

The complaint

Mr F acquired a new car in November 2019, by means of a 36 month hire agreement with LEASYS UK LTD. He complains that his car did not correspond to its description as advertised. He also complains that his car was also not of satisfactory quality at the point of supply.

Mr F wants Leasys: to accept rejection of his car; to refund in full all payments he has made; to remove any adverse information it may have recorded on his credit file; and to pay him compensation for the distress and inconvenience he has suffered.

What happened

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 1 February 2022, as follows.

Background

Mr F said he initially complained about problems with his car to the supplying dealership and the manufacturer, but without success. He then contacted Leasys in December 2019.

Leasys addressed Mr F's concern that his car was not the model that he had seen advertised, and that he believed he had agreed with the supplying dealership to acquire. Leasys compared the description of Mr F's car in the dealer's invoice with that in its agreement with him. It found these descriptions to be the same – and, on this basis, it felt unable to uphold Mr F's complaint.

Mr F took his car to a manufacturer's main dealer (not the supplying dealership) in March 2020 for inspection. The main dealer provided a courtesy car, and repairs of his car were undertaken. But Mr F said he did not authorise these repairs, and he made clear that he wanted to reject his car.

The dealer advised Leasys that the car had been fully repaired, but Mr F would not collect it. Leasys was unwilling to accept rejection, but offered two options to Mr F in May 2020:

- It would waive two of the monthly payments required under his agreement, if he agreed to collect his car
- Early Termination (ET) of Mr F's agreement, with a 50% reduction in the ET payment he would be required under his agreement to make in these circumstances

Mr F rejected both offers, and he referred his complaint to us in July 2020, with supporting evidence. Leasys arranged for the car to be collected from the main dealer and proceeded with the ET option.

Our investigator initially concluded that the complaint should not be upheld. He noted that, under current legislation:

- A consumer may be able to reject a faulty car within 30 days of acquisition
- Beyond this period, a consumer may still be able to reject a faulty car, after the supplier has had the opportunity to repair it, and if that repair is unsuccessful – but it appeared that Mr F's car had been successfully repaired, and so Leasys did not respond unfairly when it declined rejection of his car

Our investigator also initially concluded that the offers made by Leasys, as alternatives to rejection, were fair and reasonable. Leasys applied the 50% ET payment to Mr F's agreement account, and it recorded this outstanding balance on his credit file.

In response to these initial conclusions, Mr F pointed to evidence showing that the variant of the type of car he saw advertised and ordered, was different to the variant delivered to him. He added that, if he had known at the outset a different variant would be delivered, then he would not have ordered the car in the first place.

The differences between specifications of the variant Mr F wanted and the variant that was delivered appear to explain why he considered the car delivered did not correspond to its description.

Mr F also complained about adverse information (relating to the 50% ET payment) recorded by Leasys on his credit file.

Our investigator reconsidered his conclusions. His revised conclusions were:

- The car delivered to Mr F did not conform to its description as advertised, and as he had agreed with Leasys to acquire – and so his complaint should be upheld for this reason
- Leasys should have agreed to the rejection of Mr F's car, when he complained to it in December 2019 – had Mr F been allowed to do so then, the issues that arose in spring 2020 (when Leasys again did not agree to his car's rejection) could have been avoided

Our investigator recommended:

- Mr F should not be required to pay the outstanding balance on his agreement account (which relates to the issues that arose in spring 2020)
- Leasys should remove the adverse information it recorded on his credit file relating to this outstanding balance

Leasys accepted our investigator's revised conclusions and recommendations. It also offered Mr F compensation of £100 for distress and inconvenience, in full and final resolution of his complaint.

Mr F similarly accepted our investigator's conclusions and settlement recommendations. But he did not accept the compensation offer made by Leasys. The settlement he was seeking comprised:

- Full refund of all payments made
- Removal of adverse information recorded on his credit file
- Payment of compensation for the distress and inconvenience suffered

Mr F told us that:

- He had already made payments totalling a little under £4,200 to Leasys
- His car had only travelled 8.9% of the mileage permitted by his agreement
- The payments due over the full 36 months of his agreement amounted to just over £8,500, 8.9% of which is just over £750
- The minimum acceptable settlement was roundly £3,450 (£4,200 less £750)

So, this complaint was referred for review by an ombudsman.

My provisional findings

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Leasys has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. The goods delivered to Mr F did not correspond to their description, for which Leasys are required to accept responsibility.

Leasys and Mr F might have agreed to have his car replaced when he complained to it, just a few weeks after taking delivery. But Leasys wrongly decided against replacement or rejection at that time. Replacement might not have been practical in spring 2020, but Leasys once more wrongly decided against rejection.

This means I have come to the same conclusions as our investigator, for similar reasons.

Mr F had use of his car for four months, up to when he took his car to the main dealer. And it would be fair and reasonable to assume that he gained benefit from using the car during this period.

But Mr F says the car was faulty. And this appears to be confirmed by the main dealer's actions in repairing the car (albeit unauthorised by Mr F), as reported to us by Leasys.

The car's faults imply that the benefit Mr F gained from it during these four months would have been impaired. His car might have been expected to travel 2,000 miles (4/36 of the mileage permitted by his agreement), but it only travelled between 1,600 miles (Mr F's estimate – 80% of the expected mileage) and 1,680 miles (the main dealer's estimate – 84% of the expected mileage).

I conclude from the above that Mr F did gain benefit over this period, but not full benefit. And so Leasys should retain payments made for this period (that is, payments made in December 2019 to March 2020, inclusive), but not full payments. This means that I agree with Mr F that the settlement recommended by our investigator should be increased.

Mr F told us that he had made payments to Leasys totalling a little under £4,200 – and this figure is confirmed by the statement of his account provided to us by Leasys.

Putting things right

Leasys has already accepted our investigator's recommendations that:

- Mr F should not be required to pay the outstanding balance on his agreement account
- It should remove the adverse information it recorded on his credit file, relating to this outstanding balance

In addition, I think it would be fair and reasonable:

- For Leasys to retain 82% of four of the monthly payments, required under Mr F's agreement (that is, discounted by 18% to reflect impaired benefit)
- For Leasys to retain 82% of 4/36 of the required initial payment (that is, for 4 months of a 36-month agreement, discounted by 18% to reflect impaired benefit)
- But for all other monies paid by Mr F to Leasys to be refunded, plus interest

Leasys has also offered Mr F compensation of £100 for distress and inconvenience. There is information about compensation for non-financial loss on our public website, where we describe:

- When we might award compensation for distress or inconvenience, damage to reputation, pain and suffering
- What we take into account when deciding an award, where compensation is appropriate
- Examples of awards for trouble and upset

I feel that compensation of £100 in this instance (as offered by Leasys) is appropriate, given the circumstances of Mr F's complaint. It is consistent with our approach to awarding compensation, and with those examples of awards.

My provisional decision and responses

My provisional decision is that I uphold this complaint. My provisional settlement recommendations are that Leasys should:

- Be allowed to retain 82% of four of the monthly payments, required under Mr F's hire agreement with it
- Be allowed also to retain 82% of 4/36 of the required initial payment
- Be required to refund all other monies paid to it by Mr F, plus interest at 8% per annum simple from the dates of payment to the date of settlement
- Remove the adverse information it recorded on Mr F's credit file, relating to the outstanding balance of his agreement account
- Pay directly to Mr F compensation of £100 for distress and inconvenience

Mr F has replied accepting my decision. Leasys has acknowledged receipt of my decision, but it has made no further comments or offered any further evidence.

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.

Neither Mr F nor Leasys have offered further comments or evidence, and Mr F has agreed with my decision. In these circumstances, I see no reason to change that decision.

Putting things right

As noted in my provisional decision, Leasys has already accepted our investigator's recommendations that:

- Mr F should not be required to pay the outstanding balance on his agreement account
- It should remove the adverse information it recorded on his credit file, relating to this outstanding balance

And as also noted in my provisional decision, I think it would be fair and reasonable in addition:

- For Leasys to retain 82% of four of the monthly payments, required under Mr F's agreement (that is, discounted by 18% to reflect impaired benefit)
- For Leasys to retain 82% of 4/36 of the required initial payment (that is, for 4 months of a 36-month agreement, discounted by 18% to reflect impaired benefit)
- But for all other monies paid by Mr F to Leasys to be refunded, plus interest

And as further noted in my provisional decision, I think that Mr F should receive compensation of £100 as well (as offered by Leasys).

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. In full and final settlement of it, I order that LEASYS UK LTD:

1. Be allowed to retain –
 - a. 82% of four of the monthly payments, required under Mr F's hire agreement with it
 - b. 82% of 4/36 of the required initial payment
2. Be required –
 - a. to refund all other monies paid to it by Mr F, plus interest at 8% per annum simple from the dates of payment to the date of settlement
 - b. to remove the adverse information it recorded on Mr F's credit file, relating to the outstanding balance of his agreement account
 - c. to pay directly to Mr F compensation of £100 for distress and inconvenience

If Leasys considers that it has to deduct tax from the interest element of my award, it should send Mr F a tax deduction certificate when it pays him. He can then try to reclaim the tax, if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 April 2022.

Roy Mawford
Ombudsman