DRN-5303823

The complaint

Mr S complains about a van supplied to him using a hire purchase agreement taken out with LeasePlan UK Limited ("LeasePlan"). Mr S also complains about the outstanding balance that LeasePlan believe is owed on the account.

What happened

In February 2019, Mr S acquired a used van using a hire purchase agreement with LeasePlan. The cash price of the van listed on the agreement was £20,567.90 and the term of the agreement was 48 months. A deposit of £6,377.15 was to be paid, and then an advance instalment of £3,000, followed by 47 monthly instalments of £203.50, with a final instalment of £8,410.50, which included an option to purchase fee, was to be paid under the agreement. The van was less than a year old and its sales invoice said it had been driven for 129 miles at the point of supply.

Mr S said he expected the van to be installed with a ply-lining of a required thickness, but he said it had been installed with a thinner lining over the existing hardboard panels, when these should have been removed first. Mr S said it was poorly installed, and as a result, he couldn't fit his existing rack systems from his old van into the acquired van. Mr S also said a heavy duty moulded plastic floor covering, securely fitted to the van, was removed and left leaning on its side, causing it to buckle.

Mr S said he attempted to reject the van shortly after acquiring it and it was left unused for months as LeasePlan refused to collect it. LeasePlan wanted a third-party to inspect the van, and if required, carry out a reinstallation of the ply-lining. Mr S didn't want a repair and he declined permission for his details to be passed on to a third-party and said the van could be inspected, but only if LeasePlan collected it and it was carried out on their premises.

Mr S said he incurred losses at this point, for things such as storage costs, and having to install signage back onto an older vehicle which he had removed it from. Mr S said he was intending to sell his older vehicle but could no longer do so as he needed it.

As LeasePlan initially refused Mr S's rejection, Mr S said he was only given the option of repair and felt he was forced to keep the acquired van. During this time Mr S said he was in contact with a senior member at LeasePlan, who he said acknowledged and accepted he had incurred losses, and told Mr S to submit these costs towards the end of the agreement, so they could be offset against the final instalment. The senior member has since left LeasePlan.

Mr S supplied our service with a copy of an email he received from the senior member he was in contact with at LeasePlan in August 2019. The copy provided is a printout of an email, which has then been digitally scanned. It is ineligible in places, but parts of it were legible. Mr S believed it showed what had been agreed with LeasePlan.

Mr S also supplied our service with an amended contract he sent LeasePlan, where he added his own terms. He also said he redacted his signature from the agreement he signed in February 2019.

As the agreement Mr S had signed in February 2019 was nearing its end, LeasePlan began to pursue Mr S for what they believed was an outstanding balance on the account, which totalled £8,744.83. This was made up of:

1. the monthly repayment of £203.50, for the period of 28 November 2022 to 27 December 2022 – which was the last of the 47 regular, monthly instalments.
2. the final instalment of £8,420.50, which included the option to purchase fee.
3. a remainder of a road fund license which LeasePlan believed was still due at £120.83.

Mr S disputed the outstanding balance owed, partly as he believed it should have been offset against losses incurred. And partly because he thought it was presented to him prematurely. Mr S also said he felt he was being harassed for payment to be made.

Mr S also said there was a lack of communication from LeasePlan when he requested a document reference number to tax the van once the agreement had ended, which he said meant the van couldn't be driven. The road tax was due to expire at the end of September 2023.

In November 2023, LeasePlan gave Mr S their final response to his complaint where they explained that they didn't uphold it. In summary, they explained that they didn't think they harassed Mr S when they contacted him on occasions for an update on paying the outstanding balance owed on the agreement, or when they contacted him to get an update on referring his complaint to our service. They also said they couldn't find any record or evidence of Mr S having an agreement in place to be reimbursed for costs incurred, so there wouldn't be a reduction on the outstanding balance owed. And amongst other things, LeasePlan also gave Mr S the document reference number to tax the van as he requested.

Unhappy with LeasePlan's response, Mr S referred his complaint to our service in December 2023.

Mr S confirmed the van was still in his possession. He also provided copies of invoices he sent to LeasePlan of losses he said he incurred. Some of the invoices were for things such as for storage costs which were invoiced from Mr S's company. Mr S wanted LeasePlan to pay the invoice amounts and to pay an appropriate amount for what he believed was stress and anxiety suffered over the last few years.

During our involvement, LeasePlan made an offer to help resolve this complaint due to the length of time that it had been ongoing. They offered to waive the last monthly repayment and the final instalment – if Mr S would voluntary surrender the van back to them (subject to the van being in a working condition and not damaged, other than minor wear and tear). LeasePlan say this would have meant Mr S would have had the van at no cost for more than a year.

LeasePlan also explained that any discussion it had about paying compensation to Mr S was discussed in the context of reimbursing monthly payments, if Mr S gave them the opportunity to have the van independently inspected when he wished to reject it in 2019, and it had found something wrong. As Mr S didn't allow LeasePlan to have the van inspected, no arrangement was agreed for reimbursements to be made. LeasePlan also explained that they would not look to pay the invoices they were sent by Mr S.

Our investigator communicated the offer to Mr S and he said he didn't accept it. Among other things, Mr S also explained the van had been involved in two accidents; in January 2022 and in April 2024.

As Mr S didn't accept the offer, our investigator continued with her investigation and upheld the complaint in part. She found that LeasePlan should pay Mr S £150 for the distress and inconvenience caused by the complaint. In summary, she found that:

1. the van was of satisfactory quality at the point of supply.
2. It wasn't unfair for LeasePlan to request the outstanding balance owed on the account, as Mr S chose to retain the van.
3. But LeasePlan should have done more when they communicated to Mr S about the document tax reference number.

LeasePlan accepted the investigator's findings and confirmed their offer they made to Mr S had been retracted.

Mr S didn't accept the investigator's findings and asked for an ombudsman to review the complaint. And so it has been passed to me to decide.

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'm upholding this complaint along similar lines to our investigator. I'll explain why below.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Mr S complains about a hire purchase agreement. I'm satisfied here that Mr S entered into the contract wholly or predominantly for business purposes. But, the amount of credit provided was under £25,000. So, I'm satisfied the agreement was regulated. Entering into regulated credit agreements such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr S's complaint about LeasePlan.

Mr S supplied our service with an amended contract he sent LeasePlan, where he added his own terms. He also said he redacted his signature from the agreement he signed in February 2019. I can't see that LeasePlan accepted these new terms at the time, and so haven't considered it any further. As such, any reference made to the agreement throughout this decision is in reference to the agreement signed by both parties in February 2019, which was the agreed contract when the vehicle was leased, and so is the applicable one.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations.

LeasePlan and our investigator all referenced the Consumer Rights Act 2015 ("CRA") in relation to this complaint. But, as I'm satisfied Mr S entered into the agreement wholly or predominantly for business purposes, he wasn't acting as a consumer. So, I'm satisfied the CRA doesn't apply here. But, the Sale of Goods Act 1979 ("SGA") is relevant to this complaint.

Similar to the CRA, the SGA implies a term into the contract that the van LeasePlan supplied to Mr S should have been of "*satisfactory quality*". The SGA explains satisfactory quality is what a reasonable person would expect, taking into account any relevant circumstances. I would consider relevant circumstances here to include things, amongst others, like the van's age, price, mileage and description. It's important to note that the SGA says whether goods are of satisfactory quality includes their general state and condition, alongside other things such as their fitness for purpose.

So, what I need to consider here is whether the van supplied to Mr S was of satisfactory quality or not. I'll take into account that the van was almost new, being less than a year old at the point of supply, with a recorded mileage on its sales invoice of 129 miles. I think a reasonable person would expect it to be in good condition, and unlikely to have any faults or issues. And I think they would expect trouble free motoring for a significant period.

Had the van developed a fault or was it fit for purpose?

Mr S has explained in detail, accompanied with photos, the issues he said he experienced due to the installation of the ply-lining to the van. In summary, the photos showed that the ply-lining had been installed over material that had already been supplied with the van. From email conversations I have seen between Mr S and LeasePlan, I'm aware LeasePlan had acknowledged there to be some issues and requested a third-party to inspect the van to consider, if required, the ply-lining could be reinstalled.

At the time, Mr S declined his details being passed to a third-party but did offer for LeasePlan to inspect the van if they also collected it.

I don't consider LeasePlan's request to have the van inspected by a third-party to be unreasonable here. I am not an expert mechanic or specialist of inspecting modifications carried out to the cargo area of vans. Nor do I think it would have been reasonable for LeasePlan to have been. So, I think it would have been useful at the time to have the van inspected and for comments about the standard of the installation to be provided by a specialist in this area. In the absence of this, I'm satisfied there is insufficient evidence to determine there was a fault with the van. And by the same logic, I'm satisfied there is insufficient evidence to determine the van wasn't fit for purpose. Without that evidence, it follows that I don't think the van was of unsatisfactory quality at the point of supply. And so, it follows that I think it was fair and reasonable for LeasePlan to decline Mr S's express to reject the van.

While I have made a finding that I don't think the van was of unsatisfactory quality at the point of supply, LeasePlan offered to repair the van. Mr S said he felt he had no option but to accept repairs to the van and to retain it. So, it is worth noting that even if there was a fault, from the remedies available to Mr S under the SGA, broadly, his rights have been met by having the van repaired.

Did LeasePlan act fairly in not reducing the outstanding balance that they believe is owed on the account?

In accepting to retain the van and accept repairs, Mr S also thought it was agreed with a LeasePlan senior member for costs incurred to be offset against his final payment, and for the term of the agreement to be extended.

Mr S supplied our service a copy of an email he received from the senior member he was in contact with at LeasePlan in August 2019. The copy provided is a printout of an email, which has then been digitally scanned. It is ineligible in places, but a part of what can be read, said:

"*… I agree you have some legitimate financial losses, and we will of course look at [ineligible]. I acknowledge we have already discussed this issue previously and I see from my email on May 31st that I [ineligible] you should be compensated for your losses. However, as advised, you will need to evidence losses and any compensation claims you submit in order to demonstrate that they have resulted from the inconvenience you have experienced as we will need to recover these from the broker.*

As explained any losses/compensation would only be applied at the end of the agreement and will be offset against your balloon payment…"

I accept that the comments above suggest that LeasePlan agree Mr S has some legitimate financial losses. Our service asked LeasePlan for their comments to the above email and they explained that any compensation that was being discussed at the time was in relation to reimbursing monthly payments *if* they found the van to be of unsatisfactory quality. But, as an inspection never took place they couldn't conclude the van was of unsatisfactory quality at the point of supply.

It's relevant to note that the above email extract doesn't specify what the losses are and it explains that these losses would need to be evidenced when a compensation claim is submitted.

I also don't think the email extract above is a guarantee that losses incurred would be offset against the final payment, but rather that it would be considered. My understanding is that since, LeasePlan has confirmed in their final response that they would not look to reduce any of the outstanding amount they believe is owed under the agreement. Considering I have concluded that based on the information currently available, the van supplied to Mr S was of satisfactory quality at the point of supply, and Mr S is still in possession of it, I don't think LeasePlan has acted unfairly in pursuing the outstanding balance they believe is owed on the account.

Did LeasePlan harass Mr S when they pursued him for the outstanding balance owed?

Mr S feels he was harassed by LeasePlan in making payment of the outstanding balance. Having considered the communication between both parties, I'm satisfied LeasePlan acted fairly in how they communicated with Mr S.

While I appreciate Mr S may not think so, I think on occasions LeasePlan did enough here. It is worth noting that the van is still in Mr S's possession and has been since the term of the agreement came to an end, over two years ago. During our involvement, LeasePlan made an offer to Mr S which was declined (and has since been retracted by LeasePlan). Mr S has continued to have use of the van, likely increasing the mileage covered in it, and decreasing its overall value. My understanding is that payment for the van to clear the arrears accrued still hasn't been made to LeasePlan. Considering the circumstances, I think LeasePlan has acted fairly here.

Communication regarding taxing the van

It is worth noting that when Mr S had requested the tax reference number, payment to clear the outstanding balance on the account hadn't been made. So, until the balance is cleared, the ownership of the van remains with LeasePlan, under the terms of the agreement. So, I don't think LeasePlan has acted unfairly in not initially providing the tax reference number to Mr S.

It is also worth noting that, while it is beneficial to have the document tax reference number to tax a vehicle, it isn't a requirement. So, I think Mr S could have mitigated his circumstances somewhat if he had contacted DVLA and to consider other ways to tax the van. If other options weren't available to him to tax the van, then he could have looked to rectify them as well.

Having said the above, I do accept that Mr S contacted LeasePlan on several occasions regarding taxing the van. And on several occasions, Mr S was ignored. While LeasePlan has told our service that they responded to Mr S in line with their complaint handling policy and provided the document reference number in their final response within eight weeks, I don't think LeasePlan had to wait for their final response to provide this. Had LeasePlan communicated with Mr S sooner, it might have meant Mr S could have resolved the issue much sooner as well.

Considering the above, LeasePlan should pay £150 to Mr S to reflect the distress and inconvenience caused by this complaint.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct LeasePlan UK Limited to put things right by paying Mr S £150 to reflect the distress and inconvenience caused by this complaint.

If LeasePlan has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 March 2025.

Ronesh Amin
Ombudsman