

## The complaint

Mr M complains about a sum LeasePlan UK Limited trading as Leaseplan are seeking the recovery of (from him) after he took the decision to early terminate his conditional sale agreement (“agreement”).

## What happened

In October 2017 Mr M entered into an agreement with Leaseplan for a new car costing £52,470.10. Under the terms of the agreement, everything else being equal, Mr M undertook to make a single (advance) instalment of £5,510.97, followed by 59 monthly instalments of £612.33 and then a final instalment (number 60) of £26,202.50 – making a total repayable of £67,840.94 at an APR of 8.59%.

The agreement allowed Mr M to return the car to Leaseplan with nothing further to pay after, everything else being equal, he had paid £33,920.47 (50% of £67,840.94).

On 25 November 2019 Mr M contacted Leaseplan to enquire about purchasing/returning the car. Leaseplan advised Mr M that he would need to speak to his broker to obtain a quote and put him through.

On the same day Mr M was sent a purchase/early termination quote. To early terminate Mr M was quoted a cost of £13,713.58 broken down as follows:

|  |              |
|--|--------------|
| • 50% of total amount payable                    | £33,920.47   |
| • instalments made [£5,510.97 plus 24 x £612.33] | (£20,206.89) |
| • amounts falling due before quote validity date | £nil         |
| • sum due  | £13,713.58   |

On 3 April 2020 Mr M contacted Leaseplan to enquire about purchasing/returning the car. During this call Mr M said he understood he could return the car with nothing further to pay if “*he had it over 50%*”. During this call Mr M advised Leaseplan of his intention to acquire, in a month or so, a new car and he didn’t want to be financing two cars and that it was his understanding that he would have “*had it over my duration*” come the middle of May. Leaseplan didn’t correct Mr M’s understanding or arrange for a purchase/early termination quote to be sent to him as its procedures say should have been done.

On 9 April 2020 Mr M contacted Leaseplan to say that once his May instalment had been collected he would have had the car for “*over half my duration*”. He then went on to ask if he could return the car after his May instalment, as he understood he could, with nothing further to pay. Mr M wasn’t advised during this call that his understanding about having nothing further to pay was incorrect, or that the correct procedure was for a purchase/early termination quote to be sent to him. Mr M also reiterated in this call his intention to acquire a new car shortly.

On 23 April 2020 Mr M contacted Leaseplan to enquire when the car would be collected, following his formal request earlier in the month to early terminate. During this call Leaseplan advised Mr M that to early terminate the agreement with nothing further to pay then he would need to have paid 50% of the total sum due under it. Mr M advised Leaseplan this wasn't his understanding, or what he had been previously advised by it, and he had now acquired a new car.

On 4 May 2020 Mr M contacted Leaseplan to enquire again when the car would be collected and to reiterate he had acquired a new car and had been advised (and understood) he had no further liability to Leaseplan. Leaseplan told Mr M his understanding was incorrect, and he had an outstanding liability of £10,697.46. But it added it would look into his concerns about being advised he would have nothing further to pay under the agreement if he early terminated it when he did so.

On the same day Mr M was sent a purchase/early termination quote. To early terminate Mr M was quoted a cost of £10,697.46 broken down as follows:

|   |              |
|---|--------------|
| • 50% of total amount payable   | £33,920.47   |
| • instalments made [£5,510.97 plus 30 x £612.33]                        | (£23,880.87) |
| • amounts falling due before quote validity date [£612.33 plus £45.53*] | £657.86      |
| • sum due   | £10,697.46   |
| *additional services  |              |

On 15 May 2020, having looked into Mr M's concerns, Leaseplan contacted Mr M to say it was satisfied that it was entitled to seek recovery of the sum of £10,697.46 from him.

Unhappy with Leaseplan's decision above, Mr M complained to our service.

Mr M's complaint was considered by one of our investigators who came to the view that it should be upheld and that Leaseplan should:

- terminate the agreement, with nothing further to pay
- pay Mr M £200 for distress and inconvenience

Leaseplan didn't agree with the investigator's view so the matter was passed to me for review and decision.

In January 2023 I issued a provisional decision on this case. In summary I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Mr M was wrong in his understanding that he could early terminate his agreement (with nothing further to pay) once he had made 50% of his contractual monthly instalments (30 of 60). As ultimately pointed out by Leaseplan, for Mr M to do be able to early terminate his agreement (with nothing further to pay) what he was actually required to do was to have paid 50% of the total amount payable under the agreement of £33,920.47.*

*But I wouldn't have expected Mr M to know this. So, when Mr M telephoned Leaseplan on 3 and 9 April 2020 what it should have done, in my view, is explained in clear and in unequivocal terms exactly what Mr M needed to have paid it in order to be able to early terminate the agreement with nothing further to pay.*

*I've listened to the call recordings provided by Leaseplan for 3 and 9 April 2020. And having done so I'm satisfied that Leaseplan failed to correct Mr M's misunderstanding that he could early terminate the agreement with nothing further to pay as long as he paid, in due course, May 2020's agreement instalment of £612.33 when it could have easily done so and should, in my view, have done so.*

*I'm also satisfied, having listened to the call recordings for 3 and 9 April 2020, that Mr M acted entirely reasonably in assuming he could early terminate the agreement with nothing further to pay (other than May 2020's agreement instalment in due course) and that he could commit to the purchase of a new car. And for the avoidance of doubt, I can confirm that Mr M has provided evidence that he had committed to the purchase of a new car on 14 April 2020 after Leaseplan had failed to correct his misunderstanding on two separate occasions (when it could and should have done) and before it ultimately did so on 23 April 2020.*

*So, in summary I'm satisfied that Leaseplan misrepresented to Mr M that he needed to pay nothing further (other than May 2020's agreement instalment) in order to be able to early terminate his agreement and Mr M acted on this misrepresentation in good faith and to his detriment.*

*Where someone has acted in good faith on what they understood something to be (because it was misrepresented to them or not made clear to them), the appropriate remedy isn't to put them in the position they would be in if their understanding had been correct, but the position they would have been in had there been no misrepresentation or where things had been explained clearly to them.*

*But in this case that isn't possible. So, in the particular circumstances of this case, I find that the fairest thing for Leaseplan to now do is to stand by its misrepresentation.*

*However, having looked at a statement provided by Leaseplan, it would appear that Mr M has only paid 29 instalments because 2 of the 31 instalments made by him (between early-December 2017 and early-June 2020) were (in mid-June 2020) refunded. So, I think it's entirely fair that Leaseplan should be able to seek the recovery of £612.33 from Mr M, a sum equivalent to one further monthly agreement instalment, taking the total payable to 30 monthly instalments rather than 29.*

*Finally, like the investigator, I find that this whole matter has caused Mr M material distress and inconvenience for which he should be fairly compensated. And taking everything into account I can confirm that I agree with the investigator that £200 represents an appropriate sum for Leaseplan to have to pay Mr M in this respect.*

Both parties responded to my provisional decision to say they accepted it.

### **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.

As both parties have confirmed that they accept my provisional findings I see no reason to depart from them and I now confirm them as final.

### **My final decision**

My final decision is I uphold this complaint and that LeasePlan UK Limited trading as Leaseplan must:

- reduce the sum it's seeking from Mr M to £612.33 (from £10,697.46)
- pay Mr M £200 for the distress and inconvenience this whole matter has caused him

Unless Mr M agrees otherwise, the sum of £200 shouldn't be offset against the sum of £612.33.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 February 2023.

Peter Cook  
**Ombudsman**