

The complaint

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

When I refer to what Mr S or Lex have said or done, it should also be taken to include things said or done on their behalf.

What happened

In September 2019, Mr S entered into a hire agreement with Lex for a brand-new car which was supplied to him in December 2019. The hiring period was 48 months, with an initial rental payment of around £1,007 followed by 47 monthly rental payments of £335.68.

Following supply, the car broke down on multiple occasions due to issues relating to the diesel particulate filter (DPF). The DPF was replaced under warranty in June 2020, and when the problem reoccurred, Mr S was told this was due to the way in which he was using the car. Mr S obtained a second opinion from a third-party diesel specialist who found the DPF wasn't regenerating due to a faulty sensor. Following this, the dealership agreed to replace the DPF again and reimbursed Mr S' costs for the third-party inspection.

However, the car continued to breakdown and from July 2023, Mr S says the car was continuously in and out of the garage for repairs, but the fault persisted.

In September 2023, Lex agreed the car wasn't fit for purpose and said Mr S could return it without penalty, excluding any damage or excess mileage costs. They offered him £300 compensation and said they'd cover the outstanding monthly cost once the car had been repaired. Mr S was asked to contact Lex to arrange early termination, at which point they would calculate any refund he may be due for loss of use. Lex repeated the same offer in January 2024, plus an additional £300 compensation.

Mr S explained the lease had already ended in December 2023, and he was unable to terminate it early in September as Lex wouldn't accept the car back until it had been repaired. Mr S said the car had been to the garage and they were unable to fix the fault. He complained that Lex continued to bill him for rental payments after they'd found the car to be not fit for purpose, which led to adverse information being reported on his credit file.

Lex said the terms of the agreement require the car to be driveable in order for them to collect it, so until the car had been repaired collection couldn't be arranged. They said Mr S was responsible for the rental payments until the car was returned, so they were unable to amend his credit file.

The car was eventually collected in March 2024, at which point the outstanding balance on the agreement was £3,003.45. This included outstanding arrears due to missed rental payments and excess mileage charges.

Our Investigator reviewed matters and didn't think Lex needed to do anymore to put things right for Mr S. They said the agreement had already ended and Mr S exceeded the

maximum mileage allowance, so it wouldn't be reasonable to expect Lex to refund any rentals for loss of use or alternative travel costs. As they found it reasonable for Lex to retain all payments due under the agreement, they also thought Lex had fairly reported the missed payments to Mr S' credit file. And the excess mileage had been charged correctly in line with the terms of the agreement.

Mr S didn't agree. And as no agreement was reached, the matter was passed to me to decide. I issued a provisional decision, setting out my intention to uphold this complaint. I said:

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a reasonable outcome is. 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.

Mr S 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 S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. Lex is the supplier of the car and therefore responsible for complaints about its 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. In this case those relevant circumstances include, but are not limited to, the age, mileage and cash price of the car at the point of supply.

In this instance, it's not disputed there was a problem with the DPF, nor that the car was of unsatisfactory quality. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision because both parties agree that the car was of unsatisfactory quality at the point of supply. Instead, I'll focus on what I think Lex should do to put things right.

I've considered what the Investigator has previously set out. However, I'm required to reach my own findings having reviewed the complaint independently. So, I've considered and set out what I consider to be fair redress due to Mr S.

Rejection

Outside of the first 30 days of the agreement (during which Mr S had a short-term right to rejection), the CRA says a consumer has a right to reject if the goods do not conform to contract after one repair or replacement. The CRA is clear that, if the single chance at repair fails, then the customer has the right of rejection. It also says where a consumer requires the trader to repair or replace the goods, this must be done within a reasonable time and without significant inconvenience.

Here, the dealership had several opportunities to repair the problem with the car over a three-year period. With this in mind, I find Mr S had fair grounds to seek rejection of the goods. Multiple repairs were attempted, and the car wasn't brought back to conformity within a reasonable amount of time.

Mr S' agreement ended in December 2023, and the car was returned in March 2024. However, Lex accepted the car wasn't fit for purpose in September 2023 and agreed Mr S could return it without penalty. Given the number of faults and repairs required on a brand-new car, it could be argued that Lex should've agreed to rejection much earlier. But I'm satisfied Lex should've allowed rejection of the car in August 2023 when Mr S reported ongoing issues.

When rejecting a car under a hire agreement, I'd expect a finance provider to end the agreement with no further rental payments due, pay a pro-rated refund of the deposit paid and arrange collection of the car at no cost to the consumer – regardless of the car remaining faulty. I therefore don't find it was reasonable to expect Mr S to arrange for the car to be repaired before Lex collected it and ended his agreement. Lex should therefore refund Mr S' monthly rentals from August 2023 onwards.

Mr S paid an initial rental payment which essentially reduced the cost of the remaining monthly rentals due over the remaining term of the agreement. As this has reduced the monthly rentals, I consider it unreasonable to direct Lex to refund the full amount. However, Lex should calculate a pro-rated refund assuming the initial payment amount was spread equally over the 48-month term of the agreement, refunding an amount equivalent to the remaining period of the rentals from August 2023.

Excess mileage

I understand Mr S doesn't think he should be liable for excess mileage charges, due to the car never being suitable for his intended use. This resulted in him taking the car for longer journeys than expected to maintain the DPF. However, I don't think it's unreasonable to expect a consumer to consider the suitability of a car they purchase. Mr S knew he would only need the car for short journeys and therefore could've reasonably researched the type of car that would be suitable for such use, which wouldn't have included a diesel car. And when Mr S became aware his annual mileage allowance wasn't sufficient to maintain the car he chose to hire, he could've contacted Lex to discuss the possibility of increasing his mileage allowance.

Ultimately, the agreement clearly sets out the contract mileage allowance, and the amount payable for any mileage that exceeds this amount. So, I'm satisfied it's reasonable for Lex to ask Mr S to pay for excess mileage here.

Credit file impact

Mr S has told this service that Lex has defaulted his agreement due to non-payment of the outstanding balance. It's important to note that Lex is able to report a default on an arrears balance, but not on any post-contract charges such as excess mileage. Had Lex ended the agreement in August 2023, as they should've, there would've been no arrears payable – only an excess mileage charge. Lex should therefore remove the default from Mr S' credit file – as well as any other adverse information relating to this agreement. The credit agreement should be marked as settled in full, or something similar, and should not show as voluntary termination.

Loss of use

Mr S has had fair usage of the car while it's been in his possession, so I think it's fair he pays for the use he's had. However, Mr S has told this service he was left without the car for a significant period of time when the DPF failed for a second time, due to being in dispute with the dealership regarding who was responsible for the cost of the required repairs.

Having considered this, I note Lex's contact records show Mr S notified them in January 2022 that the car needed a new DPF, but the dealership wouldn't repair it. He said he was being charged £25 a day for the courtesy car he'd been supplied but had been told this needed to be returned, leaving him without a car. The third-party inspection report was dated March 2022, and the repair history shows the DPF was replaced under warranty in April 2022. I'm therefore satisfied that between January and April 2022, Mr S was paying for goods he was unable to use. As the car was off the road due to it being of unsatisfactory quality when it was supplied, and as Lex failed to keep Mr S mobile, they should refund the three rental payments he paid during this period.

It's unclear if there were any other periods where Mr S was without use of a car. It seems likely he was provided with a courtesy car while the other repairs were carried out. However, if Mr S was charged for any of the courtesy cars provided, Lex should refund any costs incurred on receipt of evidence of the amounts paid.

Repair costs

It's unclear if Mr S incurred any costs for repairs, including the repairs attempted after August 2023 so Lex would agree to take the car back. If Mr S has incurred any costs for repairs, these should be refunded by Lex on receipt of invoices and proof of payment.

Interest

Interest should be added to each of the refunded amounts mentioned above, calculated at 8% simple per year, from the date of payment until the date of settlement.

Distress and Inconvenience

Lastly, I've considered the distress and inconvenience Mr S was caused by being supplied with a car that was of unsatisfactory quality. It's not disputed that the impact on him was significant. I've considered that he experienced multiple breakdowns in the car, had to take it for inspection and repairs several times and was left without a car for at least three months. I don't doubt the stress and anxiety he experienced regarding the reliability of the car or the impact this had on his day-to-day life over a significant period of time. That being said, having carefully considered the offer made by Lex, and the overall circumstances of this complaint, I'm satisfied £600 is reasonable – and within our award ranges for situations such as this.

Responses to my provisional decision

I invited both parties to respond with any further points or evidence they wanted me to consider before I issued my final decision on this complaint.

Mr S accepted my provisional decision and didn't offer any further comments or submissions for my consideration. Lex didn't agree. In summary, they said:

- Mr S was offered early termination in September 2023. Repairs were carried out and Mr S decided to continue using the car instead of contacting Lex to arrange collection.
- Mr S had fair usage of the car and if the excess mileage charges are valid, rental charges should also remain valid.
- Mr S didn't pay the excess mileage charges, so the default should remain on his credit file.
- Mr S was supplied with a courtesy car so they don't agree he should be refunded rentals for loss of use. However, they would agree to refund 20% of the rental costs

to compensate him for loss of enjoyment.

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 those set out in my provisional decision, for the same reasons. Lex hasn't disputed the car was of unsatisfactory quality in this case. What they disagree with is how things should be put right for Mr S – so this is what I've thought about.

Lex say they offered Mr S early termination in September 2023, but this isn't a remedy set out in the CRA where a car is found to be of unsatisfactory quality. For the reasons I've set out within my provisional decision, I'm satisfied Mr S had the right to reject the car – so Lex should've ended the agreement, arranged collection of the car and paid a pro-rated refund of the deposit. Where a car is rejected due to being of unsatisfactory quality, I'd also expect all adverse information relating to the agreement to be removed from a consumer's credit file.

Lex say Mr S had the opportunity to return the car in September 2023, but he continued to use it. However, the reason Mr S remained in possession of the car was because Lex told him he needed to get the car repaired before they would take it back. For the reasons I've explained, I don't agree this was reasonable. Lex should've arranged collection of the car in September 2023, regardless of it having ongoing faults.

Lex's internal call notes from November 2023 note Mr S told them he took the car to the garage for repairs following their response to his previous complaint. However, the day after collecting the car from the repairing garage, the fault reoccurred. So, I don't agree Mr S chose to continue using the car when he had the opportunity to return it. Lex made it clear they wouldn't take the car back while it remained faulty, and Mr S arranged repairs which failed.

Lex noted my provisional decision said it was likely Mr S would've been supplied with a courtesy car while his car underwent repairs. And in any event, the lease agreement doesn't include the provision of a replacement during periods of downtime. What this doesn't take into account is that Mr S was without the car due to it being of unsatisfactory quality, rather than general maintenance. As I've explained within my provisional decision, Lex's contact notes show Mr S notified them he needed to return his courtesy car in January 2022, so I'm satisfied he wasn't kept mobile from this point until his car was repaired in April 2022. During this time, Mr S was paying for goods he was unable to use. As the car was off the road due to it being of unsatisfactory quality, and Lex failed to keep him mobile with a courtesy car, I remain of the view Lex should refund the rental payments he made during this period.

Lex also maintains the default they've reported should remain on Mr S' credit file, but I disagree. Mr S didn't pay the outstanding balance due to the ongoing dispute, which in my view wasn't unreasonable in the circumstances of this complaint. And for the reasons I've set out above, Mr S' agreement should've ended in September 2023, before the charges were applied. As the goods should've been rejected due to being of unsatisfactory quality, all adverse information relating to the agreement should be removed from his credit file.

In summary, Lex supplied Mr S with a car that was of unsatisfactory quality due to the DPF fault and for the reasons I've explained, they didn't do enough to put things right for Mr S - they should now do so in accordance with what I've set out within my provisional decision.

Lex have confirmed the £600 compensation has already been paid to Mr S, so I won't be

asking them to pay any further compensation.

My final decision

For the reasons set out above, my final decision is that I uphold Mr S' complaint about Lex Autolease Ltd and direct them to:

- Refund the rental payments paid by Mr S from August 2023 onwards.
- Calculate a prorated refund of the advance rental payment, assuming the payment was spread equally over the duration of the hire agreement term, refunding an amount equal to the unused period from August 2023.
- Refund three monthly rentals paid between January and April 2022 to reflect loss of use.
- Refund any costs incurred by Mr S for courtesy cars, on receipt of evidence of the amounts paid.
- Refund any repair costs incurred by Mr S, on receipt of invoices and proof of payment.
- Pay 8% simple yearly interest on the refunded amounts from the date of payment until the date of settlement†.
- Remove any adverse information from Mr S' credit file.

†If Lex considers that tax should be deducted from the interest element of my award, they should provide Mr S with a certificate showing how much they have 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 S to accept or reject my decision before 20 January 2026.

Nicola Bastin
Ombudsman