

The complaint

Mr W complains that Lex Autolease Ltd has unfairly recorded a default on an account he held with it for a car rental agreement. He also complains that it has mismanaged the account by unfairly failing to modify it as agreed when the term was extended.

What happened

In September 2016 Mr W entered into a four-year car hire agreement with Lex Autolease for a new vehicle. The contractual monthly payments were set at £376.22 and the annual mileage limit was 20,000 per annum with a maximum mileage limit of 80,000.

In September 2020, Mr W requested a quote to amend and extend the agreement by a further six months to 54 months. Lex Autolease quoted monthly rentals of £282.17 with an altered total mileage limit of 90,000. It sent Mr W a modifying hire agreement form to be completed and asked that he return it by the end of September 2020.

Mr W says he completed the contract modification form and sent it back by both post and via email to Lex Autolease. Lex Autolease says it never received the hardcopy of the completed form. But in October 2020 it had received photos of the completed form from Mr W via email. Lex Autolease told Mr W that it couldn't accept photos of the agreement and he would need to scan the document or send a copy of it in PDF format. It says Mr W didn't return the agreement in the correct format. Lex Autolease didn't modify the agreement and continued to charge Mr W the original monthly rentals of £376.22.

Mr W says that he later became aware the monthly payments hadn't been reduced. He says he attempted to make contact with Lex Autolease but that the waiting times when he phoned were unreasonable.

In December 2020 Mr W moved home. He says he sent Lex Autolease a letter informing it of his change of address.

In or around January 2021 Mr W says he changed banks. He said that he thought the direct debit for this account would transfer over as they had for other payments. In this month Mr W also made arrangements for the car to be collected in March 2021 from his new home's address using the online portal.

In February 2021 Mr W contacted Lex Autolease about its failure to alter the contractual payments. Lex Autolease treated Mr W's contact as a formal complaint and sent, via email to him, its final response letter. Lex Autolease said it didn't uphold Mr W's complaint as it hadn't received the signed modified agreement paperwork. This letter also informed Mr W if he was unhappy with Lex Autolease's response then he had six months in which to bring his complaint to this service. This letter showed Mr W's old address at the top as his contact details.

The February 2021 direct debit was unpaid. Lex Autolease sent a letter to Mr W's former home seeking payment of this outstanding amount.

In March 2021 the car was collected by a third-party company on behalf of Lex Autolease. Damage was noted to the car to the value of £146.00. Mr W rejected the report on the car and disputed the cost of the damage. However, later a £100 waiver was applied to that figure and a damage invoice raised in the amount of £46.

Mr W then contacted Lex Autolease and complained that it had raised a complaint on his behalf when he had not asked it to do so and that he also considered the charges for the damage found on the car to be unfair. He asked for the decision about the hire rentals to be reviewed and the end of contract damage charges to be removed.

Lex Autolease didn't uphold Mr W's complaint. It explained that the original matter had been treated as a complaint because his communication fitted its definition of a customer complaint. It said it had therefore treated it according to its complaints' procedure. Lex Autolease also confirmed that as a final decision had been made it could not review that again. In respect of the damage invoice, Lex Autolease said the damage to the vehicle was considered outside fair wear and tear and the invoice would stand.

Following the missed February 2021 payment, Lex Autolease sent Mr W a further three reminder letters that his account was now in arrears. However, in March, a second rental payment was missed, and Lex Autolease sent Mr W a Notice of Sums in Arrears for £752.44 in total. All these letters were sent to Mr W's former home.

In March 2021 Mr W made a subject access request to Lex Autolease. Lex Autolease sent the documentation to Mr W's former home address.

In April 2021 Lex Autolease sent Mr W a Default Notice for a total outstanding amount of £798.44. This being made up of the two months missed rentals and the damage invoice. The notice informed Mr W that he was in breach of the agreement as he had failed to make the payments of the rentals at the time specified as per the terms and conditions of the agreement. It said that to remedy the breach Mr W needed to pay the amount in full by the end of April. As Mr W didn't clear the arrears, the account was defaulted and this was reported to the credit reference agencies.

In November 2021 Mr W says he was contacted by the new owner of his former home advising him there was post there for him. Mr W says on attending the property he found the SAR response and became aware of the outstanding debt. He says he was also concerned as to the gaps in the information Lex Autolease appeared to hold about him.

In December 2021 Mr W contacted Lex Autolease about the debt. He says he was informed the account had been closed and the debt written off. In March 2022 Mr W made the decision to pay the amount off in full.

In July 2022 Mr W says he was declined a credit application and on checking his credit file saw that the account with Lex Autolease showed money was still owed. He made a complaint to Lex Autolease asking why the account details hadn't been updated. In September 2022 Lex Autolease sent to Mr W's new address its final response letter informing him that it had reported this account as settled on receiving payment from him.

Mr W says that his credit file still showed the adverse information and complained again to Lex Autolease about the situation. It sent Mr W a further letter in February 2023 confirming that it had reported the account as settled to the credit reference agencies.

Mr W was unhappy at Lex Autolease's response and its handling of his account and complained to this service. Lex Autolease said that Mr W had not, as required by the terms and conditions of the agreement notified it in writing that he had changed address and it had

correctly sent all the necessary correspondence to the address shown on his account.

Mr W said that he had put his new address into the online portal when arranging for the car to be collected. And as the car had been collected from this address Lex Autolease should have known he had changed address and updated its records. He also said that at this time it was the pandemic and strict regulations in place including the stay-at-home rule. He said the car had to be collected from a home location and Lex Autolease would have been aware of that.

Mr W also raised a complaint regarding the rental monthly amounts from the point the contract had been extended. He said Lex Autolease had unfairly failed to modify the agreement as agreed.

Our investigator recommended that Mr W's complaint should be upheld. He said he was persuaded by what Mr W had said that Lex Autolease had failed to update Mr W's address on its records and therefore the letters informing him about the arrears hadn't arrived. Our investigator said Lex Autolease had unfairly defaulted the account and this should now be removed together with the other adverse information about this account from Mr W's credit file.

Our investigator also said that he thought Lex Autolease had acted unfairly in not modifying the hire agreement as Mr W had returned the required paperwork. He said he thought Lex Autolease had made multiple errors which had caused Mr W unnecessary inconvenience and distress and that it would be fair and for it to now pay Mr W £500 compensation.

Lex Autolease disagreed with our investigator's view. It says that in respect of the contract modification paperwork that it had clearly told Mr W in the October email response to his sending photos that it couldn't accept that format. Lex Autolease has provided an email which has different content to the one supplied by Mr W as to this exchange.

Lex Autolease also says that the wording in the terms and conditions sets out that any change of address must be provided in writing. It says that the address supplied through the online portal for collection of the car is only for those purposes and goes directly to Lex Autolease's agent for arrangements to be made. It says it does not have sight of this form, and, in any event, the form itself does not have a section for customers to input any changes of the contact details in relation to their accounts.

Lex Autolease did not accept that the covid stay at home restrictions meant that the collection address had to be Mr W's home address as there were exemptions that applied to that rule. It said it was unreasonable that in the absence of any formal confirmation being received from the customer that they had moved, that the address for the collection of the car was automatically used as notice of a customer having changed their permanent address. Lex Autolease said there had been no service failure on its part when handling Mr W's account.

The complaint was passed to me and I issued a provisional decision along the following lines.

I had set out in some detail above the chronology of events although I accepted I might have missed out some of the dates around emails/contact between the parties as I hadn't considered they were material to my provisional decision.

When looking at this complaint I needed to have regard to the relevant law and regulations plus any guidelines and industry best practices, but I was not bound by them when I considered what was fair and reasonable.

Here Mr W had raised a number of matters. I had seen that the issue about the modification of the hire agreement had been the subject of a final response letter from Lex Autolease in February 2021 when Mr W's complaint wasn't upheld. He was at that time given his referral rights to this service. Although it didn't appear Mr W had pursued a complaint with us at that time and more than six months had now passed, I thought Lex Autolease had, by providing information and evidence about that part of his complaint, given implied consent for this service to look at it. Lex Autolease hadn't raised that this part of Mr W's complaint was out of time. I had therefore looked at it.

Mr W said he sought to extend the hire agreement for a further six months because he had been struggling to contact Lex Autolease. This was of course during the pandemic and contacting businesses could be difficult. I had seen that a quote was obtained from Lex Autolease for that additional period which Mr W indicated he was happy with. The rentals were to be reduced by £94.05 per month to £282.17. A quote was sent out which set out that it should be signed and returned by the end of September 2020. It wasn't disputed that Mr W completed the paperwork and returned it via email in October 2020 albeit in a format Lex Autolease says it wasn't able to accept.

Lex Autolease had provided a copy of an email sent to Mr W which said that attaching photos of the documents wasn't suitable and asking him to re-send it in another format. I didn't know why the copy of the email provided by Mr W (which had the same date and time displayed on it) didn't include this additional wording. However, I did think Lex Autolease had been aware that Mr W had wanted to accept the modified agreement in the terms that had been offered. And I didn't think it had acted fairly by continuing the agreement with the original monthly rentals. It had offered Mr W more favourable rentals; appeared to have been prepared to modify the agreement when the paperwork was returned in October 2020 and had known Mr W had wanted to accept that new agreement. It had allowed him to keep the car for the additional six months. I didn't know why the photos of the signed agreement hadn't been acceptable but given it was during the pandemic when post wasn't reliable, I thought it would have been reasonable to accept what Mr W had sent back and to have modified the agreement accordingly.

So, I intended to uphold that part of Mr W's complaint and ask Lex Autolease to recalculate Mr W's account and refund him the £94.05 per month difference between the two rentals for the final six months of the agreement.

Looking next at Mr W's change of bank account and the failed direct debits. I accepted Mr W had expected his direct debits to transfer over to the new account. However, I thought it would have been reasonable to have expected Mr W to have checked that all his direct debits were being paid correctly each month. Making payments under the agreement when required was his responsibility. I didn't know why Mr W hadn't been aware that the monthly rentals weren't being made.

Mr W said that he wrote to Lex Autolease in or around December 2020 providing his new address. Lex Autolease said it never received a letter from Mr W. Mr W had provided a copy of a letter but there was no proof of postage and I thought it was reasonable to take into account that during the pandemic postal services hadn't always been reliable. I had also noted that Lex Autolease's response to Mr W's complaint in February 2021, which it sent to him via email, had been a letter using Mr W's former address. And that in March 2021 Mr W had written to Lex Autolease making his SAR (although this letter was dated March 2020 Mr W accepts it should read 2021) and had put his former address as his contact. So there were opportunities for Mr W to have queried and repeated his new address.

I was aware that Mr W had contacted Lex Autolease by phone after he had moved home. I would have expected on these occasions that Mr W would have had to pass identity checks

including his address, but I hadn't seen any evidence that a new address had been provided by him.

Where evidence is contradictory or missing then I must make a decision as to what I think happened on the balance of probabilities. Here, I didn't think Lex Autolease had received Mr W's change of address letter and I didn't think he had advised it of any new address when speaking on the phone or via email correspondence. He had also used his old address for the SAR.

Mr W said that by providing his new address via the portal to make arrangements for the car to be collected should have alerted Lex Autolease and led to it changing his details. But I disagreed with that view. I accepted that a car, being returned at the end of a financial agreement, could be collected from any location. I also accepted Lex Autolease hadn't had sight of this collection form because its purpose was solely about arrangements for picking up the car which wasn't its role and that the form went directly to its agents. I wouldn't have expected Lex Autolease to have reviewed collection addresses, even during the pandemic, for the purposes of checking if customers had changed addresses.

So, I didn't think Lex Autolease had been aware of Mr W's new address and I didn't think it had acted unfairly by using his old address for any letters and for the SAR information it had sent to him. And as payments for the car were Mr W's responsibility, I also didn't think Lex Autolease did anything wrong in seeking payment of the amounts that had fallen due including sending a default notice.

I had seen that Mr W disputed the end of contract charges for the damage recorded on the car. Lex Autolease had reduced that amount by £100, but there had still been £46 outstanding.

Lex Autolease had sent Mr W, via email, its decision that these charges remained due to be paid following his complaint. I didn't know if Mr W had received a copy of the damage invoice as this shows his old address, but if he didn't, I still thought it was fair to say that he should have been aware that there were some monies owing on this account even if he wasn't aware that the direct debits hadn't been paid.

Mr W had queried whether Lex Autolease had used the correct process to default the account. I was satisfied that it had. Lex Autolease had set out what the breach of the agreement was and had provided details of how the arrears accrued. It had provided time for the breach to be remedied by Mr W and warned him of the consequences of not doing so. I thought, having not received the final two monthly rentals nor the outstanding damage charge for the car, that it was acting reasonably in making the decision to default the account.

Lex Autolease was obliged to report accurate and fair information to the credit file agencies as to how a consumer had managed their account. Here although I accepted Lex Autolease's decision to default the account had been reasonable I also thought it had acted unfairly by failing to reduce the rentals. Had it done so, then technically, Mr W wouldn't have missed the February payment having overpaid for the months of October to January. However, even with the overpayments of the rentals, I accepted Mr W's account was still in arrears at the time of the default.

Looking then at whether Lex Autolease had reported adverse information accurately and fairly, I weighed up my various conclusions. I thought both parties had contributed to the events here. As explained above, I thought Mr W should have done more about making sure the direct debits were paid and that he should also have been aware there was an outstanding amount from the end of contract damage invoice. In respect of the change of

address, I appreciated that Mr W said he had sent a letter to Lex Autolease in or around December 2020, but I accepted this hadn't been received though this was likely to have been outside of Mr W's control however it also wasn't due to any action by Lex Autolease.

I also thought Mr W had misunderstood the process of returning the car and the use of his new address as the collection point. He appeared to have relied on this for believing Lex Autolease would have his correct contact details, even though both it and he had used his old address in communications after January 2021. As set out above, I didn't agree with Mr W's view that Lex Autolease had erred in not updating his address on his account based on where the car had been collected from.

However, balancing everything together with the fact that Mr W had now cleared the full outstanding amount meaning he had overpaid what had been due, I didn't think the reporting of the adverse information had been accurate and/or fair.

I thought a fair settlement here would be for Lex Autolease to recalculate Mr W's account using the monthly rentals of £282.17 for the final six months and reimburse him any amount he had paid which was over what would have been due. However, I thought it was fair for Mr W to pay the £46 outstanding for the damage to the car. I also think it would be fair for Lex Autolease to remove the adverse information including the default from this account. But I didn't think compensation to Mr W was warranted as I was satisfied he had contributed to what happened.

I was therefore intending to partially uphold Mr W's complaint.

Mr W has said that he doesn't want to raise any points in respect of my provisional view. Lex Autolease has asked that I reconsider. It said that at the time Mr W had requested a contract modification it had been its policy not to accept photos. This it said was based on the need for the agreement to be countersigned and there were issues with both countersigning and storing this file type. Lex Autolease says this policy has since been reviewed. Lex Autolease said that it had been clear with Mr W that the amendment to the lease couldn't proceed based on the photos of the signed modification agreement.

Lex Autolease also said that as Mr W's direct debits failed after four of the six monthly payments had been made that his account would always have gone into arrears. It said the events would have been the same only the amounts would have been different. Lex Autolease said that as there would have been arrears at the end of the contract then reporting the default was fair as it accurately reflected the position of the account. It has also queried why I requested all the adverse information be removed and not just the default.

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 have looked again at the evidence that was provided and the conclusions that I reached on it; I have considered what Lex Autolease has said but I haven't changed my view.

In respect of the contract modification, while I acknowledge what Lex Autolease has said about its policy not to accept photos at that time, I haven't seen any evidence that Mr W was clearly told that the amendment to the hire contract would not go ahead. He was asked to send the agreement again as a scanned document and I've seen in the original complaint Mr W made about the rentals not having reduced, that he says he did post the document back. I haven't seen that there was email or any other form of contact in or around October/November informing Mr W that the rentals would not be reduced or asking whether

he still wished to keep the car at the original rental rate. So, I think that given this occurred during the pandemic when post was not always reliable, that further steps should have been taken to assist Mr W in extending his contract at the price that had been quoted to him and which he had accepted. I still think Lex Autolease acted unfairly by not reducing the rentals for the extended six-month period of the agreement.

So, I think Mr W had overpaid for the four months that the direct debits were paid which even though these stopped in January would mean that, in effect, he did not miss the payment due in February because he had already covered that amount. While I accept Mr W did not manage his account as was his responsibility by not being aware payments had not been made, I think it would be unreasonable not to also take into account that he had been paying more than the modified rental price which he had accepted. This would mean reported missed payments on the account for the last two months would be unfair as they would not be accurate nor reflect what had happened here.

I should also clarify that in respect of the damage charges for the car, while Mr W had originally disputed the full cost of the end of contract charges, he didn't later complain about the £46 that had remained when making this complaint to either Lex Autolease or this service. He has also paid that amount when settling this account's outstanding balance. I therefore don't have any remit to look at that and I think it's reasonable as it wasn't disputed further by Mr W that he pays this amount.

As set out above, I don't think Lex Autolease acted unreasonably at the time in defaulting the account. There were some arrears (£233.14) and Mr W had not been responding to the correspondence and reminders. This was why I didn't think it would be fair to require Lex Autolease to pay Mr W any compensation. However, as also set out above, Mr W says he did put in writing to Lex Autolease that his address had changed but then both used his old address in later correspondence and also failed to pick up on his old address still being used by Lex Autolease. However, it's possible that the change of address letter never arrived so the failure to update Mr W's contact details was neither his fault nor Lex Autolease's.

I therefore think that the adverse information reported about this account arising from the missed payments in February and March as well as the end of contract charges is unfair. This is because the amount Mr W actually owed was unclear because the rentals charged were more than the amount due under the modified agreement; that he had technically missed one month's payment and not two and that due to the house move, he was unaware of the situation regarding the missed payments and he has now cleared the outstanding balance in full. And, as explained above, I think both parties contributed to what happened here, so it is fair and reasonable in the circumstances that this agreement is simply reported as having ended.

For the reasons given I'm partially upholding Mr W's complaint.

Putting things right

I'm asking Lex Autolease to do the following:

- Recalculate what Mr W should have paid using £282.17 as the monthly rental cost for the last six months of the contract.
- Having done the above calculation, reimburse Mr W the amount that he has paid that is excess of what was due less £46 for the damage to the car.
- Interest at the annual rate of 8% simple is to be added to the above figure from the date of payment until the date of settlement.

- Remove all the adverse information about this account including the default from Mr W's credit file.

My final decision

As set out above I'm partially upholding Mr W's complaint. I'm asking Lex Autolease Ltd to do the following:

- Recalculate what Mr W should have paid using £282.17 as the monthly rental cost for the last six months of the contract.
- Having done the above calculation, reimburse Mr W the amount that he has paid that is excess of what was due less £46 for the damage to the car.
- Interest at the annual rate of 8% simple is to be added to the above figure from the date of payment until the date of settlement.
- Remove all the adverse information about this account including the default from Mr W's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 November 2024.

Jocelyn Griffith
Ombudsman