

## **Complaint**

Mr A has complained about the quality of a car that Lex Autolease Limited ("Lex") supplied to him through a regulated hire agreement.

## **Background**

In January 2022, Lex hired a brand-new car to Mr A. As I understand it the car had delivery mileage on it when Lex supplied it to Mr A. The agreement was to last for a minimum of 48 months, Mr A paid an initial rental of £2,636.50 which was to be followed by 47 monthly rentals of £439.42. £403.24 was to cover the car's rental and the remaining £36.18 went towards a maintenance plan.

In June 2024, the vehicle broke down. The vehicle was recovered to a garage of the manufacturer. The manufacturer garage established that clutch needed replacing on the car. Mr A has said that, after it completed the repair, the manufacturer garage informed him of its view that the breakdown was caused by his driving and therefore it would not be covered under the car's warranty. Mr A says that the manufacturer garage refused to release the car to him until he paid a repair bill of £1,389.12 and a further £600 for the hire car he was supplied with.

Mr A subsequently complained to Lex, in June 2024, saying that the car it supplied to him was not of satisfactory quality. Lex didn't uphold Mr A's complaint. It said that it had spoken to the manufacturer garage and as it confirmed that the clutch needed to be replaced because of Mr A's driving style, the repairs and associated costs were not covered by his service plan. And even though it did not directly say this, it would appear that it was of the view that these conclusions meant that the car it supplied Mr A was of satisfactory quality.

Mr A was dissatisfied at Lex's response and referred his complaint to our service. After the case was allocated to an investigator and before he issued his opinion, Mr A confirmed that he had paid the cost of the repair, the car had been returned to him and he had been reimbursed for the cost of the courtesy car. He wanted Lex to refund him the cost he paid to the manufacturer garage to have the car repaired. As I understand it, Mr A remains in possession of the car.

Mr A's complaint was subsequently reviewed by one of our investigators. He thought that Lex supplied Mr A with a vehicle that was not of satisfactory quality. So he upheld Mr A's complaint and thought that Lex should cover the repair costs Mr A paid plus interest and also pay him £150 for any distress and inconvenience he experienced.

Lex disagreed with our investigator's view. As this is the case, the complaint was passed to an ombudsman as per the next stage of our dispute resolution process.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I firstly need to decide is whether the car that Lex supplied to Mr A was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Lex to do put things right.

Having carefully considered matters, I'm satisfied that the vehicle Lex supplied to Mr A was not of satisfactory quality and I'm therefore upholding Mr A's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire agreement, which we are able to consider complaints about. Under the hire agreement, Lex was the legal owner of the vehicle and it hired the vehicle to Mr A and he paid a monthly amount in return.

This arrangement resulted in Lex being the supplier of Mr A's vehicle and so it is also responsible for answering a complaint about its quality.

### *The Consumer Rights Act 2015 ("CRA")*

The CRA covers hire agreements – such as Mr A's agreement with Lex. Under a hire agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

### *Was there a fault with the vehicle?*

Having considered everything provided, there is no dispute that there was a fault on the vehicle at the time of Mr A's complaint in June 2024. The vehicle broke down and it had to be recovered to the manufacturer garage. And while there is a dispute over who is ultimately responsible for this, it is not in dispute that the clutch needed replacing before the car could be used again. I am therefore satisfied that there was a fault with the vehicle at the time Mr A complained to Lex.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied was present on the vehicle at the time of Mr A's complaint, means that the car wasn't of satisfactory quality at the point of supply.

### *Why I don't think that Mr A was supplied with a vehicle of satisfactory quality*

Although the problem with the clutch manifested itself approaching two and a half years after Mr A acquired the car - he was nonetheless provided with a car that was brand new. Therefore, I think that Mr A could reasonably be entitled to expect to use the car for some time before experiencing any significant faults. This is particularly as, as I understand it, the vehicle would have cost over £30,000.00 to purchase at the time it was hired to Mr A.

While Lex argues that the problems with the clutch were caused by Mr A's driving style, this is effectively another way of arguing that the problems occurred because Mr A misused the car. It has, on more than one occasion, referred to the repairer's inspection of the vehicle. But it has not provided me with a copy of an inspection report.

The only documentation that Lex has provided to me are extracts from what look to be job sheets and even then the copies provided do not appear to have been copied correctly as there are sections of the documentation missing. Nonetheless, I have been provided with a copy of the invoice the manufacturer garage provided to Mr A. This states that the clutch on

the vehicle was worn out and as it required a replacement a new one was supplied and fitted. There isn't anything at all in this report which provides a reason why the clutch was worn – let alone any suggestion that this was down to Mr A's driving style.

Lex has argued that its version of events here is supported by testimony. I'm assuming that it is using testimony in the loosest possible sense seeing, as well as not providing me with any form of formal inspection report let alone an independent one, it hasn't provided me with any sworn evidence from either the repairer's, or its own technicians.

I don't think it is appropriate for me to attribute the same weight to these extracts and quotes that I would to an independent report. This is particularly as these submissions have been anonymised and are opinions put together for the benefit of supporting Lex's position on this case, rather than a report from an independent technician which clearly sets out the author's credentials and who was tasked with establishing what caused the clutch to fail when it did.

I've also seen the photographs which Lex has supplied and which it argues show that the clutch burnt out because of misuse. To be clear, there is no dispute that the clutch burnt out in June 2024. However, there isn't anything in these photos which shows me why the clutch burnt out. Furthermore, while I note that one of the comments Lex has supplied from one of its technicians is *"it isn't of course our position to speculate"*, what I've nonetheless been sent is a few snippets of speculative opinion, rather than any conclusive evidence on what caused the clutch to burn out and fail in June 2024.

I accept that it is Lex's opinion the clutch burnt out because Mr A misused the vehicle and, for the sake of clarity and avoidance of doubt, I have considered its opinion. Nonetheless, I've considered it as what it is (Lex's opinion) rather than in the way that Lex believes it to be a conclusive fact.

In this case, there is no dispute that the clutch needed replacing after Mr A completed only just over 9,000 miles in the vehicle. I think it's fair to say that it is unusual for a clutch to require replacing this early – especially on a brand-new vehicle. I don't think the fact that there may be instances of cars having a clutch replaced at less than 5,000 miles, is necessarily evidence that there wasn't an issue with the clutch on this vehicle, or that it was durable.

Indeed, the arguments from the manufacturer garage appear to be that because the manufacturer did not issue a bulletin, change the clutch in new vehicles and/or the repair wasn't covered by the warranty, it follows that the failure must have been caused by misuse. But if I were to take that argument to its logical conclusion, it would mean that a component on a vehicle would always be durable, unless a manufacturer concluded that some kind of mass recall was necessary.

I think that such an argument does not take into account that components can and on many occasions do fail early. And I'm not prepared to accept the fact that no manufacturer defect could be found, or that a warranty claim wasn't accepted is determinative evidence of Mr A having misused the vehicle.

I'm also mindful that Mr A has submitted that he has over fifteen years of driving manual vehicles and that he has never had a clutch that needed replacing this early before. I appreciate that clutches and in particular things like the biting point will vary from vehicle to vehicle. But, broadly speaking, the clutch is operated in a similar way on most cars. And I've not been provided with any evidence that the clutch on the vehicle Mr A was supplied with had to be operated in any specific or special way.

So other than Lex's and the manufacturer garage's speculation and the fact that no manufacturing defect could be found, there is little, if anything, to support that Mr A's driving style was responsible for the clutch needing to be replaced so early.

I also note that Lex has confirmed that the car had its two-year service at the end of May 2022, which was a matter of weeks before the clutch failed. Lex says that the vehicle was drivable, no warning lights illuminated on the car and therefore no issues with the clutch were identified. And as a clutch inspection wasn't part of the servicing requirements, one didn't take place at this time. I accept there wasn't a requirement for the clutch to have been inspected at this point.

However, it's fair to say that the car would have been driven as part of this service. If as Lex suggests that Mr A's driving style was the cause of the failure, it is reasonable to assume that his 'driving style' had been the same over the 9,000 or so miles he'd driven the car and that the clutch would have experienced gradual, but prolonged, excessive wear over this time as a result.

I don't think that it is unreasonable to expect an experienced technician, who presumably would have carried out the service, might have picked up that the clutch was behaving abnormally if it was at the point where it was about to fail, because of excessive wear as a result of misuse. Therefore the fact that nothing at all relating to the clutch was flagged, even as an advisory, does not support Lex's contention that Mr A's driving style was responsible for the clutch failing.

Overall, on balance, and after considering all of the evidence and arguments from all parties, I've not been persuaded that Mr A's driving style, or any misuse of the vehicle, caused the clutch to fail when it did. I consider it more likely that there was some kind of defect with the clutch or its associated components which caused it to fail much earlier than a reasonable person would expect it to.

The clutch, on the vehicle, failing after less than 10,000 miles is, in my view, significantly early and when considering the requirements of the CRA, I am satisfied that the car, and in particular its clutch (especially considering the expectations around durability), was not of satisfactory quality when it was supplied to Mr A. In my view, a reasonable person would have expected the clutch, on the brand-new vehicle that Lex supplied, to have lasted for a significantly longer amount of miles before failing and requiring replacement.

In reaching my conclusions, I've seen that Lex has referred me to four final decisions which it has taken from our database of published decisions. The first thing for me to say is that each case is considered on its own individual facts and merits. And I'm required to make my own individual determination of the case before me, rather than merely replicate the outcomes other ombudsmen have reached in other final decisions. So the outcomes on the other cases Lex has referred me to cannot and do not bind me into reaching the same conclusion on this case.

That said, I accept that consistency is important and with a view to providing some clarity and reassurance to Lex, I've looked at the final decisions which it has referred me to. Having done so, I can't see that any of the cases involved facts where the respondent firm supplied a brand-new vehicle and the clutch needed to be replaced after only around 9,000 miles were driven. Indeed, only three of the four cases involved facts where the respondent firm was responsible for supplying a brand-new vehicle.

The first of the decisions referred to a car which was supplied prior to the CRA. So it was supplied under a different legislative framework and, in these circumstances, I fail to see how it provides a useful comparison. The second one (which is the third case Lex cited)

involved a case where the complainant continued driving the vehicle up a hill after it was clear that there was an issue with the clutch and the gears engaging.

The ombudsman, in that case, considered this to be clear evidence of the vehicle having been misused by the complainant. I have not found that such evidence exists in Mr A's case. And the final one of the decisions cited involved a case where the clutch had failed for a third time in the seven years that the consumer had it.

I'm prepared to accept that those cases involved cars that were supplied as new and the clutch at some point failed. But other than that, I think that the facts and circumstances, in the cited cases, share little in common with the facts and circumstances in this case brought by Mr A. Therefore, it is my view, that the relevance of those cases is, at best, limited.

Furthermore, Lex will also be aware that there are countless other examples of final decisions (many involving facts much more analogous with the facts in this case), on our database of published decisions, which it has not referred to, where the ombudsman concerned concluded that the clutch failing prematurely meant that the car the respondent firm supplied to the complainant, was not of satisfactory quality.

As this is the case, while, for the reasons I've already explained, I'm not required to replicate the outcomes reached by other ombudsmen, I nonetheless don't consider that my answer here is incompatible or inconsistent with the other ones Lex has referred to, notwithstanding the differing outcomes.

Overall and having carefully considered everything provided, I'm satisfied that the clutch needing to be replaced after Mr A had completed so few miles means that the car wasn't of satisfactory quality when Lex supplied it to Mr A.

#### *What Lex needs to do to put things right for Mr A*

As Mr A was told the clutch needed replacing because of his driving style, rather than because it was not of satisfactory quality, he had to pay repair costs of £1,389.12 to the manufacturer garage before the car was returned to him. I think that it is neither fair nor reasonable for Mr A to have to pay for repairs that had to be made because Lex provided him with a car that was not of satisfactory quality.

So to start with Lex should reimburse Mr A the £1,389.12 he paid for the clutch to be replaced, plus interest at 8% a year simple.

I've also considered the distress and inconvenience that Mr A experienced. I appreciate that Mr A was without the vehicle for a period of time. But he was provided with a hire car, which he's been reimbursed the cost of, for most of the period concerned. That said, Mr A has had to take time to get the vehicle repaired and had the additional stress of suddenly being landed with a bill for repairs in circumstances where, at the very least he was led to believe, the repair would be covered by the vehicle's warranty.

Having considered all of this, I'm persuaded that Mr A was caused a moderate amount of distress and inconvenience as a result of Lex supplying him with a car that was not of satisfactory quality. And I think that Lex should pay Mr A £150 for the distress and inconvenience caused by its actions.

#### **Fair compensation – what Lex needs to do to put things right for Mr A**

Overall and having considered everything, I think it is fair and reasonable for Lex to put things right for Mr A by:

- reimbursing him the £1,389.12 he paid to the manufacturer garage for the clutch to be repaired, plus interest at 8% per year simple from the date the payment was made by Mr A to the date the complaint is settled†;
- paying him £150 for the distress and inconvenience caused by it supplying him with a car that wasn't of satisfactory quality.

† HM Revenue & Customs requires Lex to take off tax from this interest. Lex must give Mr A a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Mr A's complaint. Lex Autolease Limited should put things right for Mr A in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 November 2024.

Jeshen Narayanan  
**Ombudsman**