

The complaint

Mr L has complained about the quality of a car he acquired under a hire agreement with Lex Autolease Limited trading as Land Rover Contract Hire ("Lex").

What happened

The circumstances of the complaint are well known, so I'm not going to go over everything again in detail. But, to summarise, Mr L acquired a new car under a hire agreement with Lex in November 2020. Mr L was required to make an initial rental of £2,500 followed by 47 further rentals of around £440. Mr L was unhappy with the quality of the car and raised a complaint with Lex in January 2023.

Lex responded to the complaint to say it had been supplied the warranty and call out information for the car. In summary, this said there was the following roadside event:

8 December 2021 mileage 8,058 shredded belt replaced belt and tensioners

I understand the belt and tensioners were replaced under warranty. And Lex noted there was the following warranty claim:

16 June 2022 mileage 13,302 infotainment concerns.

It's not clear everything could be established but the notes indicate the infotainment system was reset.

Lex said it didn't think there was enough to show multiple or repeated faults. And it didn't uphold Mr L's complaint. He referred it to the Financial Ombudsman to consider.

To give a bit more detail about the faults, Mr L says there's been various intermittent issues with it, including:

- Speed limiter and cruise control turning itself off.
- Hands free issues.
- Infotainment system sporadically turning itself off.
- Sat nav and radio issues.
- Heating controls via app don't work.
- Errors with the boot opening and closing.

Mr L says he contacted the manufacturer in January 2021 about issues. And that he'd contacted the supplying dealer several times about issues as well. But he didn't get the support he needed. Which is why he decided to contact Lex.

One of our investigators looked into things and decided to uphold the complaint. He said he thought he'd seen enough to demonstrate there were faults with the car and he thought those faults made the car of unsatisfactory quality. So he recommended Lex end the agreement; collect the car; refund 20% of the rentals for impaired use; pay 8% simple interest on refunds; pay £250 compensation; and remove adverse information from Mr L's credit file.

Lex didn't accept the assessment. In summary, it said:

- The only occasion the car had visited a retailer for investigation into any of the reported issues was in June 2022. It said this was 12 months prior to its involvement.
- It didn't think Mr L had shown he'd mitigated the impact the problems were having.
- Its notes indicate it asked Mr L to rebook the car in again for inspection, but he refused.
- There's no tangible evidence to confirm there are ongoing issues with the car. It would have assisted Mr L if he'd contacted it.
- There's insufficient evidence repairs wouldn't resolve the issues.
- It appreciated Mr L had made an attempt at repair, but this had been done without Lex's involvement. It shouldn't lose its right to repair.
- It didn't understand why the investigator asked for adverse information to be removed.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr L and Lex that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr L acquired the car using a regulated consumer hire agreement. Our service is able to consider complaints relating to these sorts of agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr L entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. Lex is the supplier of the goods under the agreement and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of delivery.

The car was new, so I'd have expected it to be in perfect working order and free from even minor defects when it was supplied to Mr L.

On the one hand, I've seen evidence of a roadside event and warranty claim in relation to belts and tensioners due to a shredded belt in December 2021. The mileage at this point was around 8,000. I've also seen a warranty claim in relation to infotainment concerns in June 2022 when the mileage was around 13,300. Mr L has also shown us various videos of issues he's been having with the boot and the infotainment system. And he's shown us correspondence with the supplying dealer where he's highlighted issues he'd been having that are electronic related.

But on the other hand, there's a lack of evidence such as job cards, inspections, or worksheets in relation to the faults. It's hard to reach firm conclusions. Moreover, I don't think Lex were put on notice of the complaint early on. And I can't generally hold Lex responsible for actions of the supplying dealer or the manufacturer that took place after Mr L entered into the hire agreement. Moreover, Lex has said Mr L hasn't had the problems diagnosed by a garage and that it wouldn't make any offers until that happened.

As I said above, there's a lack of evidence. But it's not in dispute a belt shredded around a year after the car was acquired. Given the car was new and it had only covered around 8,000 miles at that point I think that fault likely would have meant the car wasn't of satisfactory quality. I don't think a reasonable person would expect to have to change a belt and tensioners within a year. While I'd like to have seen more evidence on this point, I think I can make that conclusion on the balance of probabilities. If Lex has evidence to dispute that it can send it in response to this provisional decision.

The CRA sets out that (outside of the short term right to reject period) if the goods don't conform to the contract the consumer has the right to ask for a repair, which is what Mr L did. Although he went through a warranty claim as opposed to speaking to Lex about it.

I appreciate it doesn't look like Mr L spoke to Lex about the issues with the belt and tensioners. But at that point in time if he had done, I think it would've helped Mr L to arrange the repair. The repair seems to have worked. I think Mr L broadly ended up in the same position he'd have been in had he contacted Lex about the faults. I don't think Lex was caused prejudice by Mr L's actions at that point in time. But I don't think it's fair and reasonable to ignore that fault and repair, based on the evidence I've seen.

If the goods still don't conform to the contract after the repairs, the consumer has the right to exercise their final right to reject the goods. So has Mr L shown enough to demonstrate the car still doesn't conform to the contract? I take Lex's point that it hasn't got a worksheet or invoice detailing exactly what is wrong. But I'm conscious Mr L has said the faults are intermittent. And he's also shown several videos that seem to indicate there's a problem with the infotainment system and the boot. I think it's reasonable to take the video evidence into account. Lex hasn't explained why it should be discounted. The videos don't, to my mind, look like something Mr L would have manipulated to show a fault. It seems there's some things going wrong with the car intermittently. And he's also shown us contact he's made with the supplying dealer and the manufacturer about issues he was having, which I think supports his claims. I understand he also had the car booked in for inspection around April and May 2023, but he says this was cancelled by the dealer.

I'm conscious Mr L is only due to keep the car for a few more months. Given what I've said above, on balance, I don't think it was of satisfactory quality. There's been a repair attempt. I don't think it'd be fair to say the repair should be discounted because Mr L didn't arrange it through Lex. While the evidence isn't complete, I think Mr L has done enough to show there are other electrical issues with the car. I therefore don't think it's been brought back to conformity after the initial repair because I don't think the reasonable person would expect to experience those sorts of issues on a new car, taking into account when Mr L started to complain about them. So I think there's grounds to say he should be able to reject it.

However, I do take Lex's point that Mr L could have done more to mitigate. And I don't know if Lex would have been able to help him resolve things if he'd spoken to it sooner. I'm conscious that the first record of an inspection for the infotainment issues was in June 2022. While Mr L has shown us some emails and videos, the evidence is incomplete, and I can't create a definitive timeline of the impact on Mr L. Unlike our investigator, on balance, I don't think it's fair to hold Lex responsible for the alleged impaired usage. Had Mr L reached out to Lex early on and it didn't help him then there might've been grounds to direct Lex to cover an amount for impaired use, but that didn't happen. In this particular case, and taking into account the lack of evidence and contact with Lex, I don't think it's fair to hold Lex liable in the same way our investigator set out for something it had less ability to impact.

Therefore, taking into account there's only a few months left on the term, I'm going to propose Lex allows Mr L to reject the car and end the agreement early. I'm not going to propose a reduction in the rental payments, but I think Mr L should receive a pro-rata refund

of the initial rental payment he made. While Lex wasn't involved early on, it was put on notice of a complaint over 12 months ago. The matters no doubt caused some overall inconvenience to Mr L. I think the investigator's recommendation of £250 compensation is broadly fair as well. Arguably Lex could have done more to have the car inspected. I've not seen where Mr L refused. In any event, on balance, I think there's enough evidence available for me to reach this conclusion without asking for further inspections. I think it's a fair and reasonable outcome based on the evidence I've seen.

Therefore, to resolve the complaint, I'm intending to propose Lex:

- *End the agreement with nothing further to pay.*
- *Collect the car at no cost to Mr L.*
- *Refund the initial rental of £2,500 pro-rata.*
- *Pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.*
- *Pay £250 compensation.*
- *Remove any adverse information about the agreement from Mr L's credit file.*

Mr L accepted the decision. Lex responded to say, in summary:

- Mr L should remain liable for the rental costs up to the date of collection.
- Any end of contract charges should remain valid, specifically in relation to the condition of the car or any excess mileage.
- It agreed to refund the advance rental pro-rata. But didn't agree that 8% interest should be added. It said it should only pay this when due to its error a customer has been deprived use of funds.
- It agreed to pay £250 compensation.
- It's not aware of any adverse credit information having been recorded and it's not relevant to the satisfactory quality complaint that was brought.

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'd like to thank the parties for their responses. It seems both parties are broadly in agreement with the outcome. For the avoidance of doubt, I agree Mr L should remain liable for the rental costs up to the date of collection. And I make no directions in relation to the end of contract charges that may be applicable.

I understand Lex's point with regards to the 8% interest and the removal of adverse credit information. I've made the interest award because I'm trying as best as possible to put Mr L back in the position he'd have been in had he not been supplied a car that was of unsatisfactory quality. There's no perfect solution, but I'm mindful Mr L will now need to fund the cost of a replacement car and he needs to do that sooner than he otherwise would have done, potentially with higher costs. So I think the interest award is fair and in line with our approach in this sort of situation.

With regards to the removal of adverse information, I agree there may be times where this doesn't need to be removed because it is not associated with the breach of contract. But there may also be times where it's fair to remove the adverse information because the consumer missed payments as a result of the breach of contract. I don't think that's what's happened in this case because I'm not aware any adverse information has previously been recorded. For completeness' sake, in this case, I'll leave the direction in place in case any adverse information is recorded through the course of ending the agreement.

I make no further directions.

Putting things right

I direct Lex to:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mr L.
- Refund the initial rental of £2,500 pro-rata.
- Pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.
- Pay £250 compensation.
- Remove any adverse information about the agreement from Mr L's credit file.

If Lex considers it is required to deduct tax from my interest award it should provide Mr L a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Lex Autolease Limited trading as Land Rover Contract Hire to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 April 2024.

Simon Wingfield
Ombudsman