DRN-4235642

## The complaint

Mr D complains Lex Autolease Ltd (Lex) have unfairly defaulted him and reported adverse information to the credit reference agencies (CRAs). He's also unhappy about the level of service he's received.

## What happened

In February 2015, Mr D entered into a 48 month hire agreement for a new car. In February 2019, he entered into an informal extension of the agreement so he could continue to use the car. In March 2020, the agreement came to an end.

Following the return of the car, Lex said he owed around £4,800 in charges, broken down as follows:

- Excess mileage £3,701
- Damage to the car £615
- Excess rental £556

This outstanding balance went unpaid for quite some time despite Lex's correspondence to Mr D saying he needed to pay them. As the charges weren't paid, Lex later defaulted the account in September 2020.
In September 2022, Mr D complained about the above and a number of other issues such as:

- His credit file had been impacted by information reported by Lex and it should be removed;
- He disputes the above charges and he believes he should be able to pursue this via legal channels;
- The car's sunroof and passenger door didn't work;
- The excess milage was covered outside the formal agreement;
- When the agreement came to an end and the charges were applied, he was vulnerable.

Lex said they were entitled to apply the above charges and they were calculated correctly. However they said they failed to follow their internal process about the number of correspondence to be sent about the balance owed. Because of that, they said they would be willing to remove the adverse information from Mr D's credit file upon him paying the charges. They also paid £75 compensation for the inconvenience caused. Lex later sent further correspondence which conflicted this – stating they had indeed followed their correct internal process.
Unhappy with their response and the conflicting outcomes, he referred it to our service. Our investigator recommended the complaint wasn't upheld. He concluded based on the terms of the agreement, Lex were allowed to apply these charges and he found they had been calculated correctly. He also said Lex had sent numerous correspondence to Mr D about the balance owed but as the sums weren't received, Lex did nothing wrong by reporting adverse information to the CRAs and defaulting the account. Mr D disagreed.

As an agreement couldn't be reached, the complaint has been referred 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've decided not to uphold Mr D's complaint. I will explain why.

I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. No discourtesy is intended by this. I also note Mr D has raised a number of complaint points. I can reassure both parties I've thoroughly reviewed everything that has been submitted but in this decision I won't address everything. I will only comment on the issues that I consider to be key in reaching a fair outcome.

*The charges*

Mr D disputes the above mentioned charges. As a starting point, I've referred to the terms of the agreement subject to this complaint. I won't repeat them again as the investigator has already set them out in his opinion. However in summary it says Lex are entitled to charge excess mileage, damage to the car and continued use of the car up to the point it is returned and the agreement comes to an end. So I disagree with Mr D's comments that the above charges are outside of the agreement and it's a legal matter rather than one related to the credit. I find these charges form a part of the hire agreement that Mr D signed and agreed to in February 2015.

*Excess mileage* – Mr D had a mileage allowance of 24,000 miles for the duration of the initial 48 month agreement. It said if he exceeds that amount he would be charged 20.1 pence per mile. In this case, Mr D had use of the car beyond the 48 month duration, he had it for around a further 12 months and the same mileage allowance applied- that is 6,000 per year (total of around 30,000 miles). So when determining mileage at the end of the agreement, I would expect Lex to take that into account and based on the evidence I've seen, I'm satisfied they've done so. When the car was returned, it had travelled around 45,826 miles which exceeded the allowance by over 15,300 miles therefore the excess mileage charge applied. Based on the figures of the invoice, I'm satisfied Lex calculated this charge correctly and they are entitled to say Mr D owes this amount to them under the agreement.

*Damage to the car* – the terms of the agreement outline when the car is returned it will be inspected and any damage found beyond fair wear and tear, will be charged to cover the cost of the repair/replacement. When determining what is fair wear and tear, Lex has referred to the British Vehicle Rental and Leasing Association (BVLRA) guidance. This is industry wide guidance that applies for when new cars are returned which is the case here so I consider it fair for Lex to rely on it.

When looking at the pictures and videos of the car taken when the car was returned, I've referred to the BVLRA's guidelines. I won't repeat each one in full as the investigator has already done so. But having done so, I'm satisfied the damage identified went above what the BVLRA would consider fair wear and tear therefore I find Lex were entitled to charge for this. Given the car was in Mr D's possession for around five years, I find it's most likely the damage was caused by him and not caused by a third party when the car was collected.

*Excess rental* – Mr D entered into an informal rental extension between February 2019 and March 2020. From my understanding the agreement was he would continue to pay the same monthly payments of around £706 which Mr D went on to do. However based on when his last payment was made to Lex and when the car was given back, there was a period of time

that went unpaid. As Mr D was in possession of the car and had use of it, I find Lex were entitled to say he needed to pay for that time period.

From my understanding, Mr D wishes to make a reduced offer to settle the above charges. However I must stress Lex aren't obliged to consider nor accept a reduced amount to settle the agreement in full.

Taking everything into account, based on the terms of the agreement, I'm satisfied Lex were entitled to apply the above charges and they did so fairly and reasonably. So I can't say they did anything wrong.

*The default and the impact to the credit file*

Lex has provided copies of the three invoices sent to Mr D in relation to the charges. They reiterated this was the amount he owed to them following the end of the agreement and they asked him to pay it.

As they failed to receive these sums, they wrote to him on two separate occasions in March and April 2020. Having read these letters, I find it was made clear by Lex to Mr D that there was an outstanding balance and payment was required immediately. It was evident Mr D had to take action. I note the letter sent in March 2020 also says:

*"Our records show that your account is in arrears. To assist you we enclose a statement of the account. Could you please make payment of the arrears within 10 days from the date of this letter. We may report this as a late payment to a credit reference agency. This may affect your ability to obtain or extend credit facilities from other finance companies. If you need any help or cannot make full payment of the arrears and want to discuss an alternative solution, please telephone quoting your fleet number and we will try to help you".*

Based on this, I can't agree with Mr D's comments that Lex failed to let him know about any potential impact on his credit file should he not take action. I'm satisfied they did.

I know Mr D vehemently argues he never received the correspondence about the invoices or the outstanding balance owed. As already mentioned, Lex have provided copies of the same and I can see they were all addressed to Mr D at his postal address. I note it's the same address our service holds for him. Mr D questions whether the correspondence was indeed sent by Lex but I have no evidence to suggest they weren't.

I note in Mr D's submissions that at the time the invoices were sent he says he wasn't staying at his address due to the Covid-19 pandemic. While I accept that to be the case, it would've been his responsibility to let Lex know his up to date contact details. There is no indication Mr D told Lex he had moved or wasn't staying at his address so I can't reasonably say they did anything wrong by sending the correspondence to the address they held for him. They were not required to contact Mr D by other channels such as phone or email, it was reasonable for them to send it by post.

Overall, I'm satisfied Lex acted fairly and reasonably in making Mr D aware that there was an outstanding balance for him to pay and should he not take the required action, further steps would be taken.

There is insufficient evidence Mr D paid the sums owed or he contacted Lex to discuss it. Therefore I find they acted fairly in reporting adverse information to the CRAs. Lex has an obligation to report fair and accurate information to the CRAs and based on no payment being received from Mr D, I find this was a fair reflection of how the account was being managed at the time.

After months of not receiving the money or any contact from Mr D, Lex decided to default the account and given the circumstances, I find it was fair for them to do so. Therefore I won't be asking them to remove it.

*Other*

I've thought about Mr D's other complaint points regarding the service he received from Lex when he complained to them and the conflicting complaint outcomes he received. They've paid £75 compensation and I consider this fair based on what's happened.

Additionally, given the conflicting complaint outcomes, Lex has agreed to remove the adverse information from Mr D's credit file once he's paid the outstanding amount owed. As Lex aren't obliged to do so (for the reasons outlined above), I can't say they are acting unreasonably. I won't be asking Lex to do anything further to resolve this complaint.

I appreciate Mr D will be disappointed by my outcome. I recognise his strength of feeling about the situation and his wish to pursue matters via a legal route. As we've already explained we are an alternative to the courts so should he not accept this decision, he is free to seek other alternative dispute resolution.

**My final decision**

For the reasons set out above, I've decided not to uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 December 2023.

Simona Reese
**Ombudsman**