 was too much.

The dealer didn't mention there was another car that Mr H had chosen before acquiring C2 or C3. It said Mr H chose C3 after also viewing another car. It said it was the third car Mr H had acquired and so, it spent most of the day with him to ensure it found the right fit. However after Mr H acquired the car, he called and said he wanted the other car instead.

Having carefully considered all of this, I don't consider it reasonable that Mr H would on two occasions agree to acquire cars that he was unhappy with. Having considered the submissions made by both sides, it's not clear what happened. It seems that Mr H was happy with C2 until he said the steering was heavy and complained about the faults. For C3, it seems unlikely and unreasonable that Mr H would on a second occasion agree to acquire a car that he was unhappy with. It seems more likely that Mr H agreed to acquire C3 and then may have changed his mind. In any event I must take into account that Mr H signed legally binding agreements to confirm the cars he had agreed to acquire under each hire purchase agreement.

Overall, I'm not persuaded on a balance of probabilities that Mr H was provided the wrong cars or that he was forced to acquire any of the cars he did. And I don't consider that the agreements were mis-sold to Mr H in any way.

### **My final decision**

My final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 April 2025.

Sonia Ahmed  
**Ombudsman**