

The complaint

Miss L complains that a car supplied to her by LeasePlan UK Limited ("LeasePlan") through a hire agreement was not of a sufficient quality.

What happened

Miss L was supplied with a new car by LeasePlan through a hire agreement in August 2021. Miss L agreed to hire the car for a minimum period of 48 months and included an optional maintenance package with the agreement. The agreement permitted Miss L to travel up to 6,000 miles per annum in the car.

In June 2023, the car showed a warning light relating to the clutch. The problem was identified by a breakdown service as the clutch overheating and the car was recovered to a main dealer of the car's manufacturer. The dealer did not have the capacity to complete any repairs in a reasonable timeframe so the car was transferred to another main dealer. That dealer identified that the clutch of the car had been significantly worn and would need to be replaced.

LeasePlan told Miss L that the engineers at the dealer had concluded that the failure of the clutch was most likely due to her driving style rather than any manufacturing problems with the clutch component itself. So it told Miss L that she would need to pay the cost of the repairs that amounted to £934.28 and £33.88 for a hire car that she used whilst the repairs were completed.

Miss L complained to LeasePlan about what had happened. And she said that over 400 miles had been driven in her car since it had been recovered to the first garage. Miss L wondered if those additional miles had caused the damage found on the clutch. LeasePlan didn't agree with the complaint. It said it had been unable to find any evidence that Miss L's car had been driven whilst it was awaiting repair – it thought the additional mileage was most likely as a result of it being recorded incorrectly by the recovery firm. And it said the reports it had received were clear that the damage to the clutch was unlikely to be as a result of a faulty component – it repeated it was most likely due to the nature of Miss L's driving. Unhappy with that response Miss L brought her complaint to us.

Miss L's complaint has been assessed by one of our investigators. On balance she thought it most likely that the clutch fitted to the car that was supplied to Miss L was not sufficiently durable. So the investigator thought that LeasePlan should refund the cost of the repairs, and the hire car, to Miss L. And the investigator asked LeasePlan to pay Miss L £200 for the inconvenience she had been caused.

LeasePlan didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Miss L accepts my decision it is legally binding on both parties.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss L and by LeasePlan. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Miss L was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of the finance used to purchase the car, LeasePlan is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In this case I think it is particularly relevant that the car supplied to Miss L was brand new.

It seems that both Miss L and LeasePlan accept that the clutch plate of her car had failed prematurely. The car had travelled around 10,000 miles at the time of the failure whereas that component might be expected to last for significantly longer. What I need to determine here is whether that failure is as a result of the clutch not being sufficiently durable, and so not of a sufficient quality at the time the car was supplied, or whether the failure is as a result of normal wear and tear – and in this case representative of the manner in which Miss L has used the car.

Miss L has given us details of both her driving history, and the nature of the use of the car. Whilst I do not have evidence to directly verify what Miss L has said, I have no reason to doubt the veracity of what she has told us.

Miss L says that she has been driving manual cars for over 26 years. And in that time she says she hasn't experienced any similar failures of the clutch. And she says her use of the car has been relatively light – the car had travelled around 10,000 miles at the time the clutch failed – less than would be allowed under the hire agreement. So I have little reason to conclude that Miss L's use of the car was such that she placed unreasonable demands on the clutch causing it to wear prematurely.

LeasePlan has concluded that it is Miss L's driving style that has caused the problem. But it doesn't seem that LeasePlan has any evidence to support that conclusion. It seems to me that the problems seen with the unusual wear of the clutch could just as easily have been caused by the component being faulty from the outset. I accept that the car was almost two years old by the time the problems arose. But I don't agree that means any problems have only recently arisen. The fault suggests that the clutch has suffered unusual amounts of wear. So that could have been happening from the outset, and only manifested in the warning light when the level of the clutch materials reached a critical point.

On balance I haven't seen any persuasive evidence that would lead me to conclude that the premature wear of the clutch is as a result of Miss L's driving style. Instead I think the premature wear has most likely been caused by a faulty component – a component that wasn't sufficiently durable when the car was supplied. So I don't think the car was of a satisfactory quality when it was supplied to Miss L.

Section 24(5) of the CRA says that a consumer who has the right to reject may only exercise this if after one repair or replacement, the goods do not conform to contract. Here a repair has been completed on the clutch system of the car. And Miss L has told us that, since the repair, she hasn't had any further problems with the clutch. So I am satisfied that it wouldn't be reasonable to allow the car to be rejected at this time.

But since the car was not of a satisfactory quality when it was supplied, it is for LeasePlan rather than Miss L to return it to a satisfactory quality. That appears to have been achieved by the repairs undertaken by the dealer. So I think that LeasePlan needs to pay the cost of those repairs and refund the charges it has asked Miss L to pay. And since the car was off the road due to something LeasePlan had done wrong, I think LeasePlan needed to ensure Miss L was kept mobile. So I think it should also pay her the cost of the hire car she used.

I appreciate how upset Miss L was when her car was returned from the dealer and she discovered its mileage was much greater than when it broke down. Although some mileage for testing purposes might be appropriate, I don't think the mileage that Miss L says was added to her car would be reasonable.

Miss L says she made a record of the car's mileage when it first broke down. But that only seems to be in the form of handwritten notes. Whilst I have no doubts about what Miss L has said, I am sure she can appreciate I cannot discount the possibility that any records might have been created after the event. So in that case the only independent record of the mileage appears to be that recorded by the breakdown firm. And, as LeasePlan says, there is a possibility that an error was made at that time – there isn't any other evidence such as a photo of the mileage to confirm the accuracy of the records.

But, ultimately Miss L is unlikely to have lost out as a result of that additional mileage. It seems that the current mileage on the car is much less than that permitted by the hire agreement. So although the additional mileage will be understandably disappointing, I cannot be sure why, or whether, it has arisen or conclude that it has caused Miss L to lose out.

Being supplied with a car that was not of a satisfactory quality, and then being blamed for the faults, would have been very distressing for Miss L. And she has faced the inconvenience of being without her car for a period of time. So I think that LeasePlan should pay Miss L an additional £200 in that regard.

Putting things right

I am satisfied that, on the balance of probability, the car that was supplied to Miss L in August 2021 was not of a satisfactory quality. I don't think the clutch was sufficiently durable most likely due to a manufacturing fault. So, to put things right, LeasePlan should;

- Refund to Miss L the costs of the clutch repair she paid amounting to £934.28.
- Refund to Miss L the cost of the hire car she used during the time her car was off the road being repaired amounting to £33.88.

- Add interest of 8% simple a year on the above refunds from the date they were paid to the date of settlement. HM Revenue & Customs requires LeasePlan to take off tax from this interest. LeasePlan must give Miss L a certificate showing how much tax it's taken off if she asks for one.
- Pay Miss L £200 for the distress and inconvenience she has been caused.

My final decision

My final decision is that I uphold Miss L's complaint and direct LeasePlan UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 29 November 2024.

Paul Reilly
Ombudsman