

The complaint

Mr A complains about a car he acquired through a Hire Agreement with Lex Autolease Ltd ('Lex'). Mr A complained about repeated electrical and mechanical issues. He says the car's been in for multiple repairs but faults have remained, so he wanted to hand it back.

What happened

Mr A acquired a brand new car through a Hire Agreement with Lex in January 2022. The agreement required him to make an initial rental payment of £7,714.94, followed by 47 payments of £642.91. If the agreement ran till the end this would equate to payments totalling £37,931.71.

Roughly nine months later work was carried out on the car because of a seatbelt recall. At this time, an anti-theft recall was carried out and the software was updated. By this time, in November 2022, Mr A had covered 6,740 miles.

Mr A complained about the EV system not working as it should in March 2023. I can see the dealership offered £219.76 for fuel costs and a new charging cable.

A job sheet from 6 April 2023 confirms the fault with the EV mode. At this point the car had covered 10,287 miles. The EV mode couldn't be used if the heater was above a certain level. Fault codes were present for the heating and ventilation unit. The 'HV coolant heater' was replaced, the fault codes were cleared and everything was said to be okay.

Lex responded to this complaint in May 2023. It said the dealership confirmed the fault, repaired the issue and returned the car to Mr A. Mr A had also complained about the car shuddering on start-up, but Lex said the dealership couldn't find this fault.

Mr A said the car then wouldn't switch from petrol mode to electric mode. But Lex said it didn't have evidence of this still being an issue.

It offered Mr A £148.00 for the inconvenience caused and £73.85 to reflect not being able to use the car as intended between 16 March 2023 and 6 April 2023. As Mr A was still able to drive during this time though, this was calculated as 15% of his payments for this period.

Mr A complained again in August 2023. In September 2023 it was confirmed there was a further fault with the EV system, by this time the car had covered 14,138 miles. The HV coolant heater needed to be replaced again. There was also a noise coming from the nearside dashboard, so the trim was removed and refitted. The engine coolant pipe and elbow also needed replacing under a recall.

When Lex responded to the complaint, it acknowledged the repeated issue and said Mr A could exit the agreement early. It said if termination wasn't accepted within 28 days it may not be able to accept termination in the event of future issues.

Under the agreement Mr A would usually be liable for further payment if the agreement were to end early. But Lex offered for the agreement to be terminated without having to pay

anything more – other than any excess mileage or damage costs. It also offered £250.00 for the distress and inconvenience of the continued issues.

A further inspection took place in October 2023 to investigate the car shuddering when starting in EV mode, along with issues with the brake pedal. No faults were found, however a diagnostic did show two fault codes in the brake booster module. The wiring was checked over and the fault codes were cleared. At this point the car had covered 15,050 miles.

Mr A contacted Lex in January 2024 to say he hadn't received the £250.00 previously offered or a letter in response to the complaint he'd made. He said the EV and brakes issues still weren't resolved.

The car went back to the dealership and a replacement car was arranged. Mr A said he would be able to acquire a new car in May 2024.

Lex issued a further final response in February 2024. It repeated the offer of a zero-cost early termination because of the EV issue. It said the brakes issue stemmed from normal wear and tear and it didn't accept the complaint about that. But to reflect the continuing EV fault and being unable to fully use the car, it offered £419.39. This was made up of £56.27 for 12 days loss of enjoyment, £164.12 for 7 days loss of use, and £199.00 for the distress and inconvenience it had caused.

It said it would work out a further figure once the car has been returned for the impacted use from January 2024 onwards – and compensation for what happened in August and October 2023 would be confirmed. But ultimately it accepted the car wasn't durable and said the agreement could be terminated. It said if termination wasn't accepted it may not be able to offer this again in future.

The car had been inspected again in February 2024 with further faults found relating to the EV charger and brake pedals.

Mr A contacted Lex to ask about the compensation he might receive for the loss of use in August and October 2023, and how much of his initial rental would be refunded. Lex said it would let him know. But Mr A followed this up later in February 2024.

As Mr A hadn't heard anything he contacted Lex in May 2024. He still didn't know the compensation he'd receive or whether Lex would be refunding any of his initial payment.

At this point he referred his complaint to our service.

After this, on 24 May 2024, Lex explained some of the termination process and told Mr A that the 'unused' portion of his initial rental was £3,241.34. And it would offer a further £187.56 for the 40 days the car was in the garage in August and October 2023.

The same day, Mr A contacted Lex to say the initial payment of around £7,000 and the monthly payments since have meant he's paid a very large sum of money for a car that's ultimately not of satisfactory quality. He said the burden of pursuing the complaint and having the car repaired multiple times over the last couple of years has caused a great deal of stress. He also said he wasn't happy about the fact Lex hadn't progressed his complaint since February 2024, which delayed the resolution of the matter.

Lex calculated the portion of the initial rental that was 'unused' and would be refunded after the complaint was referred to our service, along with further amounts for the time Mr A hadn't been able to properly use the car.

The investigator who considered the complaint thought Lex agreeing to take the car back and offering a proportionate refund to Mr A was fair in the circumstances, given the time he'd been using the car. They said Lex had offered to take the car back earlier and so a further refund wouldn't be fair when Mr A could've handed the car back sooner.

Mr A said he wasn't able to hand the car back because he hadn't been given enough information about the process or the amounts of any refunds due. He said he hadn't been able to use the car as intended for more time than Lex's offer acknowledged and he hadn't been reimbursed for costs he'd incurred. He's also had further issues with the car which couldn't be resolved.

The investigator felt Lex had given enough information about how to hand back the car and Mr A could nevertheless have pursued these options. They thought the mileage Mr A had covered while he had the car indicated he'd been able to make good use of it.

Their view remained unchanged and Mr A asked for the case to be reviewed by an ombudsman. It was passed to me to issue a decision and I issued a provisional decision, as follows:

'What I've provisionally decided – and why

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

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr A acquired the car through a Hire Agreement with Lex. Under this type of arrangement, Lex became the supplier of the car and is responsible if the goods aren't of satisfactory quality at the point of supply. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

As said above the Hire Agreement was entered into on 6 January 2022. This involved an advance payment of £7,714.94 followed by 47 payments of £642.91. The car acquired was first registered on 9 Feb 2022 and was provided brand new. If Mr A made all the payments under the agreement he would've paid £37,931.71.

This timeline of events shows the car had recurrent faults. While it's accepted by all sides, I think it's worth me confirming the position on satisfactory quality.

In this instance the car provided was brand new – and this was reflected in the size of the payments Mr A had to make. In circumstances where goods are provided brand new, it can reasonably be expected that they're durable and free from even minor defects.

I think it's not unreasonable to conclude that not being able to properly use the EV function in what's described as a hybrid car is a significant defect. Goods provided brand new would reasonably be expected to be fault free for a considerable amount of time, and a reasonable person would not expect a significant fault of this nature to happen as soon as it did. The fact it couldn't then successfully be fixed therefore makes it fair to be able to reject the goods, given the durability concerns with the repeated faults.

The car should now be collected at no cost to Mr A, if it hasn't already, and the agreement ended with nothing further to pay.

Throughout these events, Mr A has almost always remained mobile as far as I can tell. When the car was being repaired he was given courtesy cars. Even when faults were present while he had the car he was still generally able to use it. However consideration still needs to be given to the extent to which he was able to use the car as intended and whether this use was impaired by the issues he experienced.

Lex told our service that to address the issues complained of Mr A has been given over £1,000 by the manufacturer and Lex has also paid (or offered) £1,078.80 in total for the time without the car and the inconvenience caused.

I'll consider the payments Mr A has made under the agreement, the offers he's been made and whether this is fair to reflect the issues he's experienced.

Under the agreement Mr A has made monthly payments of £642.91 since acquiring the car. For this price he would reasonably have expected to be able to not only use the car without fault, but also to enjoy the significant benefits and comfort of a prestige vehicle of this type. So I think it's fair to factor in the overall experience of the car not functioning as it should have been for much of the time Mr A had it.

The seatbelt recall that had to be seen to was potentially a significant safety issue that required attention, however the evidence I've seen doesn't indicate it had a great impact on Mr A's use of the car.

From the evidence we have, I can't see that issues were raised about the EV until March 2023, so I think Lex can keep any payments made up to this point. It's from this point onwards that the persistent faults with the EV function, and at other times the brakes, occurred. While Mr A remained technically mobile throughout this period, I don't think he was able to enjoy the vehicle as intended.

Mr A has been offered £73.85 for 21 days of lost enjoyment, £56.27 for 12 days lost enjoyment, £164.12 for seven days lost use and £187.56 for 40 days of lost enjoyment. These amounts reflect a portion of his monthly payment for 80 days during the entire period in question, which spans roughly 18 months. During this time he'd made payments totalling roughly £11,500. So these refunds equate to roughly 4% of the payments he made during that time.

Given his consistent complaints, which were supported by reports confirming the issues complained of, I'm satisfied that from this point onwards his use and enjoyment of the car was impacted. Sometimes this impact would have been greater and sometimes lesser. However I think what's been offered so far doesn't quite reflect the difficulties as indicated by the evidence.

I'm mindful that he was able to stay mobile throughout. Though given the prestige of the car he was hiring, and that the monthly payments he was making were intended to reflect the enjoyment and comfort associated with that, I don't think it's fair for Mr A to have paid so much on a monthly basis towards a car he ultimately couldn't enjoy for a majority of the time he had it.

In order to reflect this consistent loss of enjoyment and impaired use, I think 10% of all his monthly payments from March 2023 onwards should be refunded up to the point the car is returned, the £481.80 already paid or offered by Lex for the lost use would be part of this 10%.

I've also considered the initial payment Mr A made as part of the Hire Agreement. The greater the initial payment, the lower the subsequent monthly payments. So a portion of this initial payment goes towards reducing each subsequent monthly payment. The initial payment Mr A made under his agreement was £7,714.94. If Mr A hadn't paid an initial payment then the monthly payments from then on would've been significantly larger.

So when considering what, if any, of the initial payment should be refunded I've considered the impact on the monthly payments he was making under the agreement.

While Lex had offered termination as an option previously, I can't see that Mr A pursued the rejection of the vehicle until Lex responded to his complaint in February 2024. He says that was because of a lack of information, however I think this information could have been relatively easily obtained had he tried to pursue this option.

He did pursue this option in February 2024. It took a long time for Lex to confirm the refund amount, but it backdated the offer to February 2024. So I think it's fair to consider the rejection of the car as of February 2024 which is when Mr A did try to pursue it.

At this point Mr A was halfway through his 48-month agreement – and so I think it's fair for 50% of his initial payment to be refunded to him to reflect this 'unused' portion.

However, as I've laid out above, even when Mr A had the car, or had access to a car, I'm satisfied that his use was impaired. And given that his initial payment contributed to his monthly payments, it follows that the same proportion of the initial payment should be refunded in line with the impaired use refund laid out above.

Mr A seemed to be able to use the car without much issue up to March 2023 – so I think it's fair for Lex to keep 13 months' worth of the initial payment, which is roughly 27% of it.

I'm satisfied that Mr A's use of the car was impaired from March 2023 and that he used the car for some time after that. Up to the termination date, this portion is equivalent to 11 months' worth of use and equates to roughly 23% of the initial payment. Lex should refund 10% of this portion.

To summarise, Lex should keep 27% of Mr A's initial payment for the use he had for the first 13 months of use. It should refund in full 50% of the initial payment to reflect the 'unused' portion. Of the remaining 23%, which reflects the impaired use over 11 months up to the point of termination, Lex should refund 10% of that amount. In other words Lex should refund 52.3% of Mr A's initial payment.

Lex has claimed that the manufacturer has paid Mr A over £1,000, however I can only see one payment referred to of £219.76. This payment was intended to cover fuel costs that Mr A wouldn't have otherwise incurred had the EV been working at it should.

Over time Mr A also received payments from Lex totalling £398.00 for the distress and inconvenience caused. I appreciate that this has been going on for some time and wasn't always handled as well as it could have been, but I wouldn't award anything over and above what's already been offered to reflect the impact this has had.

Mr A says he hasn't been reimbursed for all his costs and Lex agreed to refund these. I haven't seen evidence of the specific refund offered, or evidence of the cost Mr A incurred, but I invite both parties to provide evidence on this point. If Lex has agreed to cover this then it should ensure this is paid along with any other refunds that are yet to be made.

For much of the time period concerned the car has been in excess of the pro-rata contractual mileage limit. I think it's fair for Lex to charge for this use over and above what was agreed at the outset. However I think this amount should be capped at the excess mileage at the accepted point of termination in February 2024. At this stage Mr A was 7,355 miles over the limit. If Mr A is now below this, when prorated at the point of collection, then Lex should calculate the excess mileage charge that applies at that time. Whatever is the lesser amount can be taken from the total refund.

In terms of fair redress, there's no exact formula. I think what I've laid out above is reasonable bearing in mind all the circumstances. It strikes a fair balance when considering the previous offers that have been made, the delayed termination after Lex's offer in February 2024, and the mileage covered while Mr A had the car – and the extent to which the issues complained of impaired that use over the lifetime of the agreement.'

Responses to the provisional decision

Mr A felt as though it wouldn't be fair for him to be responsible for any of the excess mileage charges or service costs because the issues with the car weren't resolved by Lex sooner.

He said a replacement car won't be available for three to six months and being without a car will cause him significant inconvenience for his work and personal life. He said handing the car back in these circumstances isn't ideal and he wanted further compensation for the impact this has had on him mentally and physically.

Lex confirmed the initial payment did reduce each monthly payment under the agreement, however it also included the first month's rental. So any refunds should account for the fact that part of this payment covered the first month's use.

It also felt as though refunding 50% of the initial payment as the 'unused' portion didn't reflect the amount of use Mr A has had beyond the halfway mark of the agreement. It said its usual approach is to calculate the unused portion of the initial payment up to the point the car is collected, and that this approach has been previously accepted by our service.

It also highlighted that the car has a personalised number plate, which would take time for Mr A to remove before collection.

It felt Mr A should be liable for any excess mileage recorded at the point of collection, rather than it being capped at the amount recorded in February 2024. It said this charge isn't a penalty and simply reflects the depreciation of the goods as a result of the additional use. It has been acknowledged that Mr A has been using the car since February 2024 – and that he would pay for the use of the car since then – so it's fair that any use over and above what was outlined in the agreement should be accounted for.

It was also concerned that although the agreement was to end 'with nothing further to pay', it should still be entitled to charge for any damage caused to the car once it's collected and inspected.

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've outlined in the provisional decision what I'm required to take into account, how I'll come to a decision and the key legislation in this case. I'll lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Having weighed up the responses to the provisional decision, I've come to broadly the same outcome and for the same reasons.

There isn't much dispute around the quality of the car and the fact it's to be returned, so I won't go into detail on what's already been outlined in my provisional decision. The areas remaining unresolved relate to how things should be put right. I'll address the points raised in response to the provisional decision before confirming how things should now be resolved.

Excess mileage

Mr A maintained that any excess mileage charge was unfair because of continued problems with the car. Whereas Lex felt as though the excess mileage charge should not be capped.

Although there were faults with the car, it's clear Mr A still got substantial use from it. As a starting point it's fair for him to pay for the use he got from the car. I have to consider that if the mileage limit had been set higher to match the mileage he eventually ended up covering, then his monthly payments would have been greater. So I have to consider the use in those months compared to the amount of use he'd paid for at the outset.

The car's use being impacted by faults will be considered as part of the refund of payments under the agreement, not as the waiving of excess mileage charges. I don't find a link between impaired use and additional mileage covered. I see no reason to waive the excess mileage charges in their entirety.

Lex has argued the excess mileage charge merely reflects the depreciation in the value of the car as a result of the increased use. It feels this excess use should be charged for in line with the terms of the agreement.

As a starting point I would agree. However I have to consider the circumstances of this case. In this instance I consider that, while the rejection of the car was offered and first pursued in February 2024, Lex considerably contributed to the delay in this being resolved. As such, this prevented Mr A from being able to mitigate any charges that would be accrued for any excess mileage from then on.

For instance if he was given a full redress package in February 2024, which allowed him to hand back the goods and make alternative arrangements, then these alternative arrangements would have allowed him the opportunity to avoid any further excess mileage charges Lex might have applied if the agreement continued.

While we can't say exactly when the car would have been collected and exactly what the mileage would have been at that time, I think the figure we have from February 2024, which is the only figure we have, is reasonable in the circumstances.

I don't dispute the excess mileage charges would, all things being equal, be valid. Or that they reflect Mr A's use of the car, however in the individual circumstances I think it's fair for these to be capped at the lower of the figure in February 2024 and the figure on collection for the reasons explained.

Fair use and the monthly payments

Lex disputed the refund of the unused portion of the initial payment being calculated from February 2024 because the car was still in use after that date. It disagreed in principle that this should be backdated. It's worth noting it was Lex that first offered to backdate the settlement to February 2024 – the notes it provided us say this was done because it was fair to Mr A in the circumstances.

But I don't think this is fair simply because Lex initially offered it. I think it's fair because Lex contributed to the delay in the settlement of the complaint and I think this limited the amount Mr A was able to recoup of his initial outlay. I suspect this is why Lex originally offered it. I have thought about Mr A's use of the car overall as part of what I've directed – and it's fair for his initial payment to be refunded in line with what I initially recommended.

It remains that Lex should refund 10% of Mr A's monthly payments from March 2023 onwards. The £481.80 already paid or offered by Lex for lost use would be part of this 10%.

The initial payment

Lex provided an invoice for the initial payment which shows this covered the first month's rental - and the remainder went towards bringing down each monthly payment. I'm satisfied the initial payment for the purposes of calculating the later refund should be the total amount Mr A paid at the outset minus the first monthly rental.

To summarise, Lex should keep 27% of Mr A's initial payment for the use he had for the first 13 months. It should refund in full 50% of the initial payment to reflect the 'unused' portion. Of the remaining 23%, which reflects the impaired use over 11 months up to the point of termination, Lex should refund 10% of that amount. In other words Lex should refund 52.3% of Mr A's initial payment.

Other issues

Mr A has expressed the difficulty caused by him having to source a replacement car. While I accept there will be a level of inconvenience arranging this, I don't think this is unreasonable. Although it was delayed and didn't go ahead, the potential return of the car has been on the cards since February 2024. Mr A has been on notice of this for some time now. If he hasn't already, he could have made preparations for this in order to mitigate the impact of any period without a car.

Similarly, even if it will take some time to source his first preference of replacement, I consider alternative arrangements can relatively easily be arranged to keep him mobile in the interim. Mr A has said the car being rejected in these circumstances isn't ideal, however the level of redress he's being awarded is on the basis of him handing back the car and is fair in the circumstances.

Lex highlighted the car has a personalised number plate, which may take time to remove before collection. Mr A needs to now arrange this promptly such that Lex can collect the car.

Mr A has disputed the service costs he's been charged. This type of cost seems to me to be the normal expense of someone using a car. I haven't seen anything to indicate Mr A had costs over and above what's to be expected and in those circumstances it's not clear exactly why those costs should be refunded.

I think it's fair for Lex to charge Mr A for any damage to the car that is unreasonably beyond what would be expected. However the car is now three years old and has had a great deal of work on it as a result of it not being of satisfactory quality, and so it should ensure any damage charges are fairly assessed on that basis.

I wasn't provided with any further information about any outstanding offers Lex had made to cover Mr A's costs. However if Mr A can provide Lex evidence of costs he's incurred, which Lex had previously agreed to cover, then these should be refunded too.

Putting things right

As confirmed in the provisional decision, there isn't an exact formula which automatically applies to all cases. It's necessary to also consider the individual facts. What I've directed is reasonable bearing in mind all the circumstances.

I've considered the previous offers that have been made, the delays to the termination after it was first offered in February 2024, the mileage Mr A has covered while he had the car – and the impact of the issues complained of on his use of the car.

In summary, Lex should:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr A
- Refund 52.3% of Mr A's initial payment (the total minus the first month's rental)
- Refund 10% of his monthly payments from March 2023 onwards
- Refund any evidenced costs already offered but not paid
- Pay 8% simple interest on the above refunds, calculated from the date of each payment until the date of settlement*
- Deduct an amount as set out above for any excess mileage

* If Lex considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr A's complaint against Lex Autolease Ltd.

It must now settle the complaint in line with what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 February 2025.

Scott Walker
Ombudsman