

## **The complaint**

Mr T complains about the collection of his car and the end of contract charges applied by LeasePlan UK Limited (LeasePlan) following the end of his hire agreement.

## **What happened**

In May 2017, Mr T entered into a 36 month hire agreement with LeasePlan for a new car. The advance rental was £3,616 followed by 35 payments of £602.

At the end of the agreement in July 2020, the car was returned. It was inspected on 10 July 2020 and it had covered 73,512 miles. Damage was found to the car's bumper and one of the wheels. As a result, LeasePlan said Mr T was required to pay £261. They also said he exceeded the miles permitted so he needed to pay £3,026.

Mr T complained that the collection of the car wasn't in line with LeasePlan's returns process. He said this was because he wasn't present at the inspection, he didn't sign the collection report and despite his requests, he didn't get a copy of it until he received the invoices for the end of contract charges. He also said the collection report had been fraudulently signed.

Mr T said following the receipt of the invoices he spoke to LeasePlan in July 2020 and it was agreed they wouldn't collect these end of contract charges until August 2020 because he had made a request for financial assistance given the Covid-19 pandemic. However when he complained a few days later, he asked that these payments aren't taken until the complaint had been investigated and a resolution reached.

LeasePlan debited the charge for the excess mileage from Mr T's account on 1 September 2020 however Mr T reversed the charge. He said this left his account overdrawn by £364, he was left without money for a few days and this caused him significant worry and upset.

LeasePlan said due to the Covid-19 pandemic, their collection agents were required to make changes to their usual returns process and take precautions meaning Mr T wasn't able to be present for the collection and review the report. However they said pictures of the damaged areas were provided in the subsequent inspection report which was sent to him. They were satisfied the damage charges had been fairly applied.

Unhappy with their response, Mr T referred the complaint to our service. Our investigator recommended the case wasn't upheld. In summary, they concluded LeasePlan were entitled to charge for the damage and excess mileage and given the pandemic it was reasonable that restrictions were put in place during the car's collection. Mr T disagreed.

In January 2022, I issued a provisional decision partially upholding the complaint. I said:

*"End of the hire agreement*

*In terms of the return of the car, the terms of the hire agreement say:*

*"When we collect or otherwise take possession of the Vehicle it must be in a safe condition and in good and substantial repair (Fair Wear and Tear excepted, having regard only to its age and mileage). A Vehicle Collection Report will be completed and you will be required to agree any apparent damage and sign the Vehicle Collection Report. A detailed inspection will take place prior to our selling the Vehicle".*

*I've taken into consideration what Mr T has said about when the car was collected, namely he wasn't allowed to be present, he wasn't able to view the collection report and it had been fraudulently signed.*

*Given some of the restrictions due to the pandemic, some businesses would've carried out their activities differently in order to keep their employees safe, this is most likely to have included social distancing measures. I believe that's what happened here with LeasePlan's agents and I believe this as a fair course of action. Mr T also said the collection report had been fraudulently signed as it wasn't his signature but I don't think it's fair for him to say this. Having reviewed the report, I can see the signature box says 'Covid19'. Therefore I think it's fair to say the collection agent inputted this to demonstrate Mr T wasn't able to sign it due to the social distance restrictions they had taken due to the pandemic.*

*While it might've been helpful for Mr T to have been present (while being socially distanced) and for him to have had the opportunity to dispute any charges, the important thing for me to decide is whether the damage was caused while the car was in Mr T's ownership and whether the damage has been fairly charged.*

*The inspection was carried out on 26 July 2020 and based on LeasePlan's records, I can see the subsequent report was sent to Mr T on 28 July 2020. I'm satisfied it was sent to him in a reasonable amount of time following the collection of the car. While I accept the returns process wasn't carried out as stated in the agreement, given the wider context of the pandemic and the restrictions in place, I believe LeasePlan acted fairly.*

#### *Damage charges*

*The terms of the hire agreement say LeasePlan can charge for the cost of repair and/or replacement of any parts or accessories as a result of loss or damage to the car which they believe to be in excess of fair wear and tear, having regard to the car's age and mileage. In order to do so, LeasePlan said they refer to the guidance published by the British Vehicle Rental and Leasing Association (BVRLA). This is industry guidance which sets out what is considered fair wear and tear when new cars are returned at the end of their agreements. I find it's reasonable for them to rely on the same and I've also taken it into account.*

#### *Front bumper*

*The inspection reports said there is a deep scratch on the front bumper. LeasePlan has charged £151. The BVRLA says scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out. Having looked at the photos, I can see there is a significant scratch and the bare metal can be seen. Although there is no measuring tool next to the damage, it's clear it exceeds 25mm. Therefore, I'm satisfied this damage is beyond fair wear and tear and LeasePlan can charge for it.*

#### *Offside front wheel*

*The inspection report states damage is found on the offside front wheel. LeasePlan has charged £75. The BVRLA guidance says scuffs up to 50mm on the total circumference of the wheel are acceptable. Based on the photographs, I can see there are a number of scuff*

marks around this wheel which I believe is in excess of 50mm. I'm satisfied LeasePlan can charge for this damage.

#### *Rear bumper*

The report states the bumper is broken and LeasePlan has charged £35. I think it's fair to say given this part of the car is broken this can't be considered fair wear and tear so I find LeasePlan are entitled to charge for it.

Given the car was new when supplied and it had been in Mr T's possession for around 36 months, I find it's most likely the above damage was caused while in his care. I'm not persuaded his presence or lack thereof had any bearing on the collection process and what was later reported about the damage. Overall I don't consider these charges to be excessive.

#### *Excess mileage*

The terms of the hire agreement sets the mileage limit at 20,000 miles per year, that is 60,000 miles throughout the duration of the agreement. It states if this amount is exceeded, a charge will apply for each mile.

Separately, as part of the hire agreement I can also see when Mr T opted to take out an optional maintenance service, LeasePlan has explained for this service they arrange and cover the cost of MOTs, services and any repair work. In the event the maximum mileage is exceeded, the agreement sets out how much LeasePlan will charge per mile for the optional maintenance service product.

When supplied, the car was new. When it was returned, it had travelled 73,512 miles. In this case, the permitted mileage allowance had exceeded over 13,500 miles therefore as per the agreement, LeasePlan were entitled to apply these excess mileage charges including that for the optional maintenance service.

Mr T said he was unhappy the charge for the excess mileage (£3,026) was taken from his bank account despite his requests for LeasePlan not to do so. LeasePlan said as he hadn't disputed this charge, they were entitled to debit this payment from his account.

However I've seen a copy of an email sent to LeasePlan from Mr T on 28 July which says:

"I would therefore like to raise a formal complaint. I note that during our telephone call you agreed to push back my payments (invoices attached) date to the end of August, pending my request for a financial assistance request due to Covid as per the link below. I am now requesting that you freeze these payments totally until an investigation into my complaint has been conducted and a resolution agreed"

I haven't been provided with notes or a copy of this call recording so I don't know what was said or agreed. Based on what I've seen, I'm satisfied Mr T complained about the damage charges but I don't have enough evidence to show he also complained about the excess mileage charges. However based on the above email, I believe it was clear that he was experiencing financial difficulty due to the pandemic, he had requested assistance and he asked that the payment for the invoices weren't taken.

When consumers are facing financial difficulty, the Financial Conduct Authority's handbook—Consumer Credit Sourcebook (CONC) says 'A firm must treat customers in default or in arrears difficulties with forbearance and due consideration'. However in this case, I can't see this happened, instead £3,026 was debited from Mr T's account. I find this to be a significant

*amount for a person who has let LeasePlan know they are suffering financial difficulty. So I believe it would've been fair for LeasePlan to have checked with Mr T before debiting this amount given his email. Overall, I can't say LeasePlan showed the forbearance and due consideration that I would expect.*

*Mr T said as a result of this payment being taken, it led to him being overdrawn by over £360. He has provided a copy of his bank statement showing the same and it also shows he had an overdraft limit of £10. He said he was unable to pay bills for a few days before he was able to reverse the transaction. Fortunately, he hasn't said he incurred overdraft fees or any other late/missed payment fees as a result. Given Mr T's financial difficulty at the time due to the pandemic, I can understand why this would've caused him upset and worry as he had fallen into an unarranged overdraft and left without money for bills for a few days. Given the worry of this situation and the fact he had to make arrangements to reverse the transaction via his bank, I believe LeasePlan should pay him £75 compensation for the trouble and upset caused.*

### **Summary**

*Overall, I'm satisfied LeasePlan acted fairly and in line of the terms of the agreement by applying the above end of contract charges. However I don't believe they acted fairly by debiting the excess mileage fee from Mr T's account after he told them he was struggling financially and required support due to the pandemic.*

*If Mr T is still experiencing financial difficulty, I strongly urge LeasePlan to show forbearance and due consideration in line with FCA's guidelines for the payment of these charges".*

Both parties were invited to respond to the provisional decision but no response was received from either party.

### **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.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

### **My final decision**

For the reasons set out above, I've decided to partially uphold Mr T's complaint.

To put things right, LeasePlan UK Limited should pay £75 compensation to Mr T for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 March 2022.

Simona Charles  
**Ombudsman**