

The complaint

Mrs K is unhappy that a car supplied to her under a hire agreement with Lex Autolease Ltd (Lex) led to her having a default added to her credit file when she received no communication about the outstanding sum.

When I refer to what Mrs K has said and what Lex have said, it should also be taken to include things said on their behalf.

What happened

Mrs K was supplied a car under a hire agreement with Lex. She paid an initial hire payment of £878.36 and a further 36 monthly hire payments of £292.79. The agreement was signed on 23 November 2018.

During the course of the agreement Mrs K requested a holiday payment, which was granted by Lex. This was for two monthly payments of £292.79 each for April and May 2020. These were to be added to the end of the agreement. In February 2023 Mrs K extended the agreement for a short period whilst she awaited delivery of a new car. This meant that at the end of the term of the agreement she owed three separate invoices, namely:

28 February 2023 for £208.82 (for the extension)

15 March 2023 for £292.79 (for one payment holiday)

15 April 2023 for £292.79 (for one payment holiday)

Mrs K cancelled her direct debit before these invoices had been paid. There was some communications between Mrs K and Lex but it is disputed as to the extent of these. I consider this more fully when giving my decision later on. What is clear is that Mrs K paid a final invoice on 19 April 2023 of £501.61, as this is what she believed was still outstanding.

Sometime during early spring 2024 Mrs K applied for a credit card and was declined. As a result of this she obtained a copy of her credit file and found that a default for £292.79 had been placed on her file in relation to this agreement.

On 9 May 2024 Mrs K complained to Lex. Mrs K felt that she had paid the final amount outstanding on 19 April 2023 and there were no communications from Lex to chase this debt up. This meant that she was not aware of any further outstanding amount and so felt that the default was unfair.

Lex responded to her on 14 May 2024. The essence of her complaint that they investigated was that she had a default placed upon her account when she had received no communication about this sum. They did not uphold her complaint and the cited three letters that they sent to her, namely:

18 May 2023 which was a final reminder for the sum of £292.79.

5 June 2023 a letter pre-write off, highlighting the arrears and the fact that it may affect her credit rating.

23 June 2023 informing her that they would not contact Mrs K again about the outstanding debt and it would be recorded as a default, potentially impacting her credit rating for six years.

As Mrs K was not happy with their response she complained to us.

The investigator did not uphold her complaint and issued their decision on 12 August 2024. They found that the debt was owed and that the default was correctly applied. They cited the number of letters highlighted by Lex as evidence that they had made her aware of the debt. They did feel however that Lex could have handled the matter better by informing her when she paid the £501.61 over the phone on 19 April 2023 that there was still an outstanding amount to be paid. This contributed to the default and they directed Lex to pay £100 in compensation for the distress caused.

Lex did not agree with the £100 payment. They stated that they had no evidence that the £501.91 paid on 19 April 2023 would have been paid over the phone. If this had been the method of payment it would have been flagged with a diary note on her file. So they had no chance to inform her of any further outstanding amounts.

Mrs K did not agree with the decision. She highlighted that she had maintained a good account for 48 months and had not been informed when she paid over the phone in April 2023 there was any further outstanding amount. She also highlighted the disproportionate impact that the default was having on her. She did offer to pay the outstanding debt of £292.79 and any administrative costs if Lex were prepared to remove the default from her file, which they have declined. She also challenged what evidence Lex had provided that the letters had actually been sent.

On 21 August 2024 the investigator re-issued their decision. Again the complaint was not upheld and they no longer required Lex to pay £100 in compensation, as Mrs K had not been able to prove that she had called Lex to make the payment.

Mrs K did not agree and added that on the letters there were two differing amounts. The first showing the outstanding balance was £501.91 and a later amount at the bottom of the letter of £792.21. They felt that this was where the mistake was made.

As Mrs K did not agree with the investigators decision it has been passed to me to consider.

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 considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Mrs K was supplied with a vehicle under a hire agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

I am empathetic to Mrs K's circumstances and fully understand the impact that a default on her credit file can have. I can also see from the file that she maintained a good repayment rate for the majority of the agreement and the default relates to one missed payment.

However, my job is to consider the evidence as presented and decide on two key issues. The first is whether there is an outstanding debt relating to the agreement that led to the default. The second is did Lex follow a fair and due process in pursuing the debt with Mrs K, so she was aware of the amount of arrears and given an opportunity to pay before ultimately placing the debt in default.

Looking at whether there is an outstanding debt relating to the agreement there are three key pieces of evidence. The first is a statement printed out on the 25 July 2024 that shows there were no payments made on the account during April and May 2020. This coincides with the payment holiday.

The second piece of evidence is a letter from Lex to Mrs K dated 28 February 2023 showing that two invoices (dated 1 April 2020 and 1 May 2020) had been taken as a payment holiday and their direct debit payment dates were 15 March and April 2023 respectively.

The third piece of evidence is an email from Mrs K to the investigator dated 18 August 2024 in which she offers to pay the outstanding debt of £292.79 and any administrative costs if Lex are prepared to remove the default from her file.

These three pieces of evidence together are sufficient for me to conclude that the debt placed into default was a valid debt.

So having decided that the debt is valid I now need to consider the process that Lex followed to decide whether it was a fair and due process.

The first thing to say is how Lex deal with any outstanding debt is a matter for them to decide. So, whilst Mrs K has flagged that it is "normal" process for the debt to be sold on and that would have meant she would have been made aware of it when contacted by a collection agent before being placed in default, Lex are well within their rights to write the debt off.

One point to note here is that Mrs K stopped the direct debit at the end of the agreement term but before the outstanding payments relating to the payment holiday had been paid. If she had maintained the direct debit then any outstanding invoices would have been paid automatically. Of course, she is fully entitled to cancel the direct debit and pay the outstanding money in an alternate method, but it is a contributing factor.

In looking at whether Mrs K should have been aware of the £292.79 outstanding debt that ended in default I need to set out what payments she owed Lex. The first two amounts related to the payment holiday as requested by Mrs K. There is a letter from Lex on the 28 February 2023 confirming the outstanding payments due on the 15 March and April totalling £585.58.

There is also another invoice that related to the short extension of the agreement and this amount was for £208.82

This is set out in a letter from Lex dated 1 March 2023 that notifies Mrs K that her direct debit has been cancelled and giving her alternate methods of payment. Attached to the letter was an account breakdown showing a total of £794.40 relating to the following invoices:

28 February 2023 for £208.82

15 March 2023 for £292.79

15 April 2023 for £292.79

I have also seen two more letters. One dated 5 April 2023 that shows the account is currently £501.61 in arrears, which also had the same account statement attached. Another letter dated 20 April 2023 showed that the account was £501.61 in arrears. The attached

statement showed that the total to be paid on the account stood at £794.40, relating to the three invoices as set out above.

A letter dated 18 May 2023 showing that the account was £292.79 in arrears. The attached statement shows this related to the 15 April 2023 invoice, the 28 February 2023 and 15 March 2023 invoices having been paid.

I have seen a further letter dated 5 June 2023 highlighting the same arrears on the account.

Mrs K has stated that she paid an outstanding arrears of £501.62 in April 2023 and at the time of paying she was not informed that there was any further amount outstanding. If she had been informed, she states she would have paid that as well. In an email to our investigator on 6 June 2024 she states that this was paid over the phone. In an email to Lex dated 14 May 2024 she states that the payment was made by card, as she doesn't use the "manage my account" section as she finds it hard to use and has never used it. In an email to our investigator dated 18 August 2024 to our investigator she states that she phoned to let Lex know that their car was ready for collection and that is when she was informed of the outstanding amount of £501.61 and she paid after the call by a fast payment out from her bank.

Lex have challenged whether any phone call had taken place in April as this would have automatically flagged on the file in the diary notes, and there was no such note. They believed that it was more than likely that the payment was made via online banking. It is up to Mrs K to prove her case, on the balance of probabilities. Mrs K has not been able to show any telephone records of a phone call taking place, which is reasonable given the length of time that has passed since the payment being made. She has however produced a bank statement for the period 1 to 30 April 2023 as evidence. This shows that on 19 April 2023 she paid £501.61. I note that the code attached to this payment is FPO or Fast Payment Out.

Mrs K has pointed out as to how she could have arranged for the car to be picked up if she had not made any phone call. In her email of 6 June to us she states that she arranged for the car to be collected in February 2023 and that "a final invoice would come through in the post in due course".

Mrs K has also highlighted that the letters she responded to had differing amounts in the arrears being £501.61 but the attached statement showing £794.40. However, it is clear from the statements that were attached to each letter showed when each invoice was due. This meant that the final invoice for 15 April 2023 was not in arrears at the date of some of the letters. It is clear from these letters that the total amount owing was £794.40.

Mrs K has also challenged whether Lex sent all the letters, and she states that she did not receive any communications relating to the amount in default. Whilst Lex have not been able to produce independent evidence from their mail provider that the letters were sent, their file shows that they were sent. Mrs K has responded to some of the letters. There is also an email from her representative to the investigating officer dated 6 June 2024 that states:

"There was no notification from the company over the phone call (this was the alleged call during which the payment was made) at this point that there was any outstanding payments due with the car, at this point we thought that was the end of our dealings with Lex Auto. The following month she received another invoice for £292 from Lex Auto, but due to the final invoice already being paid we thought it must be an error and ignored it".

This email clearly shows that Mrs K did receive at least one of the letters that Lex sent relating to the outstanding amount of £292.79 that ended up being in default.

The decision I need to make is that have Lex both made reasonable attempts to bring the outstanding debt to Mrs K's attention and been clear in the consequences of her not clearing

the outstanding debt. The amounts owing at the end of the contract did become more complex both to the extended use of the car and the payment holiday. Communications dated March and April 2023 did have both the amount the account was in arrears and the total amount outstanding. However, the information is not in one place in the documentation, so I can understand the confusion in Mrs K's mind.

More relevant are the letters dated 18 May 2023 and 5 June 2023. Whilst Lex haven't got evidence to prove that they were sent their records show that they were and Mrs K confirms receiving, and ignoring, at least one of them. If I look at the letter dated 5 June 2023 for example it is clear as to the amount outstanding and that if it is not paid Lex will either write off the debt and register a default with the credit reference agency or pass it to their legal team to pursue the debt through the legal system. The letter further states that if they write off the debt Mrs K's credit file will show the default and it will be on the file for six years, impacting her ability to borrow money. I am content that this letter is clear in the amount being owed and the consequences for Mrs K not paying the outstanding amount.

Whilst empathetic to Mrs K, who otherwise has maintained a good payment record in relation to this hire agreement with Lex, I cannot uphold her complaint. The amount in default is clearly owed, both parties seem to be in agreement with this. All communications from Lex showed the amounts owing on each invoice. Whilst Lex have not been able to produce evidence beyond their file records that the letters were sent to Mrs K, she has responded to at least some of the letters and her representative has also stated that they ignored one of the letters chasing up the outstanding amount as they believed it to be sent in error. Therefore, on the balance of probabilities I do believe that Lex have followed a fair and due process in registering a default against this account and Mrs K.

My final decision

My decision is that I do not uphold this case

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 15 July 2025.

Leon Livermore
Ombudsman