

## The complaint

Mr B is unhappy that a car supplied to him under a hire agreement with Lex Autolease Ltd trading as Land Rover Contract Hire was of an unsatisfactory quality.

## What happened

In November 2021, Mr B was supplied with a new car through a hire agreement with Lex. He paid an initial rental of £5,912.78 and the agreement was for 48 months; with 47 monthly hire rentals of £614.76 and 47 monthly service rental payments of £42.22.

Mr B complained that the car had broken down several times while it was in his possession and, in February 2023, he raised a complaint with Lex. They upheld his complaint as there had been multiple issues with the car. And they offered him £832.27 compensation.

Mr B wasn't happy with Lex's offer, and he brought his complaint to the Financial Ombudsman Service for investigation. While the matter was being investigated, Lex increased their offer of compensation, and they said Mr B would be able to terminate the agreement early, with no termination costs to pay.

Our investigator said there were faults with the car that meant it wasn't sufficiently durable. Which made it of an unsatisfactory quality when it was supplied. However, she said that the faults had now been fixed, and there was no evidence they'd reoccurred. And, in these circumstances, we wouldn't usually say the car could be returned and the agreement ended.

Because of this, the investigator thought that Lex's offer was reasonable in the circumstances, and she didn't think they needed to do anything more.

Mr B didn't think the investigator had fully considered he'd had issues with the car for around 18-months. And he explained how this had affected him. He also explained how this had affected his wife, and she was reluctant to drive the car due to warning lights, and this meant he *"had to make major changes to my daily life"* as a result. And he needed to buy a second car because of this. So, while he was happy to return the car, he didn't think the compensation offered was sufficient for all the inconvenience and stress caused to both himself and his wife.

Because Mr B didn't agree, 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.

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 B was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Lex are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Lex can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B 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 Lex to put this right.

In this instance, it's not disputed there were faults with the car, nor that these made the car of an unsatisfactory quality when it was supplied to Mr B, due to the lack of reasonable durability. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. However, I will address the impact of the faults, as these are pertinent to the impact on Mr B, and what I think is reasonable compensation.

Based on what he's said during the complaint, Mr B is looking for a refund of his deposit, a refund of some monthly rental payments, reimbursement for the alternate transport costs he's incurred, and compensation for the time he's spent dealing with this matter, based on his consultancy rate of £1,000 plus VAT a day.

While this is noted, Mr B didn't pay a deposit, but an initial rental. An initial rental is used to reduce the monthly rental payments and, had this not been paid, then the monthly rental payment would be higher. As such, Mr B has had the benefit of this initial rental payment for each month he's been in possession of the car. Given this, even if I were to say the initial rental should be refunded to Mr B, this would only be done on a pro-rata basis to reflect the benefit Mr B has received, and not the whole amount refunded.

What's more, our approach to compensation is based on the impact this has had on the customer. In circumstances such as this, we don't consider loss of earnings. So, any compensation would be considered on this basis.

In his comments on the investigator's view, Mr B has explained how this situation has impacted both him and his wife. While I appreciate that his wife was affected by what's happened, the agreement with Lex was in Mr B's sole name. As such, Mr B's wife wasn't a customer of Lex. My powers only allow me to consider customers of the financial business. So, and while I don't mean to belittle how Mr B's wife has been affected, I'll only be considering how Mr B has been directly impacted by what's happened when deciding what is a fair compensation.

Mr B has said the issues with the car started in early 2022, a few months after the car was supplied to him, when it *“failed dangerously.”* The warranty repair history shows the car broke down on 15 April 2022 due to a charging fault that affected the gearbox. Mr B has confirmed that the alternator was replaced, and I’ve seen no evidence that shows me the fault has reoccurred. As such, I’m satisfied this was a successful repair.

I also haven’t seen anything that shows me the issue with the alternator resulted in the car being dangerous to drive or otherwise being unfit to be driven.

Mr B had a second breakdown on 26 May 2022, due to a punctured tyre. I haven’t seen anything that shows me the puncture was because of the tyre not being fit for purpose at the point the car was supplied to Mr B. As such, I’m satisfied this was more likely than not caused by something the car had driven over. And I won’t be considering this breakdown as part of my overall decision.

Mr B has also said he had *“non-stop issues”* with the car between March and August 2023, caused by an issue with the fuel injectors. This resulted in him being without use of the car for six days, and he had alternate transport costs of £191 during this period. He also said that he considered the car to be unsafe, dangerous to drive, and highly likely to break down again. In late March 2023, Mr B chose to hire a car for a family holiday abroad, rather than use the car supplied by Lex.

Mr B has said that, in February 2023, while driving on a busy motorway, a warning light came on, and the car lost power intermittently. After pulling over to restart the car, which didn’t fix the fault, he continued his journey, but did so at a maximum speed of 40mph due to the fault. The warranty repair history shows the car displayed a warning light for a fuel injector on 13 February 2023, which resulted in a slight misfire. This was fixed on 27 February 2023, and Mr B was supplied with a courtesy car while the repair was taking place.

Mr B didn’t return the courtesy car, and collect the car supplied by Lex, until 16 March 2023. At this point the car was displaying a warning light for a low battery, so Mr B refused to accept it. He considered this meant the car was *“extremely dangerous [and] was the same fault that nearly killed my family previously.”* The garage wasn’t able to provide him with a courtesy car that day, so he took a taxi home. He’s provided taxi receipts for journeys taken between 16 and 21 March 2023, totalling £132.

The car was fixed and returned to Mr B on 21 March 2023. A warning light came on again 24 March 2023, and Mr B took the car back to the dealership the same day, when he was provided with another courtesy car. The car supplied by Lex was repaired on 5 April 2023, when the wiring to the fuel injectors was replaced. I’ve seen nothing that shows me this fault reoccurred, or anything to show me that the car was dangerous or otherwise unfit to be driven after this repair had been completed.

Mr B has said that, after the car was returned in April 2023, his wife stopped driving it. Which resulted in him having to make extra journeys for family commitments etc. And this has been disruptive and impacted his ability to work.

A warning light came on the car again on 30 June 2023, which related to the exhaust gas recirculation system. This was fixed by a breakdown company the same day. However, this fault reoccurred on 21 July 2023, which was fixed the same day by a breakdown company (a blocked filter was replaced). I’ve seen nothing to show me this fault has reoccurred.

Mr B took delivery of a new car on 12 September 2023, and he says he stopped using the car supplied by Lex from this date. He’s also said that he’s now under pressure financially

due to having to make payments for two cars, which includes insurance costs. And he'd like this to be accounted for in any compensation awarded.

It's clear from what I've seen that Mr B has been significantly impacted by what's happened. And I'd expect Lex to compensate him for this. I'd also expect Lex to either refund the payments he's made for the periods of time he was without the use of the car they supplied or a courtesy car, or to reimburse his alternate transport costs for these periods. However, I wouldn't expect them to do both, as this would result in Mr B having received free transportation, which I don't consider fair or reasonable.

Mr B has financed a new car, which comes with its own costs, and has resulted in financial pressures. And he's done this because he feels the car supplied by Lex is unsafe/dangerous to drive and doing so puts his family's lives at risk. While I appreciate his strength of feeling about this, and it's clear the car has had a number of breakdowns due to unconnected issues, I haven't seen anything, for example an independent engineer's report, that says the car shouldn't be driven, as to do so would be dangerous. As such, it was Mr B's own choice to finance a second car, and I wouldn't expect Lex to cover either the costs of this or reimburse any rentals for the period when Mr B was in possession of two cars.

As stated above, I also haven't seen anything to show me that the car supplied by Lex has any ongoing faults that were present or developing at the point of supply, or that any of the previous repairs has failed. As such, the CRA doesn't support rejection of the car, and I wouldn't expect Lex to offer this to Mr B.

Turning now to what Lex have offered. And I've seen offers have been made, and improved on, in the final response letter they sent to Mr B, and in various correspondence throughout the complaints process.

In their final complaint response letter, Lex offered to refund six days payments for the first period of time Mr B was without a car. On 22 August 2023 they said they would also refund the payments for when Mr B was without a car between 17 and 21 March 2023. For the reasons already given I'm satisfied this is a reasonable offer. And I wouldn't expect Lex to also refund Mr B his taxi costs during these periods.

In addition to this, Lex have offered to refund Mr B 20% of the rental payments he made for 32 days, to compensate him for the loss of enjoyment of the car he had. And they've said they'd pay 8% simple annual interest from the date of when Mr B made these payments, to the date of the refund (less tax). This is more than I would've directed in the circumstances.

As I've already said, under the CRA Mr B doesn't have the right of rejection. However, Lex have said he can terminate the agreement early, with no additional termination costs (except any pro-rata additional mileage costs, or the costs of any damage to the car that falls outside fair wear and tear). On 9 June 2023, Lex also said they would provide a pro-rata refund of the initial rental payment upon termination. Again, this is more than I would've directed in the circumstances.

Finally, as I've said, Mr B was significantly inconvenienced by what's happened. Lex have offered to pay him £500 for the stress and inconvenience he's suffered, which is in line with what I would've directed had no recommendation been made. So, I wouldn't expect them to increase this.

As such, I won't be asking Lex to do anything more, and it's now for Mr B to decide whether to accept their offer.

**My final decision**

For the reasons explained, I don't uphold Mr B's complaint about Lex Autolease Ltd trading as Land Rover Contract Hire.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 November 2023.

Andrew Burford  
**Ombudsman**