

The complaint

Mr W complains about a car supplied to him under a hire agreement provided by Lex Autolease Ltd ('Lex'). He says the car has had various issues with it including major faults at the end of the term that weren't repaired before the car was collected.

What happened

In January 2016 Mr W acquired a new car under a hire agreement provided by Lex. The term of the agreement was for 49 months, and there was a yearly mileage allowance of 25,000.

Mr W says the car had had various issues with it. As part of this complaint, Lex and Mr W have provided an extensive history of the car's servicing and repair records. I don't intend to list the complete details here, as everything that happened is well known to both parties. Instead, I'll go through the key events that took place.

In May 2017 when the car had done around 36,848 miles, it was returned to the dealer for investigation as it was making excessive noise and using a lot of oil. A major fault was noted here and the car required a complete engine replacement.

In July 2017 at around 41,381 miles the car displayed various warning lights. A diesel particulate filter ('DPF') sensor needed to be refitted and a forced regeneration carried out. Around the same time the car had a blown bulb and needed a new parking brake switch following a coffee spill.

In August 2017 Mr W complained to Lex about the car, asking to reject it. It issued a final response and upheld the complaint. It said, in summary, that it accepted the car had faults. But, it said these were not reoccurring and had been repaired, so it wouldn't allow Mr W to reject the car. It offered Mr W £200 in vouchers and £200 as cash. Lex gave Mr W referral rights to our service, but Mr W didn't contact us at this time.

The car had some smaller issues over the coming months such as bulbs blown and a new damper box being fitted. Then in December 2018 when the car had covered 91,415 miles, the EGR valve was replaced.

In November 2019 the car displayed an engine warning light ('EML') and was making excessive noise. At this time the car had covered around 121,723 miles. Following investigation, the timing chains were replaced. The EGR was also blocked and the EGR and DPF were also replaced. Mr W says at this point the car was out of warranty but says after complaining the manufacturer covered the cost of these repairs.

Then, in January 2020 the car broke down again. It was again returned to the dealer and after investigation Mr W was told the turbo had failed. He was told the car needed a new turbo, DPF, CAT and a flush of the oil and intercooler system. Mr W says he was told the repairs were going to cost around £5,500.

Mr W complained to Lex and the manufacturer, pointing out the hire period was about to

end. Mr W left the car at the dealer and told Lex he wouldn't continue to pay for it.

In June 2020 Lex issued its final response. It said, in summary, that any concerns up to August 2017 had been covered by its previous complaint and so it wouldn't consider any of these issues further. It said after August 2017, it didn't consider the repair history excessive considering the age and mileage of the car and so it wasn't upholding Mr W's complaint.

In July 2020 the car was collected and noted as a non-runner. Around this time Mr W said again that he wished to reject the car.

Mr W then referred his complaint to our service. He says the car has had ongoing, linked issues during the time he had it. He says the dealer had the car for around six months for repairs. And he said Lex had reported negative information to his credit file that he was unhappy with.

Our investigator issued an opinion and did not uphold the complaint. He said, in summary, that there was nothing to suggest the later issues Mr W had were present or developing at the point of supply.

Mr W was unhappy with this and repeated his concerns. Our investigator asked Mr W some further information about the use of the car. Mr W confirmed it was mostly used on long drives. And he said the DPF had failed at least four times since he had the car, including once on the motorway.

Our investigator had another look into things and explained he had now changed his mind and thought the complaint should be upheld. He said, in summary, that given the number of issues the car had over its lifetime it wasn't durable. He said he thought Lex should waive the costs to repair the car from when it was returned. He also said Mr W shouldn't be responsible for the repayments to the agreement from January 2020. And he said Lex should remove any adverse information from Mr W's credit file.

Lex responded and said it had reviewed the faults from August 2017 and thought these were all minor. It also clarified that Mr W owed £5,757.46. This was made up of: two monthly rentals - £949.92, four monthly informal extension rentals - £1,977.40, a partial monthly extension rental of £153.14 and £2,677 for the condition of the car when it was returned.

The £2,677 was made up of: £2,900 for the engine not running, £207 for a missing key and £77 for a scratch to the bumper. A credit of £207 and a waiver of £300 were deducted from these charges.

The complaint has now been passed to me to decide.

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 thought about all the information on this case, I think this complaint should be upheld. I'll explain why.

Mr W complains about a car supplied under a hire agreement. Entering into consumer credit contracts such as this is a regulated activity. So, I'm satisfied I can consider Mr W's complaint about Lex.

When thinking about what's fair and reasonable, I take into account relevant law, regulations

and guidance. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This explains under a contract to supply goods, the supplier – Lex here – needs to make sure the goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

It seems to me in a case like this involving a car, that a court would consider relevant factors to include, but not be limited to, things like the car's age, price, mileage and description. I should also point out in this case that the CRA specifically explains that the durability of goods should be considered a part of whether they are of satisfactory quality.

So, I need to consider that the car Mr W got was brand new and from a premium manufacturer. He was paying nearly £500 a month to hire the car. And, in total, he was due to spend over £24,000 to hire the car over the total period. Keeping this in mind, I think a reasonable person would have very high expectations for the quality of the car and I think they would expect trouble free motoring for a significant amount of time.

I should briefly explain here that as Lex pointed out, Mr W did complain about the earlier issues with the car and did not refer this complaint to our service. So, I won't consider any redress for this time period, nor what specifically happened here. But, I do still need to consider, in general terms, the overall history of the car when thinking about this specific complaint and the later issues it addresses.

What I need to consider in this case is whether the car supplied to Mr W was of satisfactory quality or not, particularly having in mind the latest issues that the car has had.

I do need to consider that the mileage allowance under this agreement was 25,000 a year. This means that I think a reasonable person would expect the car to need maintaining throughout the hire period. I think they may expect some parts to suffer from wear and tear and need replacing. And, it might not be reasonable to expect the car, in general terms, to work flawlessly over such a high mileage.

But, that being said, I think in this particular case that more significant issues occurred when Mr W had the car than I would expect. I accept some of the history, as above, could be considered reasonable when considering the mileage involved. But, there were several instances where the car required what I would consider to be major repairs.

Firstly, the entire engine needed to be replaced at under 37,000 miles. Then at around 121,000 miles the timing chains, EGR and DPF needed to be replaced. The car broke down for the final time only around two months later than this and required a new turbo, DPF, CAT and some other work.

Mr W says he was told by the dealer the latest issues would've cost around £5,500 to repair. Thinking about the above and looking at the warranty invoices, for these three incidences this would've meant the car required over £16,000 worth of repairs in around four years. This is well over half the cost of hiring the car, which seems excessive.

Our investigator also highlighted a potential underlying fault with the EGR and DPF. I have considered that these are mentioned in the car's repair history several times and needed to be fixed or repaired on more than one occasion – including at the latest break down. Mr W also says he had issues with the DPF more times than is mentioned on the invoices and receipts. I agree with our investigator that we don't have enough to make me think – in isolation – that this is enough to conclude the car was of unsatisfactory quality. But that being said it does, with the above issues, add to the picture of the overall quality of the car.

I've also considered all of the other invoices, breakdown reports and testimony from Mr W.

Thinking about everything in the round on this case, I'm satisfied the car had more issues, including major problems, than a reasonable person would expect. I'm satisfied this means it's likely the car had underlying issues when it was supplied to Mr W. And, I'm satisfied, thinking about the times it needed to be repaired, that it wasn't durable. It follows all of this that I'm satisfied that the car supplied to Mr W was not of satisfactory quality.

I'm also satisfied, considering this, that the latest issues with the car were due to underlying faults and could be linked to previous issues or repairs. So, I'm satisfied Mr W shouldn't be responsible for these costs.

Thinking about this, I also don't think Mr W should be responsible for the payments to the agreement since the car broke down in January 2020 – including the informal charges while the car was waiting to be collected.

I have thought about whether any additional payment should be due to Mr W. He has complained about the length of time the car was in for repairs. But, I believe a large proportion of this was in relation to the first major repair – where, as above, I am not making any award for this period.

I've also considered that, while the car wasn't of satisfactory quality, it is fair to say Mr W got the use out of it he could've expected considering the mileage covered.

So, thinking about things in the round I think the most fair and reasonable thing to put things right is that Mr W should not be responsible for any of the outstanding charges. It also follows that it isn't reasonable for this to affect Mr W's credit rating – so Lex should remove any and all negative information from Mr W's credit file in relation to this agreement and the end of contract charges.

I have considered that some of the charges relate to a missing key and potential damage to a bumper, which Mr W could be responsible for. Thinking about the overall situation, I'm satisfied this must have caused Mr W some distress and inconvenience. But, I won't make a separate award for this – I'm satisfied this is covered off by removing all of the charges.

My final decision

My final decision is that I uphold this complaint. I instruct Lex Autolease Ltd to put things right by doing the following:

- If it hasn't already, cancel the agreement with nothing further to pay
- Waive the end of contract charges and remove any liability from Mr W
- Remove any negative information from Mr W's credit file in relation to the agreement, including the end of contract charges

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 June 2022.

John Bower
Ombudsman