

## The complaint

Mr D is unhappy that a car supplied to him under a hire agreement with LeasePlan UK Limited was of an unsatisfactory quality.

## What happened

On 30 December 2021, Mr D was supplied with a new car through a hire agreement with LeasePlan. Mr D paid an advance rental of £4,198, and the agreement was for 48 months; with monthly hire payments of £349.86.

On 2 November 2022 the car developed a fault, with the airbag warning light coming on. Mr D took the car to the supplying dealership, who agreed to repair the fault. However, they were only prepared to provide a courtesy car if Mr D paid £15 a day for this. And Mr D wasn't prepared to pay this.

The repairs were completed on 18 November 2022, and the car returned to Mr D. Mr D complained to LeasePlan the same day about the delay in the repairs being done, and that he was without use of a car he was paying for while the repairs were taking place. But LeasePlan didn't uphold the complaint, so Mr D brought it to the Financial Ombudsman Service for investigation.

The fault with the car reoccurred on 18 January 2023. But the supplying dealership haven't been able to repair it. And Mr D says he's not been able to use the car, because it wasn't safe to do so.

Our investigator said it's likely there was a fault with the car. And the fault code for the fault in November 2022 was the same fault code for the fault in January 2023. The investigator said the November 2022 fault occurred after 3,679 miles, and the January 2023 fault after 4,739 miles. So, she didn't think the car was sufficiently durable and no reasonable person would expect an airbag to fail after around a year and less than 5,000 miles.

While the investigator acknowledged there was some dispute as to what Mr D had been told by the dealership after the second fault occurred, she didn't think this had any bearing on the lack of durability. And, as the dealership had already had the opportunity to repair the fault in November 2022, and this repair wasn't successful, the investigator said that Mr D should be able to reject the car. She also said that LeasePlan should refund the payments Mr D has made when he hasn't been able to use the car, as well as a pro-rata refund of the advance payment, plus statutory interest, and £150 for the trouble and upset Mr D has been caused.

While Mr D agreed with most of the investigator's recommendations, he thought LeasePlan should increase the compensation to £300 due to the length of time the dealership had taken to diagnose and attempt to fix the faults, because he had to make four trips to the dealership, and because of the impact of not having a car on his day to day life.

LeasePlan also disagreed with the investigator. They didn't think the investigator's view was in line with the Consumer Rights Act 2015 (CRA) because the fault occurred more than six months after the car was supplied to Mr D. And they are only allowed one chance at repair

for faults which occurred within the first six months. As the fault occurred after six months, LeasePlan say that it's for Mr D to prove the fault existed when the car was supplied to him and, as he hasn't done this, they are able to repair the car under warranty.

Finally, LeasePlan have said that Mr D didn't choose to pay for an optional extra maintenance package when he took out the agreement, which would've kept him mobile while his car was being repaired. And he was offered the option of a courtesy car at £15 a day and didn't take this. So, they don't think that Mr D should be compensated for being without a car.

Because neither party agreed with the investigator, this matter has been passed to me to make a final decision.

### **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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr D was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, LeasePlan are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless LeasePlan can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr D to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr D took possession of it, or that it wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask LeasePlan to put this right.

From the evidence I've seen, the car developed an airbag fault on 2 November 2022. The supplying dealership didn't fix this fault until 18 November 2022, when they over-rode the fault and did a software update. And Mr D wasn't able to use the car between these dates for safety reasons - the airbag wouldn't have deployed in the event of an accident.

The dealership's job card for this fault confirmed an "*airbag error light has come on since 2/11/22*" and the car had travelled 3,679 miles. It also confirmed that the car was returned to Mr D on 18 November 2022.

The airbag fault reoccurred on 18 January 2023 and the dealership weren't able to inspect the car until 9 February 2023. After this inspection the dealership said this wasn't a recurring issue, and the second fault, although it displayed the same error, had a different root cause. However, the dealership was unable to fix this fault and were awaiting a part from the manufacturer which was on back order. Because of the same safety issue – the airbags not deploying in an accident – Mr D says he didn't use the car after 18 January 2023.

The job card for this inspection confirmed an *“airbag light is on the dash”* and the car had travelled 4,739 miles. It also confirmed the car was returned to Mr D on 10 February 2023.

Based on the evidence I've seen I'm satisfied there was a fault with the car. This fault didn't become apparent until more than nine months after the car was supplied and, as LeasePlan have said, the CRA implies it's for Mr D to show the fault was present at the point of supply. Which he hasn't been able to do.

However, when considering the CRA, I also need to consider if the car was sufficiently durable. There's an issue with a control module, which means the airbag system is not working. And this part is on back order from the manufacturer, so the fault can't be fixed. I don't think any reasonable person would expect the control module to fail after less than 5,000 miles and, as such, I'm satisfied that the car wasn't reasonably durable. And this makes it not of a satisfactory quality at the point of supply.

In circumstances like this, the CRA allows for a single chance at repair. For clarity, this means one chance to fix all the faults with the car, not one chance per fault. And this single chance of repair isn't impacted by whether the fault manifested itself before or after six months from supply.

The dealership attempted to fix a fault by a software update in November 2022. But the fault that now requires a replacement control module remains. Given this, I'm satisfied it's reasonable for me to conclude this single chance of repair was unsuccessful. And, as the dealership aren't able to provide any timescale for when a repair could be undertaken, I'm satisfied that Mr D should be allowed to reject the car.

### **Putting things right**

I appreciate LeasePlan's comments about the optional extra maintenance package, and the offer of a courtesy car at £15 a day. However, Mr D has had periods when he wasn't able to use the car he was hiring from LeasePlan, yet he was still required to continue to make the monthly hire payments. And I don't think that, just because Mr D didn't choose to pay extra to have a courtesy car means it's fair that LeasePlan should be able to charge him for a car that wasn't of a satisfactory quality for periods when he wasn't able to use the car. As such, I think it's reasonable that LeasePlan should refund the payments Mr D has made covering the periods the car wasn't available and/or driveable.

Based on the evidence I've seen; I'm satisfied that Mr D didn't use the car for the period it was awaiting repair – 2 to 17 November 2022 and 18 January to 9 February 2023 – a period of around a month.

Mr D has provided evidence of the current mileage on the car and I've seen this is 5,947. As such, this means the car has done 1,154 miles since it was returned to him on 10 February 2023. So, I don't think it's fair for me to say that Mr D hasn't used the car since its return.

In her view, the investigator said that LeasePlan should refund payments to Mr D for the periods he was unable to use the car. Given the above, I think it's fair that this should be the December payment – it's roughly equivalent to the total period Mr D was without the car, and it falls roughly in the middle of the two periods he was without the car.

Finally, I'm satisfied that Mr D has been inconvenienced by what has happened. He's had to take the car back to the dealership for repair on two occasions, and has had to wait over two weeks on each occasion before the dealership could fit him in. And he's now been left with a car that can't be fixed in a reasonable timescale and can't be driven with all of its safety features working.

While I've noted Mr D's comments about the impact of not having use of a car, I've also taken this into consideration with the refund of the payments detailed above. As such, while I'm satisfied LeasePlan should compensate Mr D for the inconvenience he's been caused, I see no compelling reason not to adopt the £150 recommended by the investigator.

So, LeasePlan should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr D;
- remove any adverse entries relating to this agreement from Mr D's credit file;
- refund, on a pro-rata basis, the advance payment for spread rentals (so Mr D isn't paying for any period he won't be hiring the car);
- refund the December 2022 payment to Mr D, to compensate him for the total period he didn't have use of the car;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr D made the payment to the date of the refund †; and
- pay Mr D an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires LeasePlan to take off tax from this interest. LeasePlan must give Mr D a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr D's complaint and LeasePlan UK Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 July 2023.

Andrew Burford  
**Ombudsman**