DRN-6002865

The complaint

Mr P complains about a hire agreement he entered into with Lex Autolease Ltd ('Lex') (which was in this instance trading as Volvo Car Leasing).

What happened

Mr P entered into a hire agreement with Lex in April 2015. The hire commenced in late June 2015 with an initial term of four years, though that was extended by one year in January 2019. When the hire period came to an end Mr P kept the car on an informal extension. This meant he continued paying month by month, but he could return the car at any point. Mr P ended the agreement in late February 2022.

In March 2022, Mr P complained to Lex about the hire agreement. In summary, he said:

- Lex didn't carry out proportionate checks to assess his ability to make repayments before entering into the agreement
- The hire agreement didn't set out the interest rate charged on the monthly rentals, or any annual percentage rate (APR)
- Lex failed to explain what other options were available to him at the point of supply
- The hire agreement didn't mention commission paid to the dealership, or that this formed part of the monthly rentals
- Lex unfairly charged him for a full day's use on the day they collected the car, despite the car being collected in the morning
- Lex charged him for damage to the car, which in his view should be considered 'fair wear and tear'.

Lex didn't uphold Mr P's complaint. They said Mr P didn't pay the dealership (which I'll call 'E' going forward) for the work they carried out, and that E didn't provide advice to Mr P. In Lex's view it was reasonable for E to receive an incentive for their work. Lex pointed out that Mr P wasn't charged interest on the agreement. With regard to the invoices, Lex said the car had been assessed by a trained inspector who found that the damage was outside the British Vehicle Rental and Leasing (BVRLA)'s fair wear and tear guidance. And that the date of collection was chargeable under the terms of the agreement.

Mr P referred his complaint to our service, but Lex objected to our parts of our investigation. Specifically, they thought Mr P had brought his complaint about the affordability of the agreement and any commission that may have been paid too late. One of our investigators considered Lex's arguments but ultimately concluded Mr P complained in time and that we could investigate the complaint in its entirely. While Lex didn't agree with the investigator's view, they didn't request an Ombudsman's decision at this stage.

Our investigator considered the merits of Mr P's complaint. In his view Lex hadn't carried out proportionate checks before entering into the agreement. But he said there wasn't enough evidence to show Mr P couldn't afford the required monthly rental payments. The investigator explained that Lex didn't charge Mr P interest, which is why this wasn't included on the agreement. As Mr P was hiring the car there were no other options to discuss with

him at the point of supply – and in any event, Lex hadn't undertaken to give Mr P independent financial advice.

The investigator reviewed the invoices but ultimately thought that Lex was reasonably entitled to charge Mr P for his use of the car and the damage. Finally, he said Lex had a commission arrangement with the broker, but in Mr P's case Lex didn't pay commission to the broker for introducing Mr P.

Mr P didn't agree with the investigator's assessment. He said the person who inspected the car acted in Lex's interest and was therefore not independent. Mr P said the investigator confirmed that a commission arrangement was in place, which proved his allegation of undisclosed commission. He also said he didn't agree with the remainder of the investigator's assessment but didn't provide any more information as to why. As Mr P asked for a decision the complaint came to me.

Mr P has also complained about an earlier agreement with Lex. However, this decision only concerns the 2015 hire agreement. The earlier agreement is subject to another complaint at our service.

I issued a provisional decision on 20 November 2025. In that I said:

> *"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*
>
> *Mr P sent a substantial amount of information and arguments in support of his complaint, including in response to our investigator's assessments. I'm going to focus on what I think are the key issues and the crux of Mr P's complaint, so I've gone into less detail than he has. But I'd like to assure Mr P that I have read and considered everything carefully. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this.*
>
> *I should also say here that I'm aware that Mr P said he was going to provide further information. However, he didn't do so by the agreed deadline and so I've based my provisional decision on the information I have available to me. I'll also consider any additional information he supplies in response to this decision as long as he does so by 4 December 2025.*
>
> ***Our jurisdiction***
>
> *Before I'm able to determine Mr P's complaint, I must ensure that I have the power to do so. This is because we can't look at every complaint brought to our service. The rules for what complaints we can consider are set out in the Dispute Resolution section of the Financial Conduct Authority's Handbook ("DISP"). Amongst other things, a complainant – such as Mr P here – must have complained in time. The time limits that I must apply are set out in DISP 2.8.2 R.*
>
> *DISP 2.8.2R says that unless a business consents, or there are exceptional circumstances, I can't consider a complaint if it's been brought more than six years after the date of the event complained about, or if later, more than three years since the complainant became aware, or ought reasonably to have been aware of cause for complaint.*

I've broken down the complaint Mr P has asked us to consider into seven complaint points which can effective be grouped into pre-contractual matters (which cover points 1 to 4) and then post contractual matters (which cover points 5 to 7):

1. *Affordability of the agreement*
2. *The omission of the APR on the hire agreement*
3. *Lex not discussing other finance options with Mr P*
4. *The commission arrangement and disclosure thereof*
5. *The excess rental invoice*
6. *The damages invoices*
7. *The default Lex registered on Mr P's credit file*

Here, Lex said Mr P's complaint about the pre-contractual matters were made too late. Our investigator set out why he thought Mr P had complied with the time limits set out in DISP 2.8.2R. Lex 'agreed to disagree' and asked the investigator to give his view on the complaint. But importantly, Lex didn't give consent as set out in DISP 2.8.2R(5), and this means I'm required to consider if we can consider Mr P's complaint in its entirety.

There's no dispute that the complaint regarding the post-contractual matters was made within the time limits set out in DISP 2.8.2R so I won't comment on those matters. However, the complaint about the pre-contractual matters all relate to events that happened in or around the time Mr P entered into his hire agreement in April 2015. Mr P first complained about those matters in March 2022, so more than six years after the events he's complained about. It follows that Mr P's complaint about Lex's pre-contractual information and actions was made outside the six-year part of the time limit rules.

I've gone on to consider if the complaint was made within three years of when Mr P ought to reasonably have become aware he had cause for complaint – as this may give him additional time to complain after the six-year part has expired. Having considered the available evidence, I'm minded to say we can't consider Mr P's complaint about points 1 to 3 (affordability, APR, options), but we can consider his complaint regarding point 4 (commission). I'll explain why.

There are effectively two parts to the three-year part of the time limit in DISP. There's a subjective part, which relates to Mr P himself - i.e., did he realise he had cause for complaint. And there's also an objective part, which looks at whether a reasonable person in Mr P's circumstances ought reasonably to have known they had cause for complaint.

<u>Affordability of the agreement</u>

Mr P complains that Lex didn't undertake checks before agreeing to enter into the agreement with him, and this resulted in him struggling financially throughout the hire period. He explained it wasn't until the end of the hire period when he was considering his options that he became aware he had cause for complaint. He referred to media coverage about similar complaints. Lex on the other hand said Mr P ought to have been aware there might be a problem as early as March 2015, when he first applied for the hire agreement. This is because they declined his initial application. In their view this would have made put Mr P on notice that they were carrying out checks as part of the application process.

I've carefully considered what Mr P and Lex have said. For me to conclude that a consumer had (or ought to have reasonably had) cause for complaint, I must be satisfied that the consumer knew (or ought reasonably to have known):

- *There was a problem;*
- *That the problem meant they have suffered or may suffer a loss;*
- *That another party's actions (or lack thereof) may have caused that loss; and*
- *The other party was the respondent business – in this case, Lex.*

Here, Mr P said he struggled to make his payments throughout the term of the agreement, and he was unable to afford even basic items as a result. Payments commenced in or around July 2015. Keeping in mind what Mr P said about the impact the rental payments were having on his overall financial situation, I'm inclined to say Mr P ought to have been aware the rentals were unaffordable not long after they commenced. And I think it's fair to say Mr P would have also known that this caused him a loss, because he has said he couldn't afford to pay for other items.

That means the first two parts of the test are met. And it seems to me that whether Mr P ought reasonably to have been aware of his cause for complaint turns on whether he ought reasonably to have realised that someone else might have had at least some responsibility for this and that that someone else might have been Lex.

I've carefully thought about whether Mr P ought reasonably to have been aware of this and if so, when. In considering this matter, I've noted that the information provided shows that Lex initially declined Mr P's application for a hire agreement, in 2015 due to information that it saw on his credit file. Mr P complained about Lex's decision to decline his application at that point. Lex have sent us emails pertaining to that complaint. In an email on 18 March 2015, Mr P said:

> *Again its important to now respectfully advise you that I am somewhat of a credit expert for the company that I'm the MD off, having conducted numerous courses with both Experian and Equifax on underwriting for my company so I know a vast amount about the information supplied to all 3 credit agencies and the legal responsibilities, (which are very limited), of all lenders as detailed by the FCA - Financial Conduct Authority and regulated by The Lending Code and The Finance And Leasing Association, in terms of both conforming to the regulations and being seen as a responsible lender.*

So, by his own admission, Mr P was aware of the requirements on firms in relation to responsible lending. Therefore, I think he ought reasonably to have questioned why he ended up with an agreement which had monthly payments he couldn't afford, in circumstances where Lex had responsible lending obligations and it had even decided it wasn't prepared to enter into an agreement with him. I'm therefore satisfied that this means he needed to make his affordability complaint within three years of realising there may be a problem – i.e. three years of when, as he's said, he struggled to make his payments.

I appreciate Mr P said he only actually became aware he had cause for complaint in March 2022 when he saw media coverage. But I think he ought reasonably to have realised that he had cause for complaint by late 2015 at the latest. I say this because at that point
Mr P had been paying the monthly rentals for a few months. He said those monthly rentals caused him financial difficulties throughout the entire rental period.

Based on what Mr P said, and bearing in mind what he knew about the need for Lex to carry out checks, I think he ought reasonably to have been aware he had cause for complaint by late 2015. It follows that he needed to bring his complaint to Lex within three years (by late 2018). As he didn't complain until March 2022, I'm minded to say that Mr P has referred the affordability aspect of his complaint too late.

Omission of APR and alternative options not being discussed

I've looked at the hire agreement Mr P signed in April 2015. It clearly sets out the monthly rental cost in a payment schedule. It also referred to the clauses within the terms and conditions which dealt with additional charges (e.g. in relation to excess mileage). If Mr P had any questions about the monthly rentals, or if he expected to pay interest, he ought to have raised his concerns within three years of signing the agreement – by April 2018 at the latest.

Looking at Mr P's March 2015 complaint email, I'm satisfied he understood he was hiring a car. While I haven't seen anything to suggest that he wanted to buy a car rather than hire it, if this was the case I think it would have been clear in March 2015 that the only option he was presented with was in relation to hiring a car. Simply put, if that didn't meet his requirements, I'd have expected Mr P to have raised the lack of information about a possible purchase within three years of that point – so by March 2018 at the latest. As set out above, his complaint wasn't until March 2022, so the two complaint points above have been brought too late.

In summary, I currently intend to say that Mr P has complained about points 1 to 3 too late. DISP 2.8.2R(3) says the time limit can be waived if I consider the delay in Mr P referring the complaint to our service to have been caused by exceptional circumstances. DISP 2.8.4G says an example of exceptional circumstances might be where the complainant has been or is incapacitated. Mr P hasn't made us aware of any exceptional circumstances. I'm also mindful here that Mr P was able to contact Lex before March 2022 – for example, he got in touch with them in 2020 during the Covid-19 pandemic. I'm therefore satisfied that exceptional circumstances don't apply here.

For completeness, I've thought about whether considering Mr P's complaint more broadly as a complaint about an unfair relationship would mean we could consider his complaint. Having done so, I don't think we can.

In the context of this complaint, the law relating to unfair relationships is set out in Section 140A of the Consumer Credit Act 1974 (Section 140A). It says a Court may make an order under Section 140A if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and Section 140A defines the creditor as "the person to whom his rights and duties under the agreement have passed by assignment or operation of law."

This is a hire agreement, with Mr P the hirer and Lex the supplier of the car. Lex doesn't meet the definition of a creditor as set out above. For that reason, a claim about an unfair relationship can't be brought by Mr P.

Commission

I appreciate that Lex said that it 'agreed to disagree' with the investigator's conclusions on why Mr P's complaint about commission was made in time. For the sake of completeness, I would add that I've not seen anything to indicate that Mr P ought to have been aware he had cause to complain about commission, more than

three years before he complained. As this is the case, I'm satisfied that Mr P's complaint about point 4 was made in time.

Did Lex act fairly and reasonably towards Mr P in terms of actions in relation to points 4 to 7?

I've set out my reasons why I can consider Mr P's complaint points 4 to 7 above. I'll now go on to review each point in turn.

Commission arrangement and disclosure thereof

Lex have explained that they paid no commission to E for introducing Mr P's business. The arrangements Lex had with E did allow for the possibility of E being paid commission. However, for whatever reason, E chose not to receive any commission in this instance.

In Mr P's view the existence of a commission arrangement proves that undisclosed commission existed, and it's irrelevant if commission was claimed. However, my role is to consider whether Mr P did lose out as a result of Lex's actions, rather than investigate whether there was the potential for him to lose out. In this case, the information I've been provided with clearly indicates that E (the introducer) elected to receive 0% commission, meaning no payment was made to them for bringing about Mr P's hire agreement. I can, to some extent, understand why Mr P feels sceptical about Lex not paying commission. This is because in their final response to Mr P Lex said it was reasonable for E to be paid an incentive for their work.

In my view, it would have been helpful if Lex had been clearer about their position from the outset. Nonetheless, Lex have provided screen shots from their internal system which clearly shows no commission was paid. I have no reason to doubt the authenticity of the screen shots provided, or the assertion that Lex paid no commission to Mr P's broker for bringing about the agreement.

Mr P questioned why no commission was claimed and what Lex did to remind the broker that they could claim it. However, I'm satisfied that it is more likely than not commission wasn't paid as a result of Mr P's agreement. So irrespective of the reasons why, Lex not paying commission means that Mr E did not lose out because of any arrangement and I'm not upholding this aspect of the complaint.

The excess rental invoice

After Mr P terminated the agreement Lex sent him a pro-rata invoice for the period starting with 25 February 2022 (the day after the agreement ended) and ending with 9 March 2022 (the date of collection). Mr P says Lex unfairly charged a day's rental for 9 March 2022, even though the car was collected in the morning. He says he didn't have a full day's use of the car on that day and thus shouldn't be charged for it.

My starting point here is to consider the terms of the agreement Mr P signed. Section 17 states:

> *If the Vehicle is not returned to us by the date of termination or the date of expiry of the Agreement we reserve the right to charge for its continuing use. The charge will be equal to the monthly rental although you will be liable to pay for each day of continuing use.*

Although I appreciate Mr P didn't have a full day's use of the car on the date it was collected, I think the terms Mr P agreed to be bound by reasonably entitled Lex to charge him for that day. For that reason, I'm not upholding this part of Mr P's complaint. In any event, Lex have told us they wrote off the debt in relation to the outstanding invoices in November 2022. In other words, they're no longer seeking repayment from Mr P.

The damages invoice

Mr P disputed the damages invoice Lex sent him following an inspection of the car on the day of collection. In his view, any damage on the car should be considered fair wear and tear, given that he had use for the car for around seven years.

I've looked at the terms Mr P agreed to when entering into the agreement. These say, in section 19:

> *(a) On the termination or expiry of this Agreement you will return the Vehicle in good condition (fair wear and tear excepted) […]*
> *(b) The cost of repairs or replacement where the Vehicle is not returned in good condition and complete shall be borne by you.*

So, I'm satisfied that Mr P agreed to keep the car in good repair and to be held responsible for any damage outside of fair wear and tear. I've also seen a sample of the email Mr P would have been sent to arrange collection of the car. This explains that any damage would be assessed using BVRLA guidelines.

What I need to consider here is whether the charges applied by Lex are fair and reasonable. In doing so I've referred to the BVLRA guidance as these are accepted as an industry standard in determining whether any damage goes beyond what is reasonably considered to be fair wear and tear. Lex said there were four areas of damage:

- *Front bumper – scratched right corner - £77*
- *Rear bumper – paint chips - £125*
- *Door (RHF) – dented - £26*
- *Roof – paint chips - £22*

Based on what I've seen Mr P doesn't dispute that damage to the car occurred while it was in his custody. But he says the damage should be considered fair wear and tear – in other words, he shouldn't have to pay for it. I've looked at the BVRLA guidance alongside photos and video footage of the damage.

In relation to the front bumper scratch, the BVRLA guidance says: "Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out".

The photo of the affected area shows two scratches. The first appears to be around 35mm long and I can see both primer and metal showing through the scratch. There's a second scratch visible, which looks to be around 10-12mm long. Lex charged for one scratch, and I think that was fair.

In relation to the rear bumper paint chips, the BVRLA guidance says: "Chips of 3mm or less in diameter are acceptable provided they are not rusted. A maximum of four

chips in any panel, six chips per door edge and eight chips on any forward-facing panel is permitted".

I've looked at the photograph showing the rear bumper. I can see at least 20 individual chips of varying sizes, 7 of which appear to be larger than 3mm. This is in excess of what is set out in the above guidance, and I therefore find Lex has fairly applied the charges in respect of this damage.

In relation to the door dent, the BVRLA guidance says: "Dents of 15mm or less are acceptable provided there are no more than two per panel and the paint surface isn't broken".

The photographic evidence here shows a dent of around 17mm, so it exceeds the 15mm allowance. For that reason, I'm satisfied it was fair and reasonable for Lex to apply the charge in relation to the dent.

Finally, in relation to the roof paint chips, the BVRLA guidance says: "Chips of 3mm or less in diameter are acceptable provided they are not rusted".

I've only seen one photograph of the roof, showing the affected area. The photo shows a chip of around 3mm which is clearly rusted. As this falls outside what the BVRLA guidance considers to be fair wear and tear, I'm satisfied Lex fairly applied the charge in relation to the paint chip.

In summary, I've concluded that the charges Lex asked Mr P to pay were applied fairly and in line with relevant industry guidance. I've considered what Mr P said about the mileage of the car on collection and whether this means it wouldn't be fair for Lex to ask Mr P to pay for any damage to the car.

Briefly, Mr P said he completed less miles during the rental period than the agreement provided for. But the terms and conditions of Mr P's agreement do not entitle him to any refund (partial or otherwise) of monthly payments for completing less miles that he anticipated at the outset, or any credit for this that can be offset against any other legitimately charges incurred at the end of the agreement. So, I'm satisfied that Lex was (and still remains) entitled to the damage charges that it sought from Mr P.

<u>The default Lex registered on Mr P's credit file</u>

Mr P's complaint here is that Lex registered a default for the contested damages invoice and three outstanding monthly rentals. The outstanding rentals resulted from a payment holiday Mr P agreed with Lex in April 2020, at the start of the Covid-19 pandemic. Mr P said the government issued guidance that late payments must not have an adverse effect on an individual's credit file. He added that he told Lex he was contesting all charges and would use his right of set off any compensation as a result of his complaint.

To start with, I should say here that it doesn't appear that Mr P has raised this with Lex as part of his initial complaint. However, given the direct link to the disputed invoices Lex have agreed that we can consider this point. Having considered everything, I don't think Lex acted unfairly by registering a default.

Lex informed Mr P in July 2022 that they had registered a default on his credit file in respect of an outstanding balance of £1,173.90. I've seen a breakdown of this

amount, and I'm satisfied that this consists of the excess rental invoice, the damages invoice and three invoices for monthly rentals in April, May and June 2020.

I've explained above why I think the excess rental and damages invoices are fair. And Mr P appears to accept he had a three-month payment holiday in 2020. The payment holiday effectively deferred payment until the end of the hiring period. So, the three rentals became due when Mr P ended his agreement in February 2022. I haven't seen anything to suggest that Mr P has made any of the payments, or that he disputed the validity of the invoice.

Mr P's position appears to be that he was looking to offset the outstanding deferred rental invoices against the compensation he was expecting from his complaints. But I think that Lex's complaint responses make it sufficiently clear that they hadn't upheld his complaints and were not offering compensation. Their letter dated 11 May 2022 explained that the collection process would continue. When Mr P didn't settle the outstanding balance Lex stopped all collection activities and recorded a default. I don't think this was unreasonable as Lex had given Mr P the opportunity to pay the debt and he did not do so.

While I appreciate Mr P feels strongly about the validity of the invoices, I'm satisfied Lex made their position clear – including that they wouldn't halt collection proceedings. Mr P could have paid the invoices pending the outcome of his complaint to our service. This is because there was the possibility that Mr P's complaint might not be upheld and therefore he might not be entitled to any compensation.

Finally, Mr P said the government issued guidance in respect of Covid-19 payment holidays, which said his credit file shouldn't be adversely affected. I haven't seen anything to suggest that Lex reported adverse information on Mr P's credit file while Mr P took the payment holiday. Instead, it appears the adverse information Mr P now refers to is the default.

As explained above, the payment holiday didn't mean that Mr P didn't have to pay for having the car for these months, or that Lex couldn't default the agreement for subsequent arrears. The default was registered only after Mr P failed to make the deferred payments following the end of the payment holiday. And, in any event, the doesn't just relate to the payments in the period of the payment break, it also in part relates to invoices Mr P didn't pay, but which, for the reasons I've explained, I'm satisfied that he was responsible for.

Conclusion

Having carefully considered all the information provided by both parties, I've provisionally decided that I can't consider Mr P's complaints regarding the affordability of the rentals, the APR being excluded from the agreement and the lack of options being discussed at the point of supply, as Mr P complained too late.

While I can consider Mr P's commission complaint, I don't think Mr P has been treated unfairly here as Lex didn't pay commission to E for introducing Mr P. I'm satisfied that Lex acted fairly and reasonably towards Mr P in levying the excess rental and damage charges.

Finally, as Mr P didn't settle the invoices for these additional charges and the payments due as a result of the payment holiday when they became due, I'm

satisfied that if wasn't unfair or unreasonable for Lex to default this agreement and report that it had done so to credit reference agencies.

Lex accepted my provisional decision. Mr P didn't reply.

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.

Neither party made any additional comments or provided new evidence for me to consider following my provisional decision. Having reviewed everything that's been submitted previously, I remain satisfied that we can't consider Mr P's complaint about the affordability of the agreement, the omission of the APR on the hire agreement and Lex not discussing other finance options with Mr P.

And for the reasons set out in detail in the provisional decision, I'm not upholding Mr P's complaint about the commission arrangement, the excess rental invoice, the damages invoices and the default.

My final decision

Overall and having considered everything, I can't consider parts of Mr P's complaint and I don't uphold the remainder of his complaint about Lex Autolease Ltd trading as Volvo Car Leasing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 January 2026.

Anja Gill
Ombudsman