

The complaint

Mr L complains about the quality of a van that was supplied to him under a hire agreement with Lex Autolease Limited, trading as Lex Autolease.

What happened

In March 2018 Mr L took out a hire agreement with Lex for a new van. Under its terms, he was to pay £423.47 a month for a minimum of 24 months. Mr L says the agreement was extended twice - each time by one year.

Mr L has told us the van needed a number of repairs, which were initially covered by the manufacturer's warranty. Lex have confirmed the warranty records show the following repairs were carried out:

Date	Repair	Mileage
February/March 2019	Replaced exhaust gas recirculation (EGR) cooler Replaced rear brake calliper	36,006
October 2019	Replaced coolant pump	40,554
June 2020	Replaced crankshaft seal Replaced window lifter switch Replaced turbocharger	40,645
October 2020	Replaced two-part flywheel	45,724

Mr L says the van broke down again after the manufacturer's warranty had expired. He says he had to pay £530 for recovery due to the size of the van. Mr L says the timing belt had failed, costing £2,200 for repairs. He says the garage told him the timing belt should last up to 130,000 miles - and that previous breakdowns may have caused it to decay.

In November 2021 Mr L complained to Lex about the amount he'd had to pay to have the van recovered and repaired. He also complained about the overall number of faults he'd experienced during the time he'd had the van.

In December 2021 Mr L contacted Lex to say the van had broken down again less than a month after the last repair - this time due to a problem with the ignition. Mr L says it remained undriveable, so he had to source another vehicle for work.

Lex issued their final response to Mr L in January 2022. They didn't uphold his complaint about the recovery cost, saying they hadn't arranged this as his contract didn't include maintenance. They said they also hadn't upheld his complaint about the cost of repairing the timing belt, because there'd been no previous faults with the timing kit and the van was no longer under warranty.

But Lex acknowledged there'd been a number of issues with the van. They upheld this aspect of Mr L's complaint, offering to waive the cost of terminating the contract early if he wished to do so. They also offered him £100 for his inconvenience.

Mr L accepted Lex's offer to end the lease early. But he remained unhappy with the way they'd handled things, so he referred his complaint to our service.

Mr L also made a second complaint to Lex about invoices they'd sent him after the van was returned. I'm not going to discuss that second complaint here, because that's being investigated as a separate matter.

Our investigator looked into Mr L's complaint about the problems he'd experienced whilst the van was in his possession. Although the investigator felt there were a high number of repairs to the van during 2019 and 2020, he noted these were covered under warranty, at no cost to Mr L. He also noted Mr L had extended the agreement twice, suggesting he was happy that it was fit for purpose.

The investigator didn't think any of the earlier repairs were linked to the timing belt issue, so he wasn't persuaded that Lex should cover the cost of that repair. He thought Lex had acted fairly by offering to terminate the agreement early without charging Mr L the usual penalty for doing so. He didn't think they needed to do anything more.

Mr L disagreed. I'll summarise his main points:

- He'd ensured the van was regularly serviced as required. At the time he extended the agreement it was running well.
- He'd been advised by a manufacturer's garage that the timing belt shouldn't have failed at 65,000 miles.
- After contacting his broker for help, they'd advised him to raise a 'problem vehicle' case with Lex. Lex had then offered to end the agreement early and recover the van as a non-runner.
- The van was classed as a 'problem vehicle' due to the numerous repairs carried out. So, it wasn't fit for purpose, and shouldn't have been leased to him. It should have been withdrawn from hire and replaced.
- The repairs had cost thousands of pounds. As a leased vehicle, these costs should've been covered by Lex.

My provisional decision

On 27 June 2023 I issued a provisional decision, saying:

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

Mr L's complaint is about a van supplied under a hire agreement. He's told us that he's a sole trader, and that he needed the van for his business. I'm satisfied that this is a regulated agreement, and that I can look into Mr L's complaint.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Supply of Goods and Services Act 1982 is relevant to this complaint. It says under a contract such as this one for goods hired in the course of a business, there's an implied term that the quality of those goods is satisfactory.

The test that's applied is whether the goods were of a standard that a reasonable person would regard as satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. In this case, I bear in mind that this van was supplied to Mr L from new.

Mr L has told us that he had a number of problems with the van breaking down, which began in the first year of the lease. He says that although this was annoying, it didn't cause him any major issues whilst recovery, repair and a replacement vehicle were provided free of charge under the manufacturer's warranty.

I think it's fair to say the issues of major concern for Mr L started in October 2021, after the manufacturer's warranty had expired. So, I'll focus my decision on the problems with the van from that point onwards. I note that Mr L feels strongly that these faults were due to this being a 'problem vehicle' from the start.

Timing chain failure

Mr L has provided a copy of the garage's invoice dated 13 October 2021 and his debit card receipt, showing he paid £2,199.34 for the following work:

Replaced damaged camshaft module

Replaced cam sensor

Fitted new timing belt & water pump

Replaced faulty battery.

Mr L says he'd had the van serviced regularly, as required. He says it had only covered around 65,000 miles - and that he's been advised the timing chain shouldn't have failed at that sort of mileage. He feels it had decayed due to the previous problems with the van. But I've seen no supporting evidence of this.

I'm aware that the life expectancy of a timing chain can vary – it can be as short as 60,000 miles. A number of factors can cause increased wear and tear, such as not changing the oil on time, not using the right grade of engine oil, and/or hauling heavy loads. I've seen no evidence to show this failure was caused by earlier breakdowns.

I bear in mind that, by this time, the van was over three years old and was no longer covered by the manufacturer's warranty. I do think it's reasonable to expect a commercial vehicle of that age might need some parts to be replaced due to wear and tear. I think that was something for Mr L to weigh up when he decided to extend the lease for a fourth year.

For these reasons, I'm not persuaded that the timing chain failed because the van hadn't been of satisfactory quality. I've seen no evidence to suggest this was anything other than normal wear and tear. I'm satisfied that the agreement terms made it clear that Mr L was responsible for keeping the van in good repair, at his own expense. So, I don't consider Lex liable for this repair cost.

Ignition problem

Mr L told us the van broke down again in December 2021. As Lex upheld his complaint about the number of faults he'd experienced, I don't think there's any dispute that they'd supplied him with a van that hadn't been of satisfactory quality.

I agree that was a reasonable conclusion to reach. So, I think it was fair for Lex to offer to terminate the agreement early without applying the usual penalty charge for doing so.

I've seen a copy of the email Mr L sent to Lex on 22 December 2021, in which he made them aware that the van was undriveable since it had broken down again. In those circumstances, I'd also expect Lex to refund any monthly rental payments Mr L made from that point onwards, to reflect the fact that he was no longer able to use the van.

Mr L says he relied on the van for his business as a sole trader. He told us that the earlier faults didn't cause him major issues, because he was given a courtesy vehicle whilst this van was at the garage. And I don't think he'd have extended the agreement twice if those earlier breakdowns caused him significant problems.

But he says having to source another vehicle has put him under a lot of financial strain. Having given careful thought to what Mr L has told us about this, I think Lex should pay him a total of £200 compensation to reflect the distress and inconvenience he's been caused.

For the reasons I've explained, I intend to uphold this complaint and direct Lex Autolease Limited to:

- Refund any monthly rental payments Mr L has made for the period after 22 December 2021.*
- Remove any adverse information that's been recorded on Mr L's credit file in respect of monthly rentals that would otherwise have become due after 22 December 2021.*
- Add interest to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.*
- Pay Mr L a total of £200 compensation for the distress and inconvenience caused.*

I invited both parties to send any further information or comments they'd like me to consider.

Responses to my provisional decision

Both parties responded, asking for clarification on various points and providing further information.

Much of the information Mr L provided went back over things he'd already told us - or related to his second complaint about things that have happened more recently. I'll summarise the additional information and comments he made about this complaint:

- Lex combined a recovery package in his monthly lease. The recovery package they'd sold him wasn't fit for purpose, because they hadn't checked that the length of the van was acceptable to their recovery agents. This mis-sale of the recovery package had resulted in him having to pay a recovery charge of £530.
- He'd had the van serviced twice whilst it was in his possession – in January 2019 and June 2020. The garage had told him there's no specific mileage at which the timing belt should be replaced, but it should have been checked on every major service. He provided a copy of an invoice dated 15 June 2020 showing a full service had been carried out, and an email from the garage about life expectancy of the

timing belt.

- Even when the van was under warranty, it was at the garage for weeks due to all the repairs needed and high workloads at the time. At one point the company that provided the courtesy vehicle had contacted him about stopping the hire, as repairs had taken nearly six weeks.
- The demand for vans and parts during the COVID-19 pandemic led to soaring prices. He relied on his van for work, so had no option but to get a replacement van when this one broke down out of warranty.

Lex agreed to credit/refund the rental invoices for the period after 22 December 2021. But they said they felt their offer of £100 was fair for the inconvenience Mr L had been caused. They said they didn't think they should be liable for inconvenience caused to Mr L by having to source a replacement vehicle for his business, because this was something he was going to have to do anyway.

After reviewing the evidence again, I wrote to both parties explaining that my decision remained the same. I gave both parties another opportunity to send me any more comments or information they'd like me to consider before I made my final decision as to how this matter should be resolved.

Lex responded, saying they now accepted my decision.

Mr L asked for clarification on various points and provided further comments, much of which repeated things he's already told us. I'll summarise the new points he made about this complaint:

- He felt he had no option but to extend the lease because he needed a van for work and prices had soared due to the COVID-19 pandemic. After the last breakdown he'd had to use his credit card to buy another vehicle. This had cost him a lot of time and money.
- Online records show the van has been off the road ever since it was collected from him, which shows it was uneconomical to repair after the last breakdown.

Mr L said he'd been given false and conflicting information by Lex – and that their full account notes would show this.

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.

I'm grateful to both parties for taking the time to respond to my provisional decision. I've thoroughly reviewed and considered all of the information they've provided. 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.

Timing belt

I've reviewed the email Mr L obtained from the garage, dated 12 July 2023. This says technicians should check the timing belt on every major service, or sometimes every five years, depending on how much the vehicle is driven.

I've also reviewed the copy of the garage's invoice dated 15 June 2020, confirming a full service was carried out. Mr L has also provided a photo showing some kind of check sheet, which he says shows the timing belt was confirmed to be in good condition at the time. I

can't say what that check sheet shows, because I'm unable to read much of what's written on it.

But even if that check sheet does confirm that the timing belt was found to be in good condition in June 2020, that wouldn't change my decision. The evidence I've seen shows the timing belt failed sixteen months later, in October 2021. Bearing in mind Mr L was using this van for his work as a self-employed courier, I think the timing belt failure was most likely to have been due to normal wear and tear.

Recovery cost

Mr L believes the hire agreement was to include a recovery package. He says this was mis-sold to him, and that Lex's account notes will show he's been misled about this. I won't be considering whether any aspect of this agreement was misdescribed or mis-sold to Mr L, because he'd need to raise a complaint about that to Lex before our service can look into it.

I don't consider it necessary for me to review all of Lex's account notes to decide whether the agreement included a recovery package. I've seen a copy of the hire agreement, which Mr L signed on 7 March 2018. I find this makes it very clear that Lex will only pay for a rescue and recovery service if this is stated to be included on page three. Page three of the document says "*Are maintenance services included: No.*"

Mr L questions why the earlier breakdowns were covered. I've seen evidence showing the van was initially covered by the manufacturer's warranty, which included roadside assistance and recovery in the event of a breakdown. Lex told us that the manufacturer has confirmed their roadside assistance team last came out for the van in October 2020. I'm satisfied that, when it broke down in October 2021, it would no longer have been covered by the manufacturer's warranty and recovery service.

For these reasons, I don't find Lex to be liable for the recovery cost Mr L paid in October 2021.

Ignition problem

I'm pleased to see Lex have agreed to credit/refund the rental invoices for the period after 22 December 2021. And they've also now agreed to pay £200 compensation for the distress and inconvenience Mr L was caused.

I appreciate both parties feel strongly about the level of compensation that's appropriate in this case. So, I'll explain my reasoning.

When he brought his complaint to us, Mr L said the earlier faults didn't cause him major issues because he was given a courtesy vehicle whilst this van was at the garage. Although Mr L told us it was there for nearly six weeks on one occasion, I've seen nothing to suggest this caused him any problems. I appreciate Mr L had to have a van for work – and van prices rose sharply due to the COVID-19 pandemic. But I still don't think he would've extended the lease twice if those breakdowns had caused him significant distress and inconvenience.

To be clear, I disregarded any distress or inconvenience Mr L suffered as a result of the timing chain issue because I consider that to have been due to normal wear and tear. And that's not something Lex would be liable for.

But in December 2021, Mr L told Lex the van was undriveable after breaking down again. He's told us that having to source another van was expensive and time consuming. Having thought about this, I don't think it's fair to say Mr L would've suffered the same level of

inconvenience at the end of the agreement because he'd have had to replace the van anyway.

I think Mr L would've been caused a lot more stress and inconvenience by suddenly having to source a replacement van following a breakdown - with no means of continuing deliveries to customers until he'd got one. And I think he'd have been put under much greater financial pressure by having to pay for a second vehicle, when he was already making monthly payments for this one. So, I think £200 compensation is fair.

My final decision

For the reasons I've explained, I uphold this complaint and direct Lex Autolease Limited to:

- Refund any monthly rental payments Mr L has made for the period after 22 December 2021.
- Remove any adverse information that's been recorded on Mr L's credit file in respect of monthly rentals that would otherwise have become due after 22 December 2021.
- Add interest to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr L a total of £200 compensation for the distress and inconvenience caused.

If Lex consider tax is deductible from the interest element of the award, they should Tell Mr L how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 September 2023.

Corinne Brown
Ombudsman