

The complaint

Mr D complains that a car that was supplied to him under a hire agreement with Lex Autolease Limited wasn't of satisfactory quality.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follows:

"A new car was supplied to Mr D under a hire agreement with Lex Autolease that he electronically signed in March 2021. He had some issues with the car and Lex Autolease accepted his request to reject the car in July 2021 and offered to return his initial payment of £6,014.84, to credit his two outstanding rentals and to pay him £200 for the inconvenience caused.

Mr D didn't accept its offer and complained to this service. He says that he would like to reject the car for a full refund of the deposit and the monthly payments and to be compensated for loss of enjoyment, fuel costs and time off work to travel to the dealer for the multiple breakdowns. Lex Autolease says that its offer to accept his rejection of the car is no longer available.

Our investigator recommended that his complaint should be upheld. She didn't think that the car was of satisfactory quality when it was supplied to Mr D and that he should be able to reject the car. She recommended that Lex Autolease should: end the agreement and collect the car; refund, on a pro-rata basis, the advance payment for spread rentals with interest; refund 15% of his rentals to cover any loss of use, or impaired use, of the car because of the inherent quality issues, with interest; pay £200 for any distress or inconvenience that's been caused; and, on receipt of the monthly payments owed, remove any adverse information from Mr D's credit file.

Mr D says that Lex Autolease credited the June and July 2021 rentals to him but has since removed them and misled him – he says that he's made a separate complaint about that and that it has confirmed that it had agreed to credit them. He says that his financial status has been impacted so his credit file should be corrected. He says that the June and July 2021 invoices should be credited as Lex Autolease didn't provide him with a hire car and his deposit should be refunded. He also says that his monthly rentals should be refunded and that he should be charged for use of the car at a maximum of 45p per mile.

Lex Autolease says that the car was collected from Mr D in March 2022 so the agreement has been closed down but the mileage recorded at collection was 5,073 and the pro rata mileage allowance was 4,167 so there's an excess mileage charge of £228.31 for the difference of 906 miles, but no charges have been raised in relation to the condition of the car. It says that Mr D owes rental payments for June and July 2021 and also October 2021 to March 2022 and that the total amount owed by him, including for the excess mileage is £4,906.55. It says that Mr D has already received a cheque payment for the £200 it had offered to him".

I set out my provisional findings in that provisional decision which were that Mr D's complaint should be partially upheld for these reasons:

- *“Lex Autolease, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr D - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;*
- *the car that was supplied to Mr D was a new car for which he agreed to pay an initial rental of £6,014.84 and then 47 monthly rentals of £668.32 and I consider that it was reasonable for him to expect that it would be free from even minor defects;*
- *satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;*
- *the roadside assistance reports show that Mr D required assistance with a suspension warning light in June 2021 and the software was updated and that he had issues with the car's air conditioning three times in June and July and the air conditioning pipes were replaced in July 2021 under the car's warranty;*
- *there were also issues with the car's Bluetooth and aux system (which required an update to be released), the boot and the audio system and Mr D says that the car was scratched when it was delivered to him;*
- *Mr D complained to Lex Autolease about those issues and it accepted his request to reject the car in July 2021 and offered to return his initial payment of £6,014.84, to credit his two outstanding rentals and to pay him £200 for the inconvenience caused;*
- *Mr D didn't accept that offer and complained to his service - he says that he would like to reject the car for a full refund of the deposit and the monthly payments and to be compensated for loss of enjoyment, fuel costs and time off work to travel to the dealer for the multiple breakdowns;*
- *I don't consider that it was reasonable to expect a new car to have so many issues within the first five months after it was supplied to Mr D and I consider that Lex Autolease's decision to accept his rejection of the car was fair and reasonable at that time – and I consider it to be more likely than not that the car wasn't of satisfactory quality when it was supplied to Mr D;*
- *the car was collected from Mr D in March 2022 and, although he says that he hasn't used it since December 2021 because he has another car, I consider that it's fair and reasonable for him to pay the monthly rentals due under the agreement for the period that he had the car (less the deduction described below);*
- *I find that it would be fair and reasonable for Lex Autolease to refund to Mr D the initial rental that he paid for the car, on a pro-rata basis spread across the four year term of the agreement, for the time that he hasn't had the car- and that it should also pay interest on that amount – I'm not persuaded that it would be fair or reasonable in these circumstances for me to require it to refund the full amount of the initial rental to Mr D;*
- *the issues with the car will have affected Mr D's use and enjoyment of it and I agree with our investigator that it would be fair and reasonable for Lex Autolease*

to refund to him 15% of his monthly rentals as compensation for that loss of use and enjoyment;

- Lex Autolease offered to credit two monthly rentals to Mr D in July 2021 but he didn't accept the offer that it made at that time and I'm not persuaded that there's enough evidence to show that Lex Autolease has acted incorrectly in connection with the June and July 2021 rentals – it has provided evidence to show that those rentals remain outstanding on Mr D's account and that he also hasn't made any payments to the account since the September 2021 rental – I'm not persuaded that it would be fair or reasonable for me to require Lex Autolease to refund to Mr D the monthly rentals for June and July 2021 and I find that it would be fair and reasonable for the arrears on his account to be deducted from any payments due to him from Lex Autolease;*
- these events will have caused some distress and inconvenience for Mr D – Lex Autolease offered to pay him £200 compensation for that distress and inconvenience in July 2021 and it says that it has sent him a cheque for £200;*
- the agreement included an annual mileage allowance of 5,000 miles – but Lex Autolease says that when the car was collected from Mr D in March 2021 its mileage was 5,073 which exceeded the mileage allowance on a pro-rata basis of 4,167 miles by 906 miles so there's an excess mileage charge of £228.31 – I consider that it's fair and reasonable for Mr D to pay for that excess mileage;*
- I'm not persuaded that it would be fair or reasonable for me to require Lex Autolease to refund to Mr D the full amount of his initial rental, more than 15% of his monthly rentals for his loss of use and enjoyment of the car or to pay him any other compensation for his fuel costs and time off work to travel to the dealer for the multiple breakdowns – nor am I persuaded that it would be more appropriate for him to pay for his use of the car at a rate of a maximum of 45p per mile;*
- I find that it would be fair and reasonable in these circumstances for Lex Autolease to refund part of the initial rental to Mr D as described above and 15% of the monthly rentals as compensation for his loss of use and enjoyment of the car (all with interest) - but I find that it should deduct from that refund the outstanding rentals due from Mr D and the excess mileage charge of £228.31;*
- if Mr D hasn't cashed the cheque for £200 that it sent to him, I consider that it should cancel that cheque and add £200 to the payment to be made to Mr D as compensation for the distress and inconvenience that he's been caused;*
- I consider that Lex Autolease should provide Mr D with a detailed explanation of its calculation of each of these amounts; and*
- I find that Lex Autolease should also remove any information about the hire agreement that it's recorded on Mr D's credit file".*

Lex Autolease has accepted my provisional decision but Mr D says that he will not pay for having a faulty and unsafe to drive car. He says that Lex Autolease is aware of all of his calls and complaints including that the collection date was delayed by the excess mileage charge which he said that it needed to remove as the excess mileage was due to faults with the car and that it had confirmed that the invoices would be credited as he had been chasing for the car to be collected since December 2021. He says that he's ordered another car from Lex Autolease which has the same issues so it's knowingly leasing faulty and unsafe cars and should be investigated for that.

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'm not persuaded that I should change the findings that I set out in my provisional decision. I consider that those findings are a fair and reasonable outcome to Mr D's complaint.

This complaint relates to the car that was supplied to Mr D under the hire agreement in March 2021. If Mr D wants to complain about another car that it's supplied to him, he should first complain to Lex Autolease (if he hasn't already done so) and then, if he's not satisfied with its response, he may be able to make a separate complaint to this service.

We offer an informal dispute resolution service and try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances. We have no regulatory or disciplinary role over those businesses and aren't able to investigate the way that any one of them conducts its business.

Putting things right

I find that it would be fair and reasonable in these circumstances for Lex Autolease to take the actions described in my provisional decision.

My final decision

My decision is that I uphold Mr D's complaint in part and order Lex Autolease Limited to:

1. Refund to Mr D the amount calculated on the basis described in my provisional decision (which is set out above).
2. Remove any information about the hire agreement that it's recorded on Mr D's credit file.

HM Revenue & Customs requires Lex Autolease to deduct tax from the interest payment to be made to Mr D. Lex Autolease must give Mr D a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 June 2022.

Jarrold Hastings
Ombudsman