

## The complaint

Miss H complains that a car she had via a hire agreement with LeasePlan UK Limited wasn't of satisfactory quality and she should not be liable for repair costs in respect of a faulty clutch.

## What happened

In August 2021 Miss H entered into a three-year hire agreement with LeasePlan for a new car. The agreement was for an annual mileage allowance of 8,000, there was an advance rental of £2,000 and 35 monthly payments of £148.55.

In July 2024, shortly before the agreement was due to end the car broke down while Miss H was driving. The car had a mileage of 20,630 at this point. It was taken to a manufacturer approved garage for investigation and repair as the car was not driveable.

The garage found that the slave cylinder was "*not actuating correctly*" and on removal found the restrictor had twisted and was facing out causing the clutch to become "*excessively worn*". The garage said that the required repairs would cost £1,147.08. Miss H arranged for the repairs to be undertaken with LeasePlan's consent and with the belief that the repairs would be covered because of the car's age and mileage. LeasePlan liaised with the car's manufacturer.

LeasePlan said that the car's warranty had expired in March 2024, and the damage found to the clutch was considered to be due to wear and tear. It said it was Miss H's responsibility to cover the costs of repair.

Miss H was unhappy at LeasePlan's response and complained to it. LeasePlan didn't uphold her complaint as it said it wasn't liable for the cost of the repairs.

Miss H complained to this service. She said that the fault with the clutch wasn't due to wear and tear but an inherent fault with the slave cylinder. She said the car hadn't been of satisfactory quality at the point of supply and it was unfair for LeasePlan to find her liable for the repairs.

Our investigator recommended that Miss H's complaint should be upheld. He said he thought that the clutch had failed prematurely as the restrictor wouldn't have become twisted by damage or through overuse but by being originally fitted incorrectly. He also said that the evidence showed Miss H wouldn't have been aware of the issue with the clutch until it failed.

Our investigator said that the car hadn't been reasonably durable and so wasn't of satisfactory quality. He said that LeasePlan should cover the full cost of the repairs and in addition pay Miss H £150 compensation for the distress and inconvenience caused to her by dealing with the faulty car.

Miss H agreed with our investigator's view, but LeasePlan disagreed. It said that the damage to the clutch had arisen through wear and tear and provided an email from the Service Manager at the repairing garage. LeasePlan said that due to the length of time and the

mileage driven by Miss H the fault couldn't have been inherent.

As the parties have been unable to reach an agreement the complaint has been passed to me.

### **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.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied their quality is satisfactory. The relevant law says the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability can be aspects of the quality of the goods.

Here the car had been new at the point of supply and so would reasonably have been expected to have been fault free at its point of supply. The car was around three years old and had a mileage of around 20,000 when it had broken down due to the issue with the clutch. The question for me to decide is whether it's more likely than not that the problem with the clutch was due to wear and tear, or was due to an inherent defect meaning the car had not been as reasonably durable as a reasonable person would have expected at its point of supply.

LeasePlan relies on the fact that Miss H had used the car for three years and driven just over 20,000 miles. It also says that the Service Manager's email has clarified that the fault with clutch was due to wear and tear.

As the car has now been repaired, and unfortunately the faulty part not retained by the garage for any independent inspection, I have no independent expert opinion as to the cause of the fault. I'm not an expert in respect of car engines, so I need to weigh up the evidence that's been provided and decide what is the most likely thing to have happened. If evidence is missing or contrary, then I also need to apply this same test.

I think it's fair to say that a reasonable person would not reasonably have expected a car of this age and mileage to have developed a significant fault with its clutch. However, I'm also aware that the life span of a clutch can be shortened by certain driving styles which can wear the clutch out much sooner than might otherwise be expected.

Miss H says she is a driver of many years' experience and has never had a similar problem with a clutch arise before. I have no reason to disbelieve her, and I think her surprise at discovering the fault with the clutch and the extent of the needed repairs was genuine. It also isn't disputed that Miss H would have been unaware of the developing problem and so she couldn't have acted in a way that would have mitigated the cost of the repairs.

The repair invoice sets out that the wear to the clutch was due to the slave cylinder restrictor being twisted and holding the clutch on intermittently. The Service Manager, in their email, says that "*the fault was mechanical*" and that they removed the gearbox to inspect the clutch and found no other fault than it being worn. However, the email doesn't mention the slave cylinder and I don't think it is a decisive piece of evidence. The Service Manager states only that it was a mechanical fault and gives no opinion as to whether this arose from wear and tear or an inherent fault in that the slave cylinder had been installed incorrectly in the first

place.

I have seen no evidence which provides a clear opinion as to how the slave cylinder restrictor became twisted. And, in light of that, I don't think I can fairly consider that this was due to something Miss H had done. I have no evidence that her driving style was the issue and I've also seen that she had the car serviced in line with the manufacturer's recommendations.

LeasePlan says if the problem was due to the slave cylinder restrictor having been poorly installed then it's unlikely Miss H would have been able to get the use that she did. But I've seen that it was due to this part being faulty that led to the excessive wear on the clutch and its premature failure. And as a clutch's lifespan is on average between 30,000 and 100,000 miles, then it would appear likely that a car would be able to travel around 20,000 miles even with a faulty slave cylinder before repair was required as this distance is still substantially less than what would be expected. I haven't seen any evidence to say if this part had been inherently defective failure of the clutch would happen within a short timescale or number of miles.

So, on weighing up the evidence, I think that it's more likely than not that the car wasn't as durable as a reasonable person would have reasonably expected and that it wasn't therefore of satisfactory quality at the point of supply to Miss H. I therefore don't think LeasePlan acted fairly in finding her liable for the costs of the repairs to the clutch. And I'm upholding her complaint.

### **Putting things right**

For the reasons set out above I'm upholding Miss H's complaint. I'm asking LeasePlan to do the following:

- Either pay the costs of the repairs of £1,147.08 if all or any part of that invoice is still outstanding. Alternatively, if Miss H has paid some or all of the costs of the repairs, reimburse her that amount including simple interest at the yearly rate of 8% from the date of payment to the date of settlement. Miss H will need to provide proof of payment.
- Pay Miss H compensation in the amount of £150 for the distress and inconvenience caused by having to deal with the faulty car.

### **My final decision**

As set out above I am upholding Miss H's complaint. I'm asking LeasePlan UK Limited to do the following:

- Either pay the costs of the repairs of £1,147.08 if all or any part of that invoice is still outstanding. Alternatively, if Miss H has paid some or all of the costs of the repairs, reimburse her that amount including simple interest at the yearly rate of 8% from the date of payment to the date of settlement. Miss H will need to provide proof of payment.
- Pay Miss H compensation in the amount of £150 for the distress and inconvenience caused by having to deal with the faulty car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 6 January 2025.

Jocelyn Griffith  
**Ombudsman**