

Complaint

Mr F is unhappy with what Oodle Financial Services Limited (trading as “Oodle” Car Finance) has agreed to do to put things right for him after it accepted it entered into a hire-purchase agreement that it ought to have realised was unaffordable for him.

Background

In January 2022, Oodle provided Mr F with finance for a used car. The cash price of the vehicle was £7,995.00. Mr F paid a deposit of £995 and applied for finance to cover the remaining £7,000.00 he required.

Oodle accepted Mr F’s application and entered into a 60-month hire-purchase agreement with him. The loan had an APR of 23.8% as well as interest, fees and total charges of £4,474.80 (made up of interest of £4,374.80, a document fee of £50 and an option to purchase fee of £50). The balance to be repaid of £11,474.80 (which does not include Mr F’s deposit) was due to be repaid in a first instalment of £239.58, followed by 58 monthly instalments of £189.58 and then a final instalment of £239.58.

In October 2023, Mr F complained that the agreement was unaffordable for him and Oodle shouldn’t have provided it to him. Oodle didn’t uphold Mr F’s complaint. As far as it was concerned it had carried out proportionate checks which showed that the agreement was affordable and that it was reasonable to lend. Mr F remained dissatisfied after Oodle’s response and referred his complaint to our service.

One of our investigators reviewed everything provided and concluded that proportionate checks ought reasonably to have shown Oodle that it shouldn’t have entered into this agreement with Mr F as it was unaffordable for him. As Oodle lent to Mr F in these circumstances it failed to treat him fairly and reasonably. So the investigator upheld the complaint and thought that it needed to put things right.

Oodle accepted the investigator’s conclusion that it shouldn’t have lent to Mr F and also agreed that it should collect the car from him. However, it pointed out that Mr F would be left with an outstanding amount to pay for usage based on the investigator’s calculation of what it would be fair for Mr F to pay to account for his usage while he had the car. It proposed to deduct the amount of Mr F’s deposit from the amount he was expected to pay and then collect the remainder of what is due from Mr F. The investigator eventually concluded that this was fair and reasonable.

Mr F was dissatisfied at this resolution and asked for an ombudsman to consider his case.

My findings

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending, including what we typically expect a lender to put things right should we consider that it failed

to act fairly and reasonably, on our website. And I've used this approach to help me decide Mr F's complaint.

Oodle has accepted that it shouldn't have lent to Mr F. So I do not need to consider whether Oodle acted fairly and reasonably to Mr F when lending to him. I merely need to consider whether what Oodle has agreed to do to put things right for Mr F is fair and reasonable in all of the circumstances of this complaint.

Having considered the available evidence, I'm satisfied that what Oodle has already agreed to do to put things right for Mr F is fair and reasonable in all the circumstances of the complaint. I'll now proceed to explain why I think that this is the case in a bit more detail.

Our approach to putting things right and what we typically tell a lender to do in a complaint about irresponsible and unaffordable lending

I've thought about the investigator's proposed method of putting things right and carefully considered whether it amounts to fair compensation in this case.

It might help for me to start by explaining that in broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Oodle putting Mr F in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. For reasons I'll explain further on, the position is even more complicated where goods are involved. Mr F did enter into the agreement and *was*, at least, given the car in question. He also had the vehicle for over three years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr F back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

The position in Mr F's case

In this case, ensuring Mr F paid no interest and charges would limit him to paying back the £7,000.00 Oodle originally lent to him (not including his deposit). But I don't think that a refund of the interest fees and charges is appropriate here. Mr F is nowhere near repaying the amount he was lent.

Furthermore, after being assigned the case for a final decision, I also provided Mr F with an additional period in order to repay the capital amount to Oodle. But as at the time of his final decision being issued Mr F hasn't done so. So, given I've been asked to determine the case, I have to do so on the facts and position as it is. And I have to accept that Mr F repaying only the capital lent and keeping the car is no longer a viable option.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr F bearing in mind he was provided with a hire-purchase agreement, he shouldn't have been provided with. I also need to, as far as practicable, ensure that neither party ends up in a better position than they would be had the agreement not been taken.

Our investigator's view concluded that the fair starting point here would be for the car to go back to Oodle. I'm also satisfied with this aspect of how Oodle should put things right. So to start with Oodle should end Mr F's agreement, ensuring that he's not required to pay any of the remaining payments and also collect the vehicle from him.

What should Mr F expected to pay for the period he has had the car?

As Mr F will have had the car for a period of time, I do think that it is fair to take account of the fact the car will have depreciated in this time and that Mr F will have had the use of it. So I do think it's fair and reasonable to expect Mr F to have to pay an amount to account for this.

There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable we'd typically think about things like the amount of interest charged on the agreement, the customer's usage of the car and what sort of costs they might have incurred to stay mobile if they didn't have the car financed.

Why I'm satisfied that the investigator's method of calculating Mr F's usage is fair and reasonable in all the circumstances of the complaint

Our investigator concluded that Mr F should pay £133 for each month that he had the car, which, at the time she wrote her assessment, at least, meant that Mr F needed to pay Oodle £4,665.00. Mr F was unhappy with this. I've therefore considered what it would be fair and reasonable for Oodle to do in these circumstances.

I appreciate that Mr F considers the amount for usage to be high – particularly as he believes that Oodle will sell the car and recover more than the amount it lent him. I don't know what Oodle will get for the car when it does sell it as this will vary on a number of different factors. But, in any event, I do need to consider the fact that Mr F has had the car for three years. He has used the car during this period and it will have depreciated in value as a result.

Furthermore, I also have to keep in mind that Oodle could legitimately argue that Mr F will have incurred transportation costs of more than £133 a month, had he not had use of the car. I cannot definitively say what Mr F would have paid to stay mobile over the last three years, neither can I know whether Oodle will or will not recover the amount it lent to Mr F. All I can do is try and form some kind of compromise taking into account all the circumstances.

Bearing in mind all of this, I'm satisfied that the figure the investigator arrived at wasn't an unreasonable starting point and in the absence of any plausible and persuasive arguments on alternatives, I think calculating what Mr F should pay for usage, based on a monthly amount of £133, does result produce a fair and reasonable outcome. So I'm satisfied that Oodle can retain £133 a month for each month Mr F had custody of the car.

I now turn to Mr F's deposit. In the usual course of events, I would typically require a lender to return a customer's deposit should it have lent irresponsibly. This would mean that I'd say that Oodle should refund Mr F his deposit of £995, in this case. There is no dispute that Mr F should receive the benefit of this amount. However, the question is how this deposit should be accounted for.

I accept that Mr F may want Oodle to pay him the £995. However, the information I've been provided with shows that the payments Mr F has made to Oodle are less than the amount he will have to pay to account for his usage of the car. I have to be fair to both parties here. And I don't think that it would be fair and reasonable for me to tell Oodle to refund Mr F his deposit and then set up a repayment plan with him for the amount that he will owe and in circumstances where he may choose not to pay this back.

Furthermore, I haven't seen anything in the information before me that suggests Mr F would be unfairly disadvantaged – for example, I can't see that he has any pressing priority debts such as outstanding utility or council tax bills, or that he'd suffer undue financial hardship – should Oodle use Mr F's deposit to reduce what he'll owe to cover his usage.

I realise that a refund of a customer's deposit can sometimes be important to their ability to obtain a (hopefully more affordable) replacement vehicle. But for reasons both parties will be well aware of and which I won't get into in this decision, I'm satisfied that Mr F will be in a position where the deposit he paid on this agreement isn't integral to his ability to obtain a replacement vehicle.

So, in simple terms, the position here will be that Oodle will owe Mr F some money. And Mr F will owe Oodle a bit more than what is owed to him once all adjustments are made. Taking all of this into account, I think the fairest way to put things right here is for Oodle to retain Mr F's deposit, use it to reduce what he'll owe for usage and then set up an affordable repayment plan for whatever is left. In my view, putting things right in this way will allow the parties to move on, from a relationship that has clearly broken down, far more quickly.

I accept that neither party will be fully satisfied at my direction. On the one hand, Mr F argues that Oodle will sell the car once it takes possession of it and once this is done it may end up making more than the amount it lent, despite the fact that it shouldn't have lent to him in the first place. On the other hand, Oodle has already said that it was the supplying dealer that Mr F paid the deposit to. It will, out of its own pocket, have to reduce what Mr F owes by this amount, without any recourse to reclaiming these funds from the supplying dealer.

Nonetheless, I hope that the parties will see that my direction is broadly in line with our overall principles on how to put things right in cases of irresponsible and unaffordable lending, which I've already set out. Equally, I don't think the fact that neither party is likely to be fully satisfied means my direction produces an unfair result. Indeed, one might argue that neither party being fully satisfied in itself produces a fair and reasonable compromise.

Bearing in mind all of this, I'm satisfied that when taken in the round my direction of Oodle taking possession of the car, Mr F's deposit being used to reduce what he'll need to pay for usage and the parties walking away from the rest of the agreement once an affordable payment plan is set up for the residual amount Mr F will owe, is fair and reasonable in all the circumstances of this particular case. Therefore, that is what I am requiring Oodle to do in this instance.

In reaching my conclusions, I've also considered whether the lending relationship between Oodle and Mr F might have been unfair to Mr F under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Oodle to do, in the following section of this final decision, results in fair compensation for Mr F given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Oodle needs to do to put things right for Mr F

Overall and having considered everything, I'm satisfied that it would be fair and reasonable for Oodle to put things right for Mr F by taking all of the steps set out below.

- Ending the hire-purchase agreement and collecting the car from Mr F at no cost to him. Mr F is encouraged to act in good faith and cooperate with the swift recovery of the car once he accepts this final decision, should he do so.
- Working out how much Mr F needs to pay to reflect his usage of his car. Oodle should do this by charging Mr F £133 a month¹ from the date Mr F was supplied with the car, to the date that Mr F accepts this final decision.
- Deducting the payments Mr F has already made to it under this agreement as well as Mr F's deposit of £995 from the amount that Mr F has calculated that he needs to pay to account for his usage.
- If, as seems likely, a balance remains on the amount Mr F needs to pay, arranging an affordable payment plan, which fairly and reasonably takes in to account what Mr F is able to pay, for this. Once any amount has been cleared and Mr F no longer owes Oodle anything, it should remove any and all adverse information it may have recorded with credit reference agencies about this agreement.

My final decision

For the reasons I've explained, I'm upholding Mr F's complaint. Oodle Financial Services Limited should put things right for Mr F in the way I've directed it do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 April 2025.

Jeshen Narayanan
Ombudsman

¹ This is based on the car having no damage above what would be considered to be reasonable wear and tear, for the period it was in Mr F's custody. Should the car have been damaged, while in Mr F's custody, or the wear and tear is above what would be considered reasonable, Oodle is entitled to recover this. Should Mr F be dissatisfied at any amount Oodle proposes to charge him for any damage or excessive wear and tear, he can separately complain to Oodle about this. Mr F may be able – subject to any jurisdiction concerns – refer a complaint about any damage or wear and tear charges here should he feel that Oodle hasn't acted fairly and reasonably.