

The complaint

Miss P complains about a car she got under a consumer hire agreement with LeasePlan UK Limited. She says that over time the car has presented several different intermittent faults and this has caused her to lose confidence in it.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint and how I thought the dispute should be resolved. I've reproduced my provisional findings below, which form part of this final decision.

What happened

Miss P entered into a four-year hire agreement for a new car. Within a couple of months of taking delivery she reported a problem with the engine, which was fixed with a software update. A subsequent problem was traced to a coolant leak. This was fixed under warranty.

However, a few months after that the car started to manifest further problems, with Miss P describing flickering headlights and an issue with the brake boost while driving, causing safety concerns. This was followed by failures in the driver assistance, Bluetooth connection and phone charging features. Miss P further describes erroneous brake warning messages and response failures with the steering, and sought to return the car.

The car was returned to the dealership on each occasion for investigation, but the absence of fault codes meant that the source of the problems couldn't be identified. LeasePlan declined Miss P's request to return the car, on the basis that the dealership had been unable to establish faults with the vehicle and thus it should be considered fault free. While an independent engineer "D" has since carried out an inspection on the car, the problems Miss P mentioned didn't manifest during that inspection.

Our investigator wasn't persuaded that there was sufficient evidence to uphold the complaint, though he did note D's report mentioned a "*kick back*" on the brake pedal that suggested an issue with the car's battery efficiency.

Miss P didn't accept the investigator's conclusions and asked that an ombudsman review the case, as the final stage in our process.

My provisional conclusions

Because Miss P acquired the car from LeasePlan 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.

Miss P's claim is that the car LeasePlan supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

Given the car was supplied new and – as I understand it – with a three-year warranty, 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 potentially serious safety problems such as those described by Miss P.

LeasePlan bases its position on reports from the dealership that say the car's fault reporting system doesn't show the problems Miss P reported. I also note that D was unable to replicate the issues that Miss P had described during its inspection. Against that, at least some of the problems Miss P described were captured on video and appear to be substantiated on a visual basis by the dealership, according to LeasePlan's own email exchange with the manufacturer's fleet services dated 2 October 2023.

I see no reason why both statements can't be true. The video and evidence from the dealership confirm that there is clearly a problem with the car headlights as Miss P described. That an intermittent problem couldn't be replicated during an inspection doesn't mean there's no fault; that is, after all, the nature of intermittent problems.

I don't consider the lack of a fault code to be conclusive evidence that the car is of satisfactory quality. That would require me to disregard the visual evidence, with no proper basis for doing so. That the dealership and/or the manufacturer's process for repair requires fault tracing through the car's management system is not material to establishing whether a reasonable person would think the car is of satisfactory quality. There may be other reasons for the lack of fault reporting, but that should simply mean that different investigation is necessary in order to establish the reason for the problem that clearly exists.

On balance I'm not currently minded to find that LeasePlan has dealt fairly with the situation by declining Miss P's claim for the reasons it has. I can further understand why Miss P has the concerns she does about the car, and why she wants to return it. That concern has been exacerbated by LeasePlan's stance, which I find difficult to understand given LeasePlan acknowledged the video and dealership witness evidence. Noting the remedies available to Miss P under the CRA, I intend to conclude that the car is not of satisfactory quality.

In light of the multiple attempts to address the car's problems that have been unsuccessful in diagnosing the root cause, I also think Miss P would be entitled to reject the car at this point.

To resolve matters I proposed that LeasePlan collect the car at no cost to Miss P, terminating the hire agreement with no further hire payments due from her. I further proposed that LeasePlan reimburse Miss P a proportion of the payments she made under the hire agreement in recognition of impairment to her use of the car, and to compensate her for the distress and inconvenience she'd been caused by its actions.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional findings

LeasePlan responded to my provisional decision referencing work undertaken by the dealership in March 2024 that included rectifying a loose earth connection in the car's lighting system, as well as reported brake pedal noise and an inoperative infotainment screen. It said the dealership considered all issues had been rectified and that the car displayed no fault codes when it was returned to Miss P. LeasePlan ventured the possibility

that the issues Miss P had reported might have been inadvertently resolved by actions taken in November 2023.

Miss P also responded, submitting additional documents in support of continued and recent intermittent problems she was having with the car.

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.

Having done so, I see no persuasive reason to reach a different conclusion from that set out in my provisional findings. I remain of the opinion that the car LeasePlan supplied to Miss P did not meet the CRA requirement that it was of satisfactory quality.

The additional evidence supplied by both parties seems to strengthen that position, rather than offer any real form of rebuttal to it. For example, the fact that in March 2024 the car was back at the dealership having the lighting issue investigated doesn't suggest to me that the problems were properly addressed by any action that might have been taken in November 2023. Further, the March 2024 invoice includes investigation due to brake pedal noise and an inoperative infotainment system, which again are suggestive that there are ongoing problems with the car as cited by Miss P at the outset.

I also note that Miss P's further submissions include a diagnostic report of fault codes recorded by the car's management system. That report is dated 14 June 2024, a few months after the dealership's last work in March 2024. If the fault codes were cleared in March 2024 when the dealership returned the car to Miss P, as LeasePlan indicates, then the fault codes reported in June 2024 presumably relate to ongoing issues. Noting that some of the reported fault codes related to the brake boost and the driver assistance functionality also previously reported by Miss P, I can see why she remains unhappy with (and concerned about) the car.

With all of this in mind, alongside the reasons I explained in my provisional decision, which I adopt in full as part of this final decision, I find that LeasePlan didn't deal with Miss P fairly when it refused to accept rejection of the car in mid-2023. Recognising that since that point Miss P has had some use of the car, albeit the mileage records indicate this has been significantly impaired, I think the proposal I put forward in my provisional decision is a fair way to resolve the complaint.

Putting things right

Within 28 days of receiving Miss P's acceptance of this final decision, LeasePlan UK Limited must take the following steps:

1. arrange to collect the car at no cost to Miss P, and at a time and date convenient to her;
2. terminate the hire agreement with Miss P having no further hire payments to make;
3. reimburse 25% of the payments Miss P has made under the hire agreement (for the avoidance of any doubt, this includes the advance rental payment Miss P made at the outset), to reflect the impairment to her use of the car; and
4. pay Miss P £200 in recognition of her distress and inconvenience
5. amend any information it has recorded on Miss P's credit file so that it correctly reflects the above arrangements

My final decision

My final decision is that I uphold this complaint and direct LeasePlan UK Limited to take the above steps in resolution of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 September 2024.

Niall Taylor
Ombudsman