

The complaint

Mr E complains about a car he got under a consumer hire agreement with Lex Autolease Ltd. He says that over time the car has presented significant problems and this has caused him to lose confidence in it, along with unsuccessful efforts to fix the car. He is also unhappy that he's incurred additional costs in running a replacement car provided to him.

What happened

In November 2021, Mr E entered into a three-year hire agreement for a new electric car. He paid an initial rental of £2,397.60, with the monthly rental and service costs being £266.40. The agreement provided for an annual allowance of 5,000 miles.

Around September 2022 Mr E experienced problems with the car's electrical and battery management systems. These included the car losing power while driving and an issue with the collision warning system, causing safety concerns and limiting his use of the vehicle.

Mr E took the car to the manufacturer's dealership "D", who were initially unable to replicate the problems. In June 2023 D established the car was reporting fault codes that suggested work needed to be carried out including replacing the battery. D provided Mr E with a replacement non-electric car to use while the original car was undergoing repair.

Citing a lack of available parts, the repair was delayed and Mr E complained to Lex. He was unhappy about the problems with the car, about the fact the replacement vehicle wasn't provided on a like-for-like basis, and about the service he'd received.

Lex acknowledged the faults with the original car adding that the timescale for repair was open-ended and excessive. It said that once the vehicle was repaired it would consider reimbursing Mr E for the impaired use of the car, for a period commencing August 2023. Lex said it wasn't responsible for the courtesy vehicle D provided to Mr E, but that D had said it would consider refunding Mr E's out of pocket costs. In recognition of poor service Mr E had received from D, Lex said it would pay Mr E £190. As I understand it, Lex subsequently paid Mr E a further £200 in this respect.

Mr E was unhappy with Lex's response. While he received some reimbursement of costs from D that he incurred in using the replacement vehicle, he said he was still out of pocket in respect of costs for alternative transport and road tolls, from which the electric car would have been exempt. He was further dissatisfied that the reimbursement Lex provided for impaired use of the car only amounted to less than £130. Mr E doesn't consider the resolution put forward by Lex adequately addresses the problems or costs he's experienced.

Our investigator felt Mr E had provided sufficient persuasive evidence that the car wasn't of satisfactory quality as required under the Consumer Rights Act 2015 ("CRA"). Although Lex had ultimately acknowledged this point, our investigator wasn't satisfied that the resolution proposals Lex had put forward went far enough.

The investigator considered that the overall level of impairment was greater than Lex's offer recognised. He said that this should be reflected by also awarding a 25% reduction in the

monthly rental payments dating from September 2022¹, when the problems with the car first manifested, along with compensation for inconvenience over and above the sums (totalling £390) that Lex had already paid Mr E for this. He also felt the appropriate remedy should include an entitlement for Mr E to reject the original car, given the time and inconvenience the repair was causing. And he thought it fair for Lex to reimburse alternative travel costs Mr E was able to evidence.

Lex said that it largely accepted the investigator's proposals, but that it wanted to clarify a couple of points. Although that was some time ago, Lex hasn't elaborated on what these points are.

Mr E has provided bank statements and other evidence of payment in support of his alternative travel costs, totalling £238.15. He didn't accept the finding that Lex had compensated him for the distress caused by the faulty vehicle, or for his lost time in dealing with matters. He said the £390 was paid as compensation for delays and poor service from D. Mr E also noted that Lex did not provide him with a courtesy car and that this was provided by D. And he says there's still issues with the car and that it was damaged while in D's possession.

In light of the current impasse, the complaint has been passed to me for review and determination as the final stage in our process.

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.

Because Mr E acquired the car from Lex as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 ("CRA"). One effect of the CRA is that the hire agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Mr E's claim is that the car Lex supplied to him failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality. Given the car was supplied new, the standard a reasonable person might expect from it would be relatively high. They would be unlikely to consider as satisfactory a car that manifested ongoing electrical issues and potentially serious safety problems such as those described by Mr E.

Lex doesn't dispute that the car showed the problems Mr E reported. I also note that at least some of these were acknowledged by D, who took in the car for repair. was unable to replicate the issues that Mr E had described during its inspection. Noting this, I'm persuaded that the car Lex supplied to Mr E under the hire agreement was not of satisfactory quality.

That brings me to the question of how best to put things right. The CRA sets out a range of potential remedies under section 19(3), in addition to other remedies that might be open to Mr E to seek. Mr E first raised his concerns more than 30 days after he took delivery of the car, so the short-term right to reject isn't at play here. In some circumstances Mr E could exercise his section 23 right to repair or replacement. But the CRA says that a repair or

¹ I'm conscious the investigator's assessment referred to September 2023, rather than 2022. However, this was clearly a typing error, given the overall intention and the fact that Lex had already proposed a starting date of August 2023.

replacement must be carried out within a reasonable time, without significant inconvenience and at no unnecessary cost to the consumer.

Here, Lex was unable to give Mr E any firm indication of the timescale for repair, and undoubtedly he's been put to significant inconvenience and some cost while D's been attempting repair. That inconvenience was assuaged to some extent by D's actions in supplying the alternative vehicle as a courtesy, but I don't think that should detract from Lex's own responsibilities. From what I can see, it didn't do enough to assist Mr E with getting the car looked at and repaired, or to replace the vehicle when it became apparent the repair would not be carried out within a reasonable time and without significant inconvenience to him.

I can understand, therefore, why our investigator considered that Mr E should be entitled to reject the car, notwithstanding that he'd originally agreed to a repair. This is provided for under section 24(5c) of the CRA. Looking at the rest of the proposals the investigator put forward, including the reduction in monthly payments due to impaired use, I consider that they represent an appropriate way to resolve the complaint, and I adopt those proposals in this decision.

I'm aware Mr E feels he should receive additional compensation, and I don't mean to understate the impact of the problems he's had with the car. The erratic braking of the vehicle would of course have been a cause for concern. However, I don't share Mr E's view that Lex is obliged to compensate him for distress he says he experienced from the supply of a defective car in addition to the payments it has already made to him for delays and poor service from D. Failure to meet contractual obligations in the supply of a vehicle doesn't generally entitle a party to compensation for distress.

I also think that the compensation currently proposed is sufficient to encompass Mr E's time and trouble in his dealings with both D and with Lex. Although Lex's offers might have said they were in recognition of service and delays with D, I'm not persuaded it's appropriate to say that Lex should provide a separate payment to him. The timescale and problems Mr E experienced aren't in my view readily distinguishable.

I can see the point Mr E is making about the fact it was D and not Lex that provided him with another vehicle. Although it's important that Mr E was kept mobile while his car was out of action, I don't think it was necessary for Lex to provide an alternative vehicle as D had already done this, and I've no reason to think Lex was any better placed to provide Mr E with an equivalent electric car than was D. There were some costs Mr E incurred that were particular to his journeys that might have been avoided with an electric car, and I think it's fair that Lex reimburses those costs Mr E has been able to evidence. As I say, they total £238.15.

My final decision

My final decision is that I uphold this complaint. To resolve it, I require Lex Autolease Ltd to take the following steps:

1. collect the car at no cost to Mr E;
2. terminate the hire agreement with Mr E having nothing further to pay;
3. reimburse 25% of the monthly payments Mr E made under the hire agreement between September 2022 and November 2023 to reflect the impairment to his use of the car, less the £129.62 it has already paid in this respect;

4. pay Mr E a prorata refund of the £2,397.60 advance rental payment he made when taking out the hire agreement. For clarity, this refund should be effective from November 2023, when the original car was returned to Mr E and he should have been entitled to exercise rejection of it;
5. pay interest on the sums in 3. and 4. at 8% simple per year from the date of each payment (the advance rental refund should be treated as a prorata monthly payment for this purpose) until the date it pays this settlement;
6. pay Mr E £238.15 to reflect the additional travel costs he has evidenced; and
7. pay Mr E £60 in recognition of his distress and inconvenience, in addition to the £390 it has already paid (that is, a total of £450).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 July 2024.

Niall Taylor
Ombudsman