

## The complaint

Ms R is unhappy that a car supplied to her under a hire purchase agreement with Toyota Financial Services (UK) Plc trading as Redline Finance ('Redline') had been misrepresented.

Ms R has been represented during the claim and complaint process by Mr R. For ease of reference, I will refer to any comments made, or any action taken, by either Ms R or Mr R as "Ms R" throughout the decision.

## What happened

In June 2022, Ms R was supplied with a used car through a hire purchase agreement with Redline. She part-exchanged her existing car for £9,000 and paid the supplying dealership £2,000. Once the finance on her existing car was cleared, this left £628.26 which was put down as a deposit for the car being supplied by Redline. The agreement was for £18,621.74 over 49 months; with 48 monthly payments of £286.01 and a final payment of £9,306. The supplying dealership also acted as the credit broker in this instance.

In July 2022, Ms R contacted the dealership. She said the car she part-exchanged was of the same make, model, and age as the car she was supplied with by Redline, but the dealership only valued her car at £9,000; while the car she was supplied was valued in excess of £20,000. She was also unhappy that she wasn't advised about the poor value of ending her previous agreement over three years into it. She indicated that she wanted to withdraw from the new agreement and be returned to her earlier agreement. In response, the dealership offered to take the car back, cancel the agreement, and refund the payment she'd already made.

Ms R wasn't happy with this, and she said the dealership had treated her request for information as a formal complaint. So, Ms R raised a complaint about being sold an unaffordable car, about the rate of interest she was being charged, about the valuation the dealership had put on the car she'd part-exchanged, and about the dealership selling the car she'd part-exchanged, instead of returning this to her. Ms R also said that the agreement she'd signed was void because the mileage on the car had been materially misrepresented.

The dealership didn't agree there had been any mis-selling, but they offered Ms R £150 as a goodwill gesture due to administrative errors that took place in the sales process.

In September 2022, after receiving an arrears notice from Redline, Ms R complained to them, saying the agreement had been rescinded due to the mileage misrepresentation, and because she hadn't signed the substitute agreement, provided by the dealership, showing the correct mileage. She also said that the dealership had agreed to cancel the agreement on 1 August 2022, and the car had been returned to them on 6 August 2022.

Redline responded to say the dealership provided Ms R with sufficient information to make an informed decision, and that the offer to end the agreement and refund the payments made was fair. They also explained that, if Ms R didn't accept this offer, she would need to collect the car from the dealership and resume payments. Ms R wasn't happy with this response, and she brought her complaint to us for investigation.

When bringing her complaint, Ms R also said that documents she was promised were never sent, she raised concerns over the validity of an electronic signature being used on documents, and said that Redline didn't investigate her complaint properly.

Our investigator said that, although Ms R had raised issues about both the dealership and Redline; we were only able to consider her complaint about Redline, as she intends to complain about the dealership separately.

The investigator thought the evidence showed Ms R had been provided with sufficient information at the time of the sale to allow her to make an informed decision. And he said that a financial business is entitled to make a commercial decision about the goods and services it offers, including what interest rate would be charged.

With regards to the mileage, the investigator said the order form showed the car had done 42,351 miles at the point of supply, while all other documentation (including the hire purchase agreement itself) showed a mileage of 42,531 – a difference of 180 miles due to a transposed figure. However, as the hire purchase agreement stated the correct figure, the investigator didn't think there had been any misrepresentation.

Turning to the signature Ms R was querying, the investigator said this was on a document dated 28 June 2022, which happened after the hire purchase agreement had been signed and came into force on 23 June 2022. As such, he didn't think this was a matter for Redline. What's more, he didn't think that a second order form (showing the correct mileage) was sufficient to say the agreement with Redline had been cancelled, especially as the agreement quoted the correct mileage details. As such, Ms R was liable for the payments under this agreement.

The Investigator explained that the Consumer Credit Act says that, when a consumer withdraws from a finance agreement, they must also repay anything owing under that agreement. So, while Ms R had the right of withdrawal, this didn't mean she wasn't required to pay Redline what she owed them. What's more, Redline had an obligation to report any missed payments to the credit reference agencies, so the investigator didn't think they'd acted unfairly by doing this.

In March 2023, Redline agreed to allow the dealership to buy back the car for £15,000 which, along with the deposit and payment Ms R had paid, came to a total of £15,914.27. Redline accepted this as full and final settlement of the agreement, writing off the remaining £2,700 plus interest Ms R owed. They also removed all adverse information relating to this agreement from Ms R's credit file. The investigator thought Redline had acted reasonably by doing this and didn't think they needed to do anything more.

Finally, the investigator said that Redline hadn't carried out reasonable and proportionate checks when they agreed the finance Ms R had applied for. So, he went on to consider what these checks would've shown. After reviewing Ms R's bank statements, the investigator said that, had Redline carried out reasonable and proportionate checks, they would've found the payments were sustainably affordable for Ms R.

Ms R didn't agree with the investigator. She said the underlying basis of the investigator's view seemed to be that Redline accepting a lower offer from the dealership was sufficient for them to do nothing more. But she thought this was irrelevant to what's considered fair treatment of the customer. She also said that Redline removing adverse information from her credit file was an admittance it should never have been there in the first place. And the investigator's view seemed to mean that a regulated business can act however it likes, so

long as it corrects this behaviour once a complaint has been raised to the Financial Ombudsman Service.

Ms R also said that the “*contract was affirmed*” on 28 June 2022, and she cancelled within 14-days, which entitles her to a full refund of what she’s paid. However, the investigator said that she would still be liable for the full amount owing under the agreement. Which she considered was an unreasonable and unenforceable condition within Redline’s contract.

Finally, Ms R was unhappy that Redline didn’t conduct reasonable checks, but have got away with this because reasonable checks would’ve shown the agreement to be affordable.

Because Ms R 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 or contradictory, 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. Ms R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we’re able to investigate complaints about it.

Before I explain why I’ve reached my decision, I think it’s extremely important for me to set out exactly what I’ve been able to consider here. I note Ms R has complained about how Redline handled and responded to her complaint. However, complaint handling is an unregulated activity and so, falls outside of our service’s jurisdiction to consider. So, the way Redline handled Ms R’s complaint hasn’t been considered as part of my decision.

I’ve also noted Ms R’s extensive comments about how she considers the dealership were acting wholly as an agent for Redline in this matter. As such, she doesn’t think it’s reasonable for me to consider this matter before her complaint about the dealership has been fully investigated, and then to decide on both matters together.

While the dealership was acting as a credit broker when arranging the agreement with Redline, I don’t agree they were acting wholly as an agent for Redline in all matters. I say this because the dealership was able to sell the car to Ms R without either arranging any finance, or by arranging finance with another lender. Given this, while I will consider the dealership’s credit broking activities as part of my decision, I’m satisfied I’m able to reach a conclusion without having to consider the dealership’s non-credit broking activities, as these have no bearing on Redline. As such, I don’t need to wait until the complaint into the dealership’s actions has been investigated, and then consider both complaints as one whole.

The basic facts in this matter aren’t disputed, and the key elements have already been set out above. As such, I won’t repeat them here. Instead, I’ll focus on the remaining points of contention, namely those raised in Ms R’s comments on the investigator’s view.

The main point of contention is the misrepresentation and whether Ms R was given sufficient information to make an informed decision. For there to have been misrepresentation there needs to have been a false statement of fact AND the false statement must've induced Ms R into an agreement she otherwise wouldn't have entered into.

As I've said, it's not disputed that the order form had an incorrect mileage recorded - 42,351 instead of 42,531. I'm satisfied this was a clear error due to a transposed figure, which gave the impression the car had done 180 miles less than it actually had. However, the hire purchase agreement that Ms R signed on 23 June 2022 clearly and correctly states the car had done 42,531 miles. What's more, upon inspecting the car, Ms R would also have seen the correct mileage showing on the odometer. As such, I'm not satisfied there was a false statement of fact.

However, even if I were to say the incorrect mileage on one document made it a false statement of fact, I still need to consider that it was this false statement of fact that induced Ms R to purchase the car. And I haven't seen anything to show me that the mileage was so important to Ms R that she wouldn't have taken the car had she known it had done 180 more miles than she believed. As such, I don't think Ms R was induced to take the car just because of a single instance of an incorrect mileage figure quoted on the paperwork.

Turning to the rest of the paperwork, all the information on this regarding the sale price of the car Ms R agreed to is correctly shown. As is the interest rate, monthly payments, and total amount payable. As such, I'm satisfied that Redline didn't misrepresent the sale or the agreement to Ms R.

I've seen a Statement of Account for the agreement between Ms R and Redline. This clearly shows that the agreement started on 23 June 2022, which I've noted is also the same day Ms R signed the hire purchase agreement. Ms R has stated that she cancelled the agreement within 14-days of it coming into force. As such, she believes she's entitled to a refund of all the money she paid.

I've reviewed the Hire Purchase agreement, and this says:

***RIGHT OF WITHDRAWAL***

*You have a right to withdraw from this Agreement without having to give a reason. The right to withdraw starts on the day the Agreement is made and ends on the expiry of 14 days beginning with the date after that day. To withdraw you must notify us in writing ... If you withdraw you must repay the Amount of Credit shown above together with any interest at the interest rate shown above accrued from the date of this Agreement to the date of Repayment without delay and no later than 30 calendar days after giving notice to withdraw.*

As the agreement came into force on 23 June 2022, this means Ms R would need to advise Redline of her wish to withdraw by no later than 7 July 2022 and repay the £18,621.74 plus any accrued interest at 7.9% APR by no later than 6 August 2022 (assuming notice was given on the latest date possible – 7 July 2022).

However, the email Ms R's provided, which confirms she wants to exercise her right of withdrawal and wants to return the car, is dated 12 July 2022. And this was only sent to the dealership. This request was clearly made more than 14-days after the hire purchase agreement came into force, and wasn't made to Redline, as required. As such, I don't agree that Ms R exercised her right to withdraw from the agreement.

But, if Redline were to have accepted Ms R's late email to the dealership as exercising her right to withdraw from the agreement, then she was still required to repay the amount

outstanding within 30 days, which she didn't do. This is because withdrawing from the agreement is fundamentally separate from returning the car; and it's perfectly possible for a customer to withdraw from the agreement, repaying the amount owed from private funds, refinancing etc., and still keep the car.

While I've noted that Ms R believes this withdrawal term, and the requirement to repay the amount owing, to be an unreasonable and unenforceable term, I don't agree. And I don't think it would have been reasonable for Ms R to have withdrawn from the agreement without repaying the amount owing – as I've said, withdrawing from the agreement and returning the car are separate, not linked, transactions. However, if Ms R continues to believe the agreement contains unenforceable terms, I think that this is a legal matter and is something best dealt with by the courts.

I've also seen that, on 1 August 2022, the dealership agreed to buy back the car from Ms R, repay the finance agreement, and refund the payment of £286.01 she'd made. In response to this, on 2 August 2022, Ms R sent the dealership a Pre-Action Letter, indicating she would pursue legal action against them if they didn't return the car she'd sold them in part-exchange, return all monies that she's paid, and void the finance agreement.

The car was returned to the dealership on 6 August 2022. However, from Ms R's email the same day, this was done with the expectation that the dealership would return the part-exchange car and all the monies Ms R had paid. As such, I'm satisfied that Ms R didn't accept the offer from the dealership. And the dealership, who didn't agree to Ms R's terms, said that unless she accepted their offer, she would be required to collect the car.

As Ms R didn't agree to the dealership's terms, the point of disagreement being the refund of the deposit, and after lengthy negotiations with Redline, the car was purchased by the dealership, the agreement cleared with any outstanding balance waived, and the agreement ended. Redline also changed their reporting on Ms R's credit file to remove any adverse information. Again, I've noted Ms R's extensive comments on this matter, and why she thinks this was unfair.

However, I've considered this in line with the request to withdraw from the agreement made on 12 June 2022. And I'm satisfied that Ms R is in the same position now as she would've been had she made her request to withdraw both in time and to the correct business. I say this because, in either case, the agreement would've ended, with no refund of any payments made (including the deposit) due; there would be no adverse credit recorded on her credit file; and she wouldn't have been in possession of the car supplied to her (as Ms R hasn't indicated any private funds to repay the finance, to have withdrawn from the agreement in July 2022 she would've needed to have sold the car to repay what she owed).

Finally, I've considered our approach to complaints about finance being irresponsibly provided. While Ms R has said that the only important factor is that Redline didn't conduct reasonable checks, this isn't how we deal with these matters. Instead, there are two overarching questions I would need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Redline complete reasonable and proportionate checks to satisfy itself that Ms R would be able to repay the credit in a sustainable way?
  - a. if so, did Redline make a fair lending decision?
  - b. if not, would reasonable and proportionate checks have shown that Ms R could sustainably repay the borrowing?
2. Did Redline act unfairly or unreasonably in some other way?

So, in a situation where we didn't think the checks were reasonable and proportionate, we also need to consider what those checks would show. It's not disputed that Ms R's bank statements clearly show she could sustainably repay the borrowing. And, with nothing to indicate that Redline acted unreasonably or unfairly in any other way when considering Ms R's finance application, we wouldn't ask them to take any further action.

As such, and while I appreciate it will come as a disappointment to Ms R, I'm satisfied that Redline acted fairly and reasonably throughout, and I won't be directing them to do anything more.

### **My final decision**

For the reasons explained, I don't uphold Ms R's complaint about Toyota Financial Services (UK) Plc trading as Redline Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 10 January 2024.

Andrew Burford  
**Ombudsman**