

The complaint

Mr M complains about the cost and inconvenience to him, in relation to a safety recall notice for a car that was supplied to him through a hire agreement with Lex Autolease Ltd (LAL)

What happened

In June 2022 Mr M acquired a new car through a hire agreement with LAL. He appears to have had a trouble-free drive of the car, however in July 2023 he received a safety recall notice relating to the *'powertrain control unit software'*. In October 2023 Mr M complained to LAL about the cost and inconvenience for him to take his car to the nearest dealership for the precautionary repairs to be carried out.

In his complaint form Mr M said he thinks LAL should absorb any costs, and that a clause in the finance agreement states the car would be replaced in the event of a safety recall.

On 27 October 2023 LAL issued their final response to Mr M's complaint which they didn't uphold. In it they said: *'as per contract the customer is obliged to keep the vehicle serviced and attend any recalls from the manufacturer'*. So, LAL didn't feel they failed in their service to Mr M.

Unhappy with their decision, Mr M brought his complaint to our service for investigation. Mr M said the goods are no longer fit for purpose due to the safety recall and so wanted LAL to pay for the related costs.

In their submission to us, LAL explained the recall notice was received in June 2023 and passed on to Mr M. LAL explained the clause in the contract referred to by Mr M relates to the manufacturer recalling the car to have it taken off the road, in which case an alternative vehicle would be supplied.

Having reviewed the information on file one of our investigators recommended that Mr M's complaint should not be upheld. The investigator concluded that LAL were not responsible for arranging and carrying out the recall.

Mr M didn't accept the investigator's view and asked that his case be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr M complains about a hire agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr M's complaint about LAL.

Mr M says that LAL, as the owners and registered keepers of the car, are responsible for returning it for the work required to comply with the safety recall. Mr M described a journey that would be in the region of 280 miles as a round trip to have the car taken into the nearest dealership.

Mr M referred to the terms of the finance agreement, Section 3(b) which says:

'At any time we may withdraw the Vehicle for a good reason (for example, if the manufacturer recalls it). If so, we will provide you with another vehicle of the same model or, at our option, a later equivalent model, of equal or similar mileage'.

I think it's fair to say this clause refers to a scenario where LAL decides to withdraw the vehicle, and therefore provide a replacement, but doesn't reference the collection and absorbing of related costs for example in transporting the vehicle to a suitable dealership to have the works done.

I think it's reasonable to say the replacement vehicle, as mentioned in the contract, refers to an event in which the safety recall works cannot be completed on the same day, or if the vehicle is recalled completely. This is also supported by what LAL have said about the clause.

In consideration of the terms of the agreement I'm in agreement with Mr M that LAL are the owners and registered keepers of the car. This is typical in hire agreements. However, I don't think this necessarily means that LAL are responsible for arranging any works required under a safety recall notice.

The General Product Safety Regulations 2005 (GPSR) is relevant in this case, it provides a framework to ensure consumers are protected from unsafe products and sets out responsibilities for suppliers of cars.

The GPSR says:

'where an enforcement authority has reasonable grounds for believing that a product is a dangerous product and that it has already been supplied or made available to consumers, the authority may serve a notice ("a recall notice") requiring the person on whom it is served to use his reasonable endeavours to organise the return of the product'

The safety recall notice was served to Mr M. The notice was addressed to Mr M at what appears to be his current address. I didn't see that it was addressed to LAL. So, I'm satisfied Mr M was served with the notice and that under the GPSR he would be liable for organising the return of the car for the recall works to be completed.

I recognise the distance involved and therefore the potential inconvenience for Mr M, however I don't think LAL should be liable for absorbing the related costs as a result of how far Mr M would have to travel. I acknowledge this is likely to be an inconvenient distance to travel for precautionary repairs, but I'm persuaded its consequential, based on where Mr M resides and in relation to where he chose to acquire the car from.

As I've concluded that LAL are not responsible for collecting, arranging and organising the safety recall repairs. I don't require them to take any action in respect of this complaint.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr M's complaint about Lex Autolease Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 April 2024.

Benjamin John
Ombudsman