

## **The complaint**

Mr W complains about the quality of the car he acquired on a hire agreement with Lex Autolease Ltd ("Lex").

## **What happened**

Firstly, I'd just like to recognise that some of the dates and actions in this case are in dispute between the parties, with different dates being given for conversations, visits to dealerships and other things. The below is an outline summary of my understanding based on balance of probability. But these specific dates used do not impact my overall decision, so I am satisfied that they form an outline of the problems suffered, not a comprehensive accurate detail which is being relied upon to make an overall decision on this case.

Mr W acquired a car on a three year hire agreement from Lex in 2021. In September 2022 he complained to Lex, saying that the computer system on the vehicle had failed and he was receiving poor service from the dealership where he had signed the agreement for the car.

Lex investigated this and confirmed in their final response letter (FRL) that Mr W had problems with the computer system. They said the dealership had carried out some repairs and a software update and said the timeline was that they could see Mr W had taken the car into the dealership in January 2022, but the problems weren't fixed until May 2022. Mr W told us that the problem had been ongoing since November 2021.

Lex went on to say that based on the delays he suffered in getting the vehicle fixed, they were upholding his complaint. Mr W had also complained that he hadn't been provided a courtesy car and had to return multiple times to get things fixed.

As there were discrepancies between the dealership and Mr W regarding how many times the vehicle had been back to the garage and whether there was an ongoing fault, Lex attempted to get the car re-examined. Mr W wanted to reject the car, but Lex felt the problem had been fixed, so they had successfully repaired it. But they attempted to arrange for the car to be looked at again to confirm whether the fault had indeed been fixed.

Mr W told Lex he was working in a different area of the country now and took the train there each week, so the car remained at home, and he couldn't arrange for it to be seen by another dealership. Lex also tried to arrange an independent inspection, but Mr W initially wasn't available to give them access for this either.

At this point Lex issued their FRL explaining that they were upholding the complaint and offering compensation for the delays in fixing the issue and the distress and inconvenience caused. But they didn't agree that the car could be rejected by Mr W, as they had no evidence the car was still faulty. They explained that as Mr W hadn't been able to take the car into a dealership to be examined or arrange an appointment with the independent inspector they had agreed to pay for, they were satisfied that the car was fixed.

Mr W asked again for the independent inspection to happen, but again wasn't able to attend and allow the inspector access to the car. At around the same time, Mr W brought the

complaint to our service.

An investigator here investigated it and said that the compensation should be increased slightly, to recognise a period of time when Mr W was without his car when it was being repaired, and also a small increase in the distress and inconvenience payment to him. Mr W still wanted to reject the car however and continued to provide evidence of known issues with the model of car, and recalls, that he felt were relevant to his complaint.

The investigator explained that there was still no evidence of the fault reoccurring in his car, and without this, they wouldn't change their opinion. So, Mr W asked for an Ombudsman to make a final decision on his case.

I issued a provisional decision on the case on 10 November 2023. I made the following provisional findings:

*There have been large amounts of evidence sent in on this case including some details sent several times. So, I want both parties to know that while I am focusing on the key issues in this decision, and won't be commenting on every piece of evidence, I have read and considered them all.*

*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 what I consider was good industry practice at the time.*

*Both parties are in agreement that there was a fault with the vehicle, so I will spend more of my time here considering whether the evidence persuades me that the issue re-occurred and should allow Mr W to reject the car, which is his preferred outcome. I'll then also consider the compensation and whether what was offered was fair or it needs to change.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Lex here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.*

*The CRA also sets out options to put things right if they have gone wrong. In the circumstances we have here, Lex is entitled to one opportunity to repair things, before a consumer has the right to reject the vehicle. Both parties agree that the opportunity to repair the car has been taken here by Lex when they've carried out repairs on the computer system in 2022.*

*The disagreement now is over whether something else has gone wrong, or the fault has re-occurred, which would give Mr W the right to reject the car.*

*I'm satisfied that the computer fault suffered by the car in 2022 did make it of unsatisfactory quality, and that Lex had the right to repair this fault. Mr W has described how the car was cutting out while he was driving on the motorway, which I completely appreciate would be very concerning. As a new car, it's reasonable to expect a considerable period where the car wouldn't suffer a fault of this nature, and ideally it wouldn't happen at all.*

*There's been no evidence supplied of any previous faults with the car. Mr W has suggested that this problem was ongoing for a lot longer, but I am satisfied that once he informed Lex, they have checked on the repairs carried out and confirmed for him that there was no evidence of any re-occurrence of the fault, or any previous fault.*

*Mr W has said the fault is ongoing/has been ongoing since the repairs. I'd expect Lex to have re-examined the car to investigate this and can see they have attempted to get Mr W to take the car to another dealership to allow it to be independently examined.*

*When Mr W explained that he wasn't able to do this due to work commitments, Lex have offered to pay for an independent inspection, where an engineer would visit Mr W and be given access to examine the car and test for the fault. Unfortunately, this also didn't happen as Mr W wasn't able to be present to give an inspector access to the car during the week at any point, as he said he was working away. He could only provide access at weekends, and this service is only available during the week.*

*On this basis, Lex said they couldn't do anymore, had no evidence of the fault re-occurring, so couldn't agree that the car could be rejected. I've thought about this, and I agree with Lex that this was fair. Mr W hasn't been able to provide any evidence to corroborate that the fault was re-occurring. Lex have made all reasonable efforts to get the car examined to look for this evidence, but Mr W hasn't been able to support Lex to do this. I appreciate that he's told us about having ongoing concerns, but without proof to verify this, it would not be fair to say Lex need to allow him to reject the car.*

*Mr W has told us that the fault did re-occur, but not as bad as previously so the car wasn't necessarily "cutting out" while he drove like it had done previously. In these circumstances, I think the only fair way to prove the fault made the car of unsatisfactory quality would have been for the car to be examined by an independent engineer, or another garage/mechanic, to get more information and evidence about what was happening with the car.*

*There may have been a different issue, which could be a minor problem that can be easily rectified, or it may have been a re-occurrence of the same computer fault as Mr W believes. But my role is to provide an impartial decision, treating both sides fairly. With no evidence of the fault re-occurring, I can't say that Lex should have to allow the rejection of the car.*

*Mr W has provided us with recall information for issues with the model of car, and conversations he's had with the car manufacturer directly, as well as internet forums about problems with this type of car. But none of this provides evidence of a fault with his own car. It just shows the kinds of issues being seen by some other owners. I'm afraid I can't consider this as evidence of a fault with his car because there's been no further inspection of his car to provide us with further evidence of what's happening with it.*

*Lex explained this to Mr W when they issued their FRL, and our investigator also highlighted this to him during their investigation. I agree with this viewpoint, and for that reason, I can't agree that the car should be allowed to be rejected based on the evidence provided.*

*I've gone on therefore to consider the repairs carried out and the compensation offered by Lex, and whether this was fair.*

*In their FRL Lex offered Mr W £463.94 compensation. In their communications with ourselves, they said this was a 20% reduction in the monthly rentals for the period in 2022 when Mr W was suffering these issues, which they said totalled £313.94, plus £150 in recognition of the distress and inconvenience caused.*

*Mr W explained to us that during May 2022, the car was in the garage being repaired and he wasn't provided a courtesy car. On this basis, our investigator said he should also be provided with a refund of one monthly payment, as he hadn't had use of the car or a replacement car during this month. I agree that this is fair and should also be provided by Lex.*

To clarify the figures here, this means Mr W should be given a 20% refund for four monthly rentals for January to April 2022 inclusive, and then a 100% refund for one monthly rental for May 2022.

I'm unclear of the maths used by Lex to originally reach a figure of £313.94, but I'd expect them now to revisit this to ensure the above figures are honoured. I can see from the finance agreement that Mr W's rental was broken down as part vehicle rental and part service plan; to be clear, I'd expect his total monthly payment to be used here, so the full amount he paid Lex each month.

So, he should be refunded four refunds of 20% of his actual full monthly payment, plus one full refunded monthly payment.

Finally with regards to distress and inconvenience, Lex offered £150, and our investigator felt this should be increased to £200. I've thought about this and based upon the distress caused to Mr W while this fault was occurring, I agree £200 is a fairer figure. He's explained how the car would cut out while driving on the motorway, and I can empathise with the distress this would have caused him.

Mr W also complained about the service provided by the dealership where he had signed up for the car and took it for repairs. He felt they had been using the car while they had it, adding mileage to it, and someone had smoked inside the car. Lex upheld this element of the complaint but didn't specify any redress for this. I think the overall £200 distress and inconvenience payment incorporates this and don't intend to make a finding that anything further should be due.

No evidence was provided with regards to mileage allegedly added at the dealership, and it's possible that the car needed to be driven to ascertain or fix the problems being suffered. I am satisfied that the redress I am proposing now covers all elements of this complaint.

When the investigator issued their view on the case, Lex queried the fact that the proposed redress included removing any adverse information from Mr W's credit file in relation to the agreement. They were unclear how this related to the rest of the findings and queried why they should not report any missed payments or similar, when the complaint did not relate to any financial difficulty or similar.

I agree with this. Mr W hasn't raised any concerns about any of the issues he alleges having caused him any financial pressure or issues, and I'm not persuaded that the issues I am recommending be put right by Lex would have impacted his credit file in any way. So, I don't think it would be fair to amend his credit file here. I am therefore provisionally finding that this requirement should be removed from the proposed redress.

Finally, having offered Mr W redress totalling £313.94 for the problems during the period Jan – May 2022, Lex have then said that because the payment was offered in their FRL and rejected, they don't feel they should have to pay Mr W interest on top of these payments for deprivation of funds. They said he could have accepted that when it was offered and still brought his complaint to our service.

I'm not persuaded by this argument. I've not seen any clear evidence of Lex telling him that accepting it wouldn't impact his right to escalate the complaint to our service. But more importantly, I have changed the payment he is due, as I don't feel it was a fair amount. On that basis, I am satisfied that Mr W was deprived of these funds back in 2022 when he suffered these problems, so interest should be payable on these elements of the redress from the relevant points.

*My proposed redress therefore is that Lex should:*

- refund Mr W 20% of his full monthly payment for four months, January-April 2022 inclusive.*
- refund Mr W his full monthly payment for May 2022.*
- pay 8% simple yearly interest on the above refunded amounts from the date of payment until the date of settlement.*
- pay Mr W £200 for the distress and inconvenience caused.*

*If Lex considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

### **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.

Both parties have responded to my provisional decision with further comments and evidence.

Mr W re-sent communications he's had with the car manufacturer directly, which talk about this type of issue and how it isn't able to be repaired. He feels that this proves his car still has an issue and the issue can't be repaired. But as I've explained to him, without testimony from a professional mechanic or engineer who has examined his specific car, this doesn't persuade me that there is any evidence of his specific car suffering an ongoing problem.

I understand that this kind of testimony might persuade Mr W, who has access to the car, that this problem is ongoing. But without the opportunity for Lex or anyone independent to check his car, I can't fairly say that this problem still exists with his car. The manufacturer hasn't examined his car to check for this, they are just sharing recall and fault information they've seen in other cars. There is no detail about how many of the cars supplied have suffered from this problem, and Mr W has not provided any further opportunity for his car to be examined or evidence if it has been. So, I'm not persuaded by this argument.

Lex responded to my provisional decision. Their first communication provided evidence that Mr W had in fact been provided with a courtesy car when his car was in the garage being repaired in May 2022 for a month. They didn't feel therefore that it was fair to refund Mr W a full month's payment for this period, as they had provided a courtesy car and kept him mobile.

I shared this with Mr W for comment, and he said that they did provide a courtesy car in May 2022 but hadn't provided him any replacement car during January to April 2022 when the car had problems and before they carried out the repairs.

As such, I explained to both parties that I intended to remove the requirement for Lex to refund a month's rental for May 2022 and have had no further comments about that.

Lex then came back to me again with further points. They explained that their original FRL offer had been calculated as 20% loss of enjoyment payments from 25 January 2022 to 1 June 2022, at a daily rate broken down from his rental costs of £375.94 per month (£12.36

per day) and so had totalled to 127 days at £12.36, meaning a total of £313.94.

My remaining calculations for a 20% reduction due in payments to recognise his impaired use of the car in the four months until it was repaired, January to April 2022 inclusive (having removed the May refund) would total slightly less than this at just over £300, but that brings me onto the final query from Lex.

Lex again queried the need to pay interest on this part of the settlement. They said that as they had offered this payment previously (including in their FRL) to Mr W and he'd declined it, they didn't think they should pay interest. They said that as my original response had focused on the reason for requiring interest being the fact that I was changing this payment, and now I had agreed not to include the one month payment for May, there was no change in payment now, and interest shouldn't be required. I don't agree with this.

I'm sorry if my original response wasn't clear in the provisional decision. But the reason for awarding interest is that Mr W should have received these reductions in his payments in early 2022 when suffering the problems that needed repairing. Lex and their broker don't appear to have discussed these issues and offered to help with reduced payments when the problems were happening, and their offer was made at FRL stage in October 2022. That offer also didn't explain the calculations and how they were worked out. The offer in the FRL didn't include interest at that point, despite it being many months down the line.

Mr W has suffered impaired use of the car while the problems were ongoing. My view is that he should have been given a reduction in his payments to recognise this, and as this reduction didn't happen at the time, he made higher payments for his use of the vehicle during this period, and that wasn't fair. This means he was deprived of some of his capital, because the payment was too high, making it unfair. He is entitled to interest on that part of the payment now being refunded therefore, irrespective of the time taken to reach a final decision at our service or his decision not to accept their offer and bring the complaint to our service.

As such, I am satisfied that Lex need to include simple interest from the time of payment until the time of settlement on this element of the redress.

Overall, I am upholding this complaint, but I don't agree with Mr W that he should be entitled to reject the car, so won't be recommending that.

### **Putting things right**

I instruct Lex Autolease Ltd to put things right as follows:

- refund Mr W 20% of his full monthly payment for four months, January-April 2022 inclusive.
- pay 8% simple yearly interest on the above refunded amount from the date of payment until the date of settlement.
- pay Mr W £200 for the distress and inconvenience caused.

If Lex considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

**My final decision**

I am upholding this complaint and instruct Lex Autolease Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 January 2024.

Paul Cronin  
**Ombudsman**