

The complaint

Mr W is unhappy that a car supplied to him under a hire agreement with Lex Autolease Ltd ("LAL") was of an unsatisfactory quality.

Mrs W brought the complaint on behalf of Mr W, so I'll also refer to her throughout my decision. When I refer to what LAL has said, it should also be taken to include things said on its behalf.

What happened

In June 2021, Mr W was supplied with a new car through a hire agreement with LAL. He paid an initial rental of £3,117.31 and the agreement was set to run for a minimum of 36 months. The initial rental included the first month's payment, and the rest was spread across the remainder of the term to reduce the monthly rental. There would be 35 rental payments of £1,039.10 per month, and the monthly rental would increase to £1,096.83 for any extension beyond the 36 months minimum term. The hire agreement didn't include servicing or maintenance.

The annual mileage allowance was 10,000 miles, totalling 30,000 for the contract mileage allowance. The extra mileage charge rate was 25.80 pence per mile.

The details of the complaint are well-known to both Mr W and LAL, so I see no benefit in repeating them here. Instead, I'll summarise what I think are the key issues.

Mrs W complained that the car was not of satisfactory quality because it broke down in dangerous situations while her young family was in the car on several occasions. She said the car was out of her possession for the majority of the time, so she thought LAL should refund some of the payments and pay compensation for placing her and her family in danger. In summary, Mrs W complained that:

- While the car was in for repair, hire cars provided were not suitable and service fell short of expected standards.
- LAL agreed to end the agreement and take the car back, but it continued to take payments.
- Only a small amount has been refunded for impaired usage.
- She has lost out on the opportunity to renew the agreement at half the monthly rental amount.
- She was declined funding for a new car.
- The mileage charge is excessive and doesn't account for her expectation of lower mileage in the final year.

LAL responded to Mrs W's complaints as she raised them, issuing five separate final responses. In those responses, LAL said it would:

- Refund 20% of the monthly payments for the impaired usage during the period 8 June to 11 November 2023.

- Credit the account with the excess mileage charge for 500 miles in recognition of the test mileage.
- Refund £409.94 which was the rental charge for 23 November to 5 December plus £5 interest.
- Refund a further £34.16 for another day's rental in November.
- Credit the remaining seven months' rental charges.
- Pay £50 compensation.
- Pay £290 for the trouble caused.

Unhappy with LAL's responses, Mrs W brought her complaint to this service.

Our investigator didn't think LAL had done enough to put matters right. He noted that LAL had accepted the car was not of satisfactory quality, yet it took further payment. He thought LAL should refund the full month's payment, amounting to £595.02 after taking into account the refunds already paid, along with interest. After LAL provided further evidence to show contact with Mrs W, our investigator didn't think it needed to make any amendments to the information it had sent to the credit reference agencies. And he didn't think LAL was responsible for Mr W or Mrs W not obtaining finance for another car.

Our investigator said there was no evidence that Mrs W would've renewed the agreement or that it would've been half the monthly rental if she had. Further, he didn't agree that the excess mileage charge was unfair because the car had already exceeded the full contract allowance. For the same reason, he didn't agree that LAL should refund any more for impaired usage or loss of benefit of paid-for extras, because it was clear the car had been used more than the national average.

Mrs W disagreed with our investigator's view. She said it was common practice to renew an agreement at half the original price and she asked that he contact LAL to confirm this. Further Mrs W said our investigator should contact the dealer to confirm that the car was faulty, and LAL to confirm that she was turned down for further finance. After issuing further views responding to Mrs W's comments, our investigator remained of the opinion that the complaint should be upheld as he'd set out. He thought that LAL should:

- Pay Mr W £595.02 which is the difference between the rental payment taken and the payments already made to Mr W.
- Pay 8% simple interest on this amount from the date of payment until the date of settlement.
- If it had not already done so, pay £340 compensation.

Because Mrs W didn't agree with the investigator, this matter has been passed to me to make a final decision.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mr W was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask LAL to put this right.

Mr W took out the hire agreement, so he is the eligible complainant in this matter. It appears that Mrs W was the primary user of the car. As she made the complaint to LAL and brought the complaint to this service on behalf of Mr W, I'll mainly refer to Mrs W. However, I will only consider the impact on Mr W of any inconvenience caused, and should compensation or refunds be warranted they will be payable directly to Mr W.

Undisputed Fault

At this point, it's not disputed there was a problem with the car. As such, I'm satisfied that I don't need to describe the faults or consider the merits of this issue within my decision. Instead, I'll focus on what I think LAL should do to put things right, including any compensation for the impact this matter had on Mr W.

Impaired Usage

Mrs W has been able to use the car while it was in her possession. And, while it was being repaired, she was also provided with a hire car to keep her mobile. Because of this, I think it's only fair that she pays for the usage.

However, given the issues with the car, I'm also satisfied that Mrs W's usage has been impaired. Because of this, I think it's fair that LAL refunds some of the payments Mr W made. LAL refunded 20% of the monthly payments for the periods during which the car was not available for Mrs W's use. Given that Mrs W had the use of the hire car, albeit not the same specification as Mr W's car, I think LAL's refund is reasonable. Had it not already refunded the payments, I would've likely required a smaller percentage refund. Therefore,

I'm satisfied that LAL's payment fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Unsuitable hire cars

I've noted that Mrs W's car was a seven-seater but she was provided with five-seater cars. She provided evidence that, on one occasion, she hired a car herself to accommodate a family holiday. I've noted that the car was to seat nine people which is more than her car would accommodate, so I can't agree that LAL had any liability for the cost.

I've also noted that Mrs W had additional equipment in her car which she said wasn't included in hire cars, and on one occasion the car was in disrepair. To maintain confidentiality, I won't specify what that equipment was. However, I think it's reasonable to conclude that it's equipment that wouldn't feature in a hire car as a matter of routine. I understand that Mrs W had specific needs for her family, but I can't reasonably hold LAL responsible for the hire cars provided not having that same equipment. The dealer provided the cars, and I haven't seen any evidence to suggest that they were unusable for the time required. Therefore, I don't think LAL needs to do anything in respect of this matter.

Payment refund

Mrs W was unhappy that LAL took further payment after it terminated the hire agreement at her request. LAL didn't refund the payment because repairs were needed.

Looking at the evidence, I think it's unreasonable that LAL took further payment when the car was never going to be returned to Mrs W after repairs. It had terminated the agreement after accepting that the car was of unsatisfactory quality, so payments should've stopped. To put this right, LAL should refund the payment taken after the agreement was terminated.

LAL already refunded part of the payment when it determined that Mrs W had experienced impaired usage. I've taken that into consideration when deciding the amount LAL should refund to Mr W.

Renewal

Mrs W said Mr W lost out on the opportunity to renew the agreement at half the cost. She said that was usual practice for agreements of this type.

The contract shows that once the agreement ended, if extended, it would be charged at £1,096.83 per month. Mrs W hasn't provided evidence to show that it would've been less than that. While I understand she wanted this service to find out directly from LAL whether the agreement would've been half price, I haven't considered it necessary. That's because, Mrs W didn't renew the agreement and I can't make an award for something that hasn't happened.

Declined funding

Mrs W said she and/or Mr W were declined funding for another car and they had to take out a high interest loan. Mrs W said LAL would confirm that.

Although Mrs W hasn't provided any evidence to support this element of her complaint, I don't doubt what she says. Credit agreements are subject to checks and LAL is entitled to reject an application based on the information available. Details of its checks are shown in the agreement under the heading "*How we use credit reference agencies*".

There's nothing in the evidence to show that LAL did anything wrong in relation to this hire agreement that caused the subsequent rejection.

Excess mileage

Mrs W is unhappy with the overall charges for excess mileage. She said LAL hasn't taken into consideration that she expected to do more miles in the first two years and that they would reduce in the final year. She also said testing at the dealership ran up more miles.

LAL applied a credit equivalent to the excess charge for 500 miles in recognition of the testing mileage. Mrs W provided a list of the miles for which she believed testing was responsible. I've considered the evidence and I'm satisfied that LAL's credit was reasonable because it's broadly in line with the additional miles Mrs W recollected.

In terms of the overall excess mileage, I'm satisfied that the invoice LAL supplied reflects the charges set out in the contract. The agreement was for a total of 30,000 miles, and equally apportioned over the three-year term. When LAL terminated the agreement, the car had done over 36,000 miles. LAL applied charges to reflect the expected mileage for the time Mr W had the car, and I think that's fair and reasonable based on the information set out in the contract. I can't reasonably say that LAL should make an allowance for the lower mileage Mrs W expected to do in the third year because there's no evidence that this was agreed or accounted for prior to taking out the hire agreement.

Credit file

LAL provided evidence to show that it contacted Mrs W and agreed a payment plan to settle the excess mileage invoice. As I've concluded that the invoice was issued fairly and in line with the agreement, I'm satisfied that the payment was due. LAL demonstrated multiple attempts to contact Mrs W about the payment, some successful, others not. But I'm satisfied that LAL communicated with Mrs W about the outstanding payment and it informed her that Mr W's credit file may be affected if he didn't make payment.

If LAL submits evidence to the credit reference agencies, it must be accurate. Therefore, I'm satisfied that LAL need not ask the credit reference agencies to remove any accurate information from Mr W's credit file in respect of this matter.

Distress and inconvenience

It's clear from Mrs W's description of the events surrounding the car faults and repairs, especially when her young family was in the car, that she experienced a great deal of distress and inconvenience. And she was further inconvenienced when provided with a hire car that didn't suit all of her needs. If the car had been of satisfactory quality, it's unlikely that Mrs W would've suffered this distress and inconvenience. While I can't make an award for Mrs W's inconvenience, I can consider compensation for Mr W for the distress and inconvenience he experienced indirectly as a result of the impact on his family.

Mrs W provided a copy of a medical letter confirming that Mr W's health was impacted. I've considered this evidence, along with Mrs W's testimony. While I don't doubt that Mr W was impacted by the events relating to the car, the letter refers to his health issues as a "routine" medical referral.

LAL offered £290 compensation and I understand it had already paid £50 compensation. Although it's agreed that the car was faulty, it's clear from the mileage and large gaps between repairs that Mrs W had significant use of it. Taking into consideration that hire cars

were provided, partial refunds paid for the period of repairs, and the medical evidence, I'm satisfied that LAL's total compensation of £340 is fair and reasonable in the circumstances.

Conclusion

Overall, the evidence persuades me that the car supplied was not of satisfactory quality and LAL made reasonable attempts to put matters right. However, I find that it unfairly took a further payment from Mr W after terminating the agreement. LAL calculated that £595.02 of the monthly rental is due to Mr W after it accounted for payments already made. As he did not have the benefit of that money, I think it's reasonable to require LAL to pay interest. I'm satisfied that LAL's offer of compensation was fair and reasonable in the circumstances and it should make payment to Mr W if it has not already done so.

My final decision

For the reasons explained, I uphold Mr W's complaint and Lex Autolease Ltd must:

- Pay Mr W £595.02 which is the difference between the rental payment taken and the payments LAL has already made to him.
- Pay 8% simple interest* on this amount from the date of payment until the date of settlement.
- If it has not already done so, pay £340 compensation.

*If Lex Autolease Ltd considers that tax should be deducted from the interest element of my award, it should provide Mr W with a certificate showing how much it has taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 February 2025.

Debra Vaughan
Ombudsman