

## **The complaint**

Mrs N has complained about the way Lex Autolease Ltd administered a hire agreement she'd taken out to acquire a car.

## **What happened**

The circumstances of the complaint are well known to the parties. The events span many years. So rather than set out everything again in great detail, I'm going to summarise what's happened.

In December 2014 Mrs N entered into a hire agreement with Lex to acquire a car. From what I can see, Mrs N was asked to make an initial rental of £1,682.67 followed by monthly rentals for 47 months of £560.89. The agreement came with an annual contracted mileage of 15,000. And the agreement set out that excess miles would be charged at 12.3pence per mile (excluding VAT).

In 2023, after a period extending the hire agreement (at a lower rental), Mrs N said:

- She acknowledged there were arrears from 2019. But during Covid-19 she deferred some payments and there was a breakdown in communication which contributed to arrears growing. When Lex was meant to start taking payments again it didn't. She says this went on for around two years.
- When Lex did get in contact it wanted her to clear the arrears. Lex didn't set out what was required to be paid correctly.
- There had been a negative impact on her credit file.
- Lex gave Mrs N quotes to buy the car, but they were excessive. And she was unhappy with the method used, in particular in relation to excess mileage.
- There were times Lex didn't contact Mrs N when promised.
- The situation affected her mental health.
- She offered £200 per month until the complaint was considered but Lex dismissed this because it was well under the contractual amount due. She felt threatened and agreed to what Lex was asking for which was around £460 per month.

Lex responded in March 2023 to say, in summary:

- There have been arrears on the account since 2019 despite it trying to come to a mutual agreement.
- There were failings when it tried to put in place a contract amendment for a one-year extension when the agreement came to the end of the four-year term, but this was put right with a counter credit. It tried to speak to Mrs N several times about the outstanding balance. There were arrears regardless of this and the issue was rectified.
- The quote it gave Mrs N to purchase the car was calculated correctly. And it was up to Mrs N to accept or decline.
- The excess mileage charge was valid as per the terms of the agreement.
- It acknowledged communication was poor during Covid-19 but there were arrears on the account prior to this.

- It offered Mrs N £150 compensation.

Mrs N didn't accept the offer and referred her complaint to the Financial Ombudsman. It looks like Lex wanted to recover the car, but Mrs N wanted things on hold until our service had the chance to consider the complaint. She reiterated what she was unhappy about. And in response to Lex's answer on her complaint she said:

- She was aware she was in arrears before Covid-19. But Lex didn't restart the direct debit or make contact to get things back on track. She says her credit file was made worse than it should have been as a result.
- Lex had been asking her to pay the wrong amount and this impacted her credit file.
- The car was wrongly priced by Lex.
- She objected to excess mileage. She was initially told she couldn't buy the car, and then Lex changed its mind. She said Lex didn't tell her when the agreement ended.
- The communication had been poor, and the situation had impacted her wellbeing.

Lex contacted the Financial Ombudsman to say:

- It would consider putting the recovery of the car on hold. But the debt was around £23,000 (in May 2023) so it wasn't sure if this was the best option for Mrs N.
- The arrears dated back to April 2019. Mrs N had requested a contract extension in February 2019 and a quote was sent for a one-year extension at £468.22 per month. But it couldn't see this was received back.
- The agreement rolled into an informal extension at £584.27 per month but it agreed to raise back credits of £116.05 so that she'd only have to pay £468.22 as previously agreed.
- It put the account with a special team because Mrs N had experienced financial difficulty.
- It gave Mrs N breathing space during Covid-19 and it spoke to her afterwards. Lex said Mrs N had intended to use proceeds from a house sale to put to the arrears or buy the car, but this didn't happen. It gave her a purchase price, but she didn't agree to it.
- It upheld her complaint in relation to not implementing the contract extension in 2019 and delays in communication during Covid-19 and it had paid her £150 for this.
- It tried to engage with Mrs N to set up a payment plan, but she'd been reluctant to do so until the complaint was considered by the Financial Ombudsman.
- The contract extension should have ended in 2020. It continued to manually agree the extension after this time at the rate agreed in 2019. It's likely it would move to repossess the car.

Our investigator looked into the complaint. In summary, he said:

- It wasn't clear why Lex didn't try to contact Mrs N more frequently about the arrears during Covid-19.
- Lex are obligated to record accurate information, including missed payments on Mrs N's credit file. Lex aren't solely to blame for Mrs N missing payments.
- As this is a hire agreement, there's no contractual right for Mrs N to buy the car, so it's up to Lex what it offered as a purchase price.
- The agreement sets out the excess mileage charge.
- Lex has compensated Mrs N £150 for the communication which seemed broadly fair.
- Lex's handling of the contract amendment was broadly fair, based on what he'd seen.

Mrs N responded to say she wasn't persuaded Lex had sent all the relevant evidence. Lex had been trying to contact her on an incorrect number. It failed to use all methods of communication. She said she had over 30 missed payments on her credit file and Lex

should have restarted her direct debit in July 2020. She says Lex are totally to blame for the impact on her credit file.

Mrs N said the compensation was low and some of the arrears should be written off. She agreed she would purchase the car, but the quotes were calculated incorrectly. She said the excess mileage charge is excessive. She said she wasn't told the contract had ended. It's not fair she has to pay excess mileage if she buys the car. She reiterated Lex's communication was poor and that it lost the paperwork for the contract amendment.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mrs N and Lex that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mrs N acquired the car using a regulated consumer hire agreement. Our service is able to consider complaints relating to these sorts of agreements.*

*As a starting point, I need to point out that the hire agreement doesn't give Mrs N the option to buy the car, unlike with a hire purchase agreement for example. Mrs N is unhappy with the price Lex wants her to pay. I appreciate Mrs N is unhappy Lex gave her a purchase price and excess mileage to be paid on top of that. But I think the purchase price is based on the actual mileage of the car. As of October 2023, that was around 172,000 – which is well over the contracted mileage, even if calculated pro-rata. If the purchase price Lex gave was calculated using the expected value of the car if it had only covered the miles agreed to under the hire agreement – it would be higher. I don't think Mrs N is losing out here, or that there's some sort of double recovery going on by Lex.*

*In any event, as there's no contractual right for Mrs N to buy the car, I don't find I have the grounds to say whether or not the offers Lex gave Mrs N were fair or not. It's up to Lex to decide what the car should be sold for, and it's up to Mrs N to decide whether she wants to accept that or not. In the circumstances, I don't think I can fairly direct Lex to sell the car to Mrs N for a certain price. But that's not to say the parties can't come to their own agreement if they wish.*

*I also don't find there'd be grounds to direct Lex to remove the excess mileage charges if the car is returned. These charges were agreed by Mrs N when she took out the agreement. If she hands back the car with more miles on it than was originally accounted for, it would be worth less. Which is why there is an excess mileage charge.*

*I've next thought about how things should be put right. There's been a lot happen here and so much time has passed that there's no straight-forward way to put everything right for both parties. But as I explained above, I need to set out what I think is a fair way to resolve the complaint quickly and with minimum formality.*

*It's not in dispute Mrs N was behind on her payments prior to Covid-19. And that there are now substantial arrears. It's not in dispute Lex didn't handle things well during Covid-19. While I can appreciate this was an unprecedented time for firms and that it would have had an impact on its operations, I think going two years without speaking to someone whose arrears were increasing wasn't reasonable. But at the same time, I take the point that Mrs N ought to have known what was owing so if she was unable to speak to Lex about making that rental payment, she could have put the money aside.*

*Mrs N says she wants her credit file to be restored to what it was before Covid-19. But by not making the rental repayments or having the funds to clear the arrears when she got back in touch with Lex, I don't find I'd have the grounds to say that the money is not fairly owed, or that Lex should amend her credit file to say the payments were up to date for that period. If she didn't have the money, this would indicate the missed payments were accurate. If she'd paid off the arrears when Lex eventually did get in contact with her, I'd have recommended the missed payments were removed. But this didn't happen.*

*It's also not in dispute Mrs N was required to pay £560.89 for the initial four-year rental period. And that she agreed to pay £468.22 for a year's extension. Lex has said the payments could have reverted back to a higher amount after that year. But it's agreed to accept £468.22 going forwards for the months Mrs N has had use of the car. I'll never know what would have happened if the parties had come to another arrangement after the extension. Again, I think the communication should have been clearer here. Particularly when the extension had ended. But, on balance, I find Lex's offer to accept £468.22 for each month Mrs N has had use of the car to be broadly fair. Mrs N has said she wants Lex to remove some of the arrears for not re-setting up the direct debit. But I have to bear in mind that it's fair she pays for her use of the car. Compensation for how things were handled is separate, and I will come on to this later.*

*Lex has indicated if it recovered the car and Mrs N is unable to pay the arrears it would write-off the debt and record a default on her credit file. The arrears are substantial now – around £24,000. And if Mrs N can't come to an agreement to buy the car outright or repay the arrears once it's handed back, I can understand why Lex would take the option to default Mrs N. But the problem with doing that, from what I can see, is that Mrs N has been in arrears for a long time – since 2019. She's had several missed payments recorded since then. There's a strong argument Lex should have stepped in much sooner and in all likelihood taken steps to recover the car if it couldn't come to an agreement with Mrs N. I appreciate there was specific guidance from the Financial Conduct Authority about repossessing cars during the earlier stages of Covid-19. But by 2021 at the latest, Lex had the option to seek to recover the car if Mrs N wasn't able to bring things back on track. This might have mitigated the situation. Moreover, as a general guide, defaults may occur when customers are three months in arrears and normally by the time they are six months behind.*

*So how can things be put right? It's not straight-forward. But I'm going to propose some options to the parties. Mrs N wants to keep the car but, unless the arrears are cleared, Lex wants to recover it.*

#### Option 1

*Lex should let us know in response to this provisional decision the total cost for Mrs N to purchase the car if it's still willing to do that (if Mrs N can clear that amount straight away).*

## Option 2

*Mrs N can decide if she wishes to hand back the car voluntarily. I can't bind her to do that. Otherwise, Lex may decide to repossess it, which could lead to further costs for her. Aside from any costs of recovery and/or repossession, her liability should be set at the monthly payments agreed as I've set out above (£560.89 for the initial four-year period followed by £468.22 for the following months), along with the excess mileage charge (pro-rata) she agreed to when signing the agreement. If Mrs N can't come to an agreement with Lex to clear the arrears and Lex moves to default the agreement, I think this should be backdated to three months after the Covid-19 payment deferral ended. I say this because I think Lex should have stepped in sooner.*

*I've thought about whether I should direct Lex to consider letting Mrs N pay off the arrears over an extended period. But they are so significant now that I don't think it would be practicable or fair on Lex to direct it to enter into another long-term agreement with Mrs N. But if it wishes to offer something along those lines, it should let me know in response to this provisional decision. No matter what happens as a result of our service's involvement, I remind Lex of its obligations to treat Mrs N with forbearance and due consideration.*

*I've also thought about the overall way things have been handled. As I've said above, I think the payment for the use of the car is a separate matter to the compensation that Lex should pay. I've found Mrs N is required to pay for her use of the car under the terms set out above. But I think Lex ought to have handled things better. Lex offered £150 compensation. It's difficult to say what should be done to put things right bearing in mind the arrears are so substantial. But looking back, Mrs N was struggling to make payment prior to Covid-19. By not bringing the agreement up to date, I don't think it would be unreasonable for Lex to think her financial situation didn't improve. If that's true, I'm very sorry to hear that.*

*Lex should have stepped in sooner, but we can't turn back the clock. It wouldn't be fair to Lex to say that Mrs N should have free use of the car for that time. Lex wasn't actively chasing Mrs N, and she's been able to use the car, so she wasn't impacted day to day per se. But we're now in a position where she owes a substantial amount. And that must be very worrying for her.*

*I don't think £150 goes far enough to reflect the impact the lack of communication has had on Mrs N. I take the point that Lex may argue that despite the lack of communication, Mrs N ought to have known what she owed, and knew that arrears were increasing. But, as I explained above, as the professional firm, I think Lex should have stepped in much sooner. I think its inaction has made things significantly worse. There's no formula I can use to decide how to put things right but, in all the circumstances, I think Lex should also compensate Mrs N another £1,000. I would normally say this should be paid direct to her. But in the very particular circumstances of this complaint, I'm minded to say this amount should be put towards the arrears, once Mrs N decides what she wants to do.*

*Lex responded to say it wouldn't be in a position to allow Mrs N to purchase the car, it would prefer her to voluntarily hand it back. It said regarding any default application, this is only recorded at the point of defaulting the customer and this would be after the agreement ended and through discussions with the customer, or in some cases, where it's become clear the arrears won't be settled within an allotted time and it moves to write off the debt. It said Mrs N would be treated with forbearance and due consideration.*

Lex also said there was little reference in the decision to the customer benefit due to the monthly £116.05 credits continued to raise on the account, which has been done in error. It says the arrears are around £4,400 less than they should be. So it doesn't feel balanced that I've recommended another £1,000 is deducted. It thinks the £150 offer is fair given the benefit to date.

Mrs N responded to say all she ever wanted was for things to be sorted out fairly and to repay the arrears at comfortable monthly amounts. She said she tried to do that several times. Mrs N said at no time did Lex say that the reduced payment for the year extension would revert back to the original amount.

Mrs N said she now wanted to voluntarily hand the car back and repay the arrears at an affordable rate. She said her credit rating has been negatively impacted and it will take a long time to put right. She said she was unable to secure funding to repay the arrears, and that the large monthly repayments are no longer affordable.

### **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.

I want to thank the parties for their responses. I'm very sorry to hear Mrs N has been unwell, and I thank her for taking the time to respond.

Seeing as though both parties have indicated the car should be returned, I no longer need to consider or make any directions relating to Mrs N buying the car from Lex.

I can't bind Mrs N to hand back the car through this decision, but I can make directions to cover things in the event she decides to do that. I'd normally only be in a position to consider how things were handled up until Lex issued its final response letter. But I issued a provisional decision so that I could set out what I thought should happen so the parties can hopefully draw a line under things. Based on the responses to that decision, I think there are three main things I can fairly cover off now Mrs N has agreed to voluntarily hand the car back: how much she should pay for her use; what should happen in the event Lex decides to default the agreement; and any compensation for the way things were handled.

Lex has said there's little reference to the discounted rentals Mrs N has received. But I have covered that off in my provisional decision. Lex accepted the discounted rate for a year's extension. I explained I'll never know what would've happened if Mrs N tried to come to another arrangement after that year. There's an argument Lex should have terminated things at that point (at the latest) due to the growing arrears. But, as I explained, we can't turn the clock back. I decided that the lower rate was a fair usage charge from that point. Lex seems to have accepted that. It's not given a compelling argument for why the higher rental figure is a fairer charge for a car that was older and worth less by that point, so I remain of the view that the lower rental charge is a fair amount to apply for the use Mrs N had of the car since she extended the agreement. And I'm not proposing to use it to offset the compensation directions I'm going to make. For the avoidance of doubt, I'm only making directions in relation to Mrs N's liability for use of the car.

I've also thought about the impact on Mrs N's credit file. I've explained why I don't have the grounds to direct Lex to remove the missed payments. Things are made more complicated because a default hasn't been recorded yet, and I wouldn't like to direct Lex to record a default because it may make things worse for Mrs N. I'm conscious that Mrs N has said she can't clear everything in one go. She wants to enter into an arrangement to pay. I remain of the view that, if upon hand back of the car, Lex decides to default Mrs N after speaking to her about that arrangement to pay, I think the default should be backdated to three months after the Covid-19 deferral period ended. I say this because I think Lex should have stepped in around that time given the arrears. And had it done that, this is around the time a default ought to have been recorded. So, to some extent, this would have the effect of putting the parties broadly in the position they would have been in had things gone as I think they should have done.

I've finally thought about the compensation I recommended. I've set out why I don't think the reduced payment should be used as compensation. I think the reduced payment seems like a fair usage charge that Lex agreed to. I remain of the view that, as the professional firm, Lex ought to have stepped in sooner. And had it done so, while it may have been very upsetting at the time for Mrs N, things would have crystallised sooner. By letting things drag on, Mrs N will now find herself with a significant sum to pay. I think there's a significant impact on Mrs N and, on balance, I think the debt should be reduced by £1,000 to recognise that things went wrong. I also remain of the view that, in the particular circumstances of Mrs N's case, this amount should be reduced from the amount outstanding because of the level of the arrears.

### **Putting things right**

If Mrs N accepts this decision and decides to voluntarily hand back the car, I direct Lex Autolease Ltd to:

1. Set Mrs N's liability for usage at the monthly payments I've set out above (£560.89 for the initial four-year period followed by £468.22 for the following months) for the time she had possession of the car, along with the excess mileage charge (pro-rata) she agreed to when signing the agreement.
2. Reduce the amount outstanding by £1,000.
3. If applicable, backdate any default it decides to record to three months after the Covid-19 deferral period ended.

### **My final decision**

My final decision is that I uphold this complaint and direct Lex Autolease Ltd to carry out what I've set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 2 January 2024.

Simon Wingfield

**Ombudsman**