

Complaint

Mr F is unhappy with what Oodle Financial Services Limited (“Oodle”) 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 December 2021, Oodle provided Mr F with finance for a used car. The cash price of the vehicle was £28,194.00. Mr F paid a deposit of £8,194.00 and applied for finance to cover the remaining £20,000.00 required to complete the purchase.

Oodle accepted Mr F’s application and entered into a 51-month hire-purchase agreement with him. The loan had an APR of 23.9%, interest, fees and total charges of £10,724.99 (made up of interest of £10,624.99, a document fee of £50 and an option to purchase fee of £50). And the balance to be repaid of £30,724.99 (which does not include Mr F’s deposit) was due to be repaid in a first instalment of £650.49, followed by 49 monthly instalments of £600.49 and then a final instalment of £650.49.

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 service¹.

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.

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. 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 concluded that this was fair and reasonable.

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

My provisional decision of 10 February 2025

¹ For the sake of completeness, I would add that in February 2024 Oodle confirmed that as our investigator had confirmed that Mr F had concerns about the quality of the car, it would investigate matters and issue a separate final response. Oodle issued a final response on 22 March 2024. And in April 2024, Mr F confirmed to the investigator that he did not wish for us to consider a complaint about the quality of the car and that he only wanted us to consider whether Oodle acted fairly and reasonably when agreeing to lend to him.

I issued a provisional decision – on 10 February 2025 - setting out why I thought that Oodle needed to do a little more to put things right for Mr F and what the more that it needed to do was.

Mr F's response to my provisional decision

Mr F responded to confirm that he agreed with my provisional decision. He also provided some information to show how much he'd paid to Oodle over the period of time the agreement had been in place.

Oodle's response to my provisional decision

Oodle responded to my provisional decision. It fair to say that it wasn't opposed to calculating what was due to Mr F differently from the way the investigator set out in her assessment. However, it thought that Mr F's loss should be calculated differently.

It thought that this needed to be done by dividing the amount lent by the term of the agreement to arrive at a monthly figure. This resulted in a monthly usage figure of £333.33 which needed multiplied by the number of months Mr F had the car to work out his usage.

The amount Mr F had already made in payments to Oodle (so not including the deposit which was paid to the motor dealer) should then be combined with the amount the car is sold for. And Mr F should be the difference between this combined amount and the amount Mr F should pay for usage. This gave an approximate compensation amount of £7,724.14 – although this would fluctuate based on when the car was collected from Mr F and the amount it manages to sell for.

My findings

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

I thank the parties for their responses to my provisional decision.

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. I merely need to consider whether what Oodle has already agreed to do to put things right for Mr F is fair and reasonable in all of the circumstances of the complaint.

Having considered the available evidence and while I appreciate that Oodle put a great deal of thought into its alternative method of putting things right, I still think that the method I set out in my provisional decision provide the fairest overall outcome. 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

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 £20,000.00 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 and is unlikely to be able to do so for some time. So in this case, Mr F repaying only the capital lent and keeping the car simply isn't 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 I don't propose to direct Oodle to do anything different in relation to these matters. And 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.

The investigator's proposed settlement

Our investigator concluded that Mr F should pay £552.82 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

£19,901.52. I think that the investigator divided the cash price of the car by the number of months that the agreement was due to run for.

However, as this was a more traditional hire-purchase agreement, rather than a personal contract purchase style one, I can't see that the term of the agreement, or the monthly payments, were ever supposed to be linked to the amount it would have cost Mr F to stay mobile in a vehicle of the sort covered by the agreement.

Secondly and more importantly Mr F would end up with ownership of the vehicle at the end of the term if he paid the cash price. So I don't see how it follows that dividing the amount of the cash price by the term, where Mr F won't end up with ownership of the car, produces a fair monthly usage amount. I also have to agree with Mr F when he says that calculating the monthly usage amount in this way produces an, at least logically, absurd result in this case.

I say this particularly as this methodology, at the time of the assessment at least, requires Mr F to pay only £100 less than the cash price of the car, for using it for 36 months. This doesn't even take into account that a further two months have passed since the assessment was issued. And the investigator's methodology would now result in Mr F being required to pay more than the cash price of the car despite the car being returned to Oodle, which wouldn't happen if Mr F was simply capped at paying the cash price of the car, and which I've already explained wouldn't be fair and reasonable, in this instance, given how far away Mr F is from paying this amount.

I'm therefore satisfied that the investigator's proposed method of putting things right does not result in a fair and reasonable outcome.

What I think it would be fair and reasonable for Oodle to do to put things right

As I've not agreed with the investigator's method of how Oodle should put things right, I've considered what I believe it would be fair and reasonable to expect Mr F to pay to account for the time he had the car.

In thinking about this matter, I note that Oodle has said that Mr F has made around £9,057.35 in monthly payments. Having reviewed matters, it also appears to me that the current market value of the vehicle is somewhere between £11,000.00 and £15,000.00. The actual value will be dependent on how the vehicle is sold (for example, privately or whether it is sold at auction etc) and its condition.

In these circumstances, I think that Oodle is likely to recover the amount that it lent once the car is surrendered, Oodle sells it and this amount I combined with the payments Mr F has already made. This is even if the car is sold for an amount at the lower end of the estimates of its current market value. As this is the case, I'm satisfied that Mr F shouldn't have to pay Oodle anything more as it is likely that Oodle will (once the payments Mr F has already made are included) recover the £20,000.00 it lent once it sells the car.

I appreciate that Oodle has queried the condition of the car and in particular the fact that the car needed an engine repair. However, I've seen an invoice for the engine repair which is dated 7 October 2024. Furthermore, the car passed an MOT on 10 October 2024, with no advisories. I think it is unlikely that the car would have passed an MOT with an engine that needed replacing.

So I'm satisfied that it is more likely than not that the car has been repaired. That said, should it be the case that the car isn't operational and given Mr F hasn't escalated his complaint about the quality of the car, then it would be fair and reasonable for Oodle to pass the cost of any repair on to Mr F.

I now turn to Mr F's deposit. As I'm satisfied that it is more likely than not that Oodle will recover the amount it lent once it takes possession of the car and it sells it, I'm satisfied that it should refund Mr F his deposit of £8,194.00. However, as Mr F will always have owed Oodle more than the amount of the deposit, at least until it takes possession of the car, I don't think that Mr F will have been in a position where he is out of pocket. So I'm not intending to require Oodle to pay interest on the £8,194.00, when it refunds Mr F his deposit.

I've also considered whether Oodle's proposed alternative would produce an outcome that would be more appropriate in the circumstances. I don't think that what Oodle has proposed is unreasonable and I want to assure it that I've given a great deal of thought to what it has said. I do think that dividing the amount it lent (rather than the cash price) by the term of the agreement does produce a fairer monthly usage figure than dividing the total cash price by the term.

However, it does remain the case that this doesn't result in a figure that's a true reflection of usage. Oodle is correct in saying that we typically look to strip out the interest and seek to ensure that the capital is repaid when looking to put things right in cases involving irresponsible lending. But as I've explained previously, this only produces a fair outcome in circumstances where Mr F would own the car at the end of the term, which he will not do here. So Mr F will not have had the benefit of £20,000.00 in this instance.

In any event, while I do accept Oodle's point that it will not be able to recover the deposit Mr F paid from the dealer, having looked at the numbers, its method only arrives at a slightly lower amount than simply refunding Mr F his deposit without the interest. I'm also mindful that it has the potential to be better off should it be able to sell the car for more than £11,000.00 once it recovers the car from Mr F.

The most important reason of all why I think that the resolution I proposed is the fairest way to put things right, is that it brings finality to the situation more quickly. While Oodle's proposed resolution isn't too far off my own, it's fair to say that a number of steps have to be enacted before Mr F will be paid his compensation. It won't be entirely clear what it is Mr F will receive until the car is first collected from him and then sold.

So there are moving parts, which requiring Oodle to simply pay Mr F the amount he paid as his deposit without interest simply won't have. Equally, as the relationship between Mr F and Oodle has clearly broken down I think that it would make far more sense to bring matters to a close as soon as practicable.

I do accept that neither party will be fully satisfied at my resolution. On the one hand, Mr F argues that he will be expected to pay an amount that will not account for his usage and that what he'll receive won't be enough to reimburse his mother what she paid to repair the engine on the car. On the other hand, Oodle will be unhappy that I have not agreed with its alternative.

Nonetheless, I'm satisfied that Mr F using the car as little as he says he did was a choice that he made and the car will still have depreciated in value over the period he had it. I would also point out that Mr F made a complaint about the quality of the car which Oodle did not uphold. As Mr F confirmed that he did not wish to refer that complaint to us, I'm not in a position to conclude that the fact that he had to pay for the engine to be replaced is unfair. Therefore, I don't think that the amount Mr F is going to be left having paid, to account for the period he had the car, is unfair given all the circumstances.

I accept that Oodle will be disappointed at my decision not to opt for its alternative as well as depart from the investigator's initial conclusions. Nonetheless, I trust that it will be able to

see how and why my resolution 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. And that it brings matters to a close more quickly which will allow the parties to move on.

Bearing in mind all of this, I'm satisfied that when taken in the round my resolution, of Oodle taking possession of the car, Mr F being refunded his deposit and the parties walking away from the rest of the agreement, remains that the method that is most fair and reasonable in all the circumstances of this particular case.

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 s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Oodle to do 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:

- collecting the car from Mr F at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr F has nothing further to pay. Oodle should also remove any adverse information it may have recorded against Mr F as a result of this agreement from his credit file;
- refunding Mr F his deposit of £8,194.00.

My final decision

For the reasons I've explained above and in my provisional decision of 10 February 2025, I'm upholding Mr F's complaint. Oodle Financial Services Limited should put things right in the way I've directed it to 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 28 March 2025.

Jeshen Narayanan
Ombudsman