

The complaint

Mrs H complains that Lex Autolease Ltd (Lex) unfairly registered a default on her credit record when she was in dispute with it about some charges it had applied under a contract hire agreement.

What happened

In October 2019, Mrs H entered into a four-year contract hire agreement with Lex for the hire of a car. In October 2023, when the hire period ended and Mrs H handed the car back, Lex charged her £380 for damage it said her car had sustained during the hire period. Mrs H didn't agree with these charges and complained to Lex but it didn't uphold her complaint. At the end of October 2023, Mrs H referred her complaint about the charges to us.

I should make it clear at this point that Mrs H's complaint about the charges is not the complaint I'm considering in this decision. But I need to refer to it because it's part of the background to the complaint I am considering.

After Mrs H had referred her complaint to us, Lex did the following:

- On 3 November, it wrote to Mrs H to say her account was overdue by £380.
- On 23 November, it wrote to Mrs H again, saying her account was still in arrears and, if she didn't pay within 14 days, her balance would either be written off or the matter would be referred to its legal department.
- On 8 December, it wrote to Mrs H saying her balance had been written off and her account would show as being in default with the credit reference agencies.

On 13 December, Mrs H made a new complaint to Lex about the default being registered on her record. A few days later, Lex responded saying it didn't uphold Mrs H's complaint because it had followed its correct process when reporting the default to the credit reference agencies. On 15 December, Mrs H contacted us about the default, asking if we could assist. Mrs H told us she'd pay the arrears if we didn't uphold her complaint – but she'd like the default removed from her record. On the same date, our investigator emailed Lex asking if it would put its collection activities on hold until we'd decided Mrs H's complaint. Our investigator also gave his first view on Mrs H's complaint about the charges, which he upheld in part.

On 20 December, in response to our investigator's email of 15 December, Lex told us it wasn't its process to halt its collection activities purely because a customer escalated a complaint to us. Lex said it had had no response from Mrs H to its letters about the arrears, so it had moved to write off the debt and a default had already been registered. Lex also sent us new information to support its position that Mrs H's complaint about its charges shouldn't be upheld. In light of this, in his second view, our investigator didn't uphold Mrs H's complaint.

Unhappy with Lex's response to her complaint about the default, Mrs H referred it to us. The investigator who looked at it upheld it saying he didn't think it was fair or reasonable of Lex to default Mrs H when she had an open dispute.

Lex disagreed and asked for an ombudsman's decision. Lex said it isn't fair or reasonable to expect it actively to pause collection activities when a complaint is referred to us. Lex also said it will consider delaying this activity, if we ask. But in Mrs H's case, it said we made the request 43 days after Mrs H had referred her complaint to us, by which time the default had already been registered.

In my provisional decision of 9 September 2024, I explained why I didn't intend to uphold Mrs H's complaint. Mrs H says she doesn't agree with my provisional decision but has nothing to add. Lex hasn't responded to it. So Mrs H's complaint has now come to me 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.

I've also considered the relevant law and regulations, any regulator's rules, guidance and standards, any codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Having done so, and for the reasons I gave in my provisional decision, I've decided not to uphold Mrs H's complaint. In that decision, I said:

"Lex started its collection activities on 3 November when it wrote to Mrs H to say her account was overdue. Lex did this after it had given Mrs H its final response to her complaint about its charges. Nearly three weeks later, Lex wrote to Mrs H again, giving her 14 days to pay the arrears on her account and telling her, if she didn't, her balance would be written off or her account would be referred to its legal department. Around two weeks later, Lex wrote to Mrs H again to say her balance had been written off and her account would show as being in default with the credit reference agencies."

I think the process Lex followed in dealing with the arrears on Mrs H's account was fair and reasonable. Lex didn't start its collection activities until after it had given Mrs H its decision on her complaint about its charges – a decision that, in his second view on Mrs H's complaint about these charges, our investigator agreed with.

In its letter of 3 November, Lex makes it clear that, if Mrs H doesn't pay the arrears, her credit file will be updated to show this, that it's normal for it to update the credit reference agencies and that this may make it difficult for her to get credit in the future.

In its letter of 23 November, Lex makes it clear Mrs H needs to make a payment. It sets out the steps it can take if she doesn't – including writing off the balance on her account which Lex says could result in a default being recorded with the credit reference agencies. And it describes the implications of this, including that a default could stay on her credit record for six years.

I understand that, for much of this time, Mrs H had her complaint about the charges with us. But, in the circumstances of this complaint, I don't think this means Lex should've paused its collection activities. As Lex has pointed out, Mrs H didn't respond to its communications about the arrears until almost a week after it notified her a default had been registered. Mrs H says she was on holiday and away with work at the time. But there was more than a month between Lex notifying Mrs H that it was starting its collection activities and registering the default. Given the potentially serious implications of a default, I would've expected Mrs H to respond to Lex's communications sooner than she did. In saying this, I've also borne in

mind Mrs H told our investigator she'd pay the arrears if her complaint wasn't upheld. So it doesn't seem that Mrs H would've struggled financially to make the payment – meaning she could've paid the disputed charges and then got them reimbursed had her complaint been upheld (which of course, ultimately, it wasn't).

While I appreciate Mrs H is unhappy about the circumstances in which a default has been registered against her, and the implications this may have, I don't think Lex has treated her unfairly or unreasonably."

As I've mentioned, while Mrs H disagrees with my provisional decision, she's also said she has nothing to add. Lex hasn't responded to it. I haven't seen anything to make me think I should change the findings and conclusions I set out in my provisional decision, which now form part of this final decision.

My final decision

For the reasons I gave in my provisional decision, I've decided not to uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 28 October 2024.

Jane Gallacher
Ombudsman