

## **The complaint**

Mr W is unhappy with how Lex Autolease Ltd (Lex) dealt with him when his Consumer Hire agreement ended.

## **What happened**

In March 2016, Mr W was supplied with a new car through a hire agreement with Lex. The agreement was for a period of three years; with an advance payment of £881, followed by 35 monthly repayments of £294. The agreement had an annual mileage allowance of 8,000 miles. A one year extension to 27 March 2020 was agreed.

Mr W contacted Lex in May 2020 as he said they had not contacted him about the lease coming to an end. He said he'd received an invoice for rentals for the extended rental period. He said that Lex hadn't been able to collect the car because of the Covid pandemic. He said he was happy to extend the rental period because the pandemic had prevented him from getting another lease agreement. He was unhappy that Lex were charging him an extra £70 every month.

He said he'd written to Lex in June 2020 asking them to arrange to collect the car. He also asked them to cancel the invoices for the additional amounts as he had never agreed to the increased amount they were now charging him.

Mr W is unhappy that Lex didn't collect the car until the end of April 2021. He said that during that time they ignored his correspondence, continued to send him invoices and default notices, and added the monthly increase to his account balance.

In October 2021 Mr W complained to Lex as he had received an invoice for damage to the car. He said that Lex hadn't made him aware of the charge in the time period set by the British Vehicle Rental and Leasing Association (BVRLA). He was also unhappy that he'd received an arrears letter, and that they hadn't implemented their proposed resolution to his earlier complaint about the lack of contact.

Lex said that they don't usually contact customers about returning a car at the end of the agreement. They also said they wouldn't have been able to collect the car due to the Covid pandemic.

Lex also explained that the reason the payments increased was because the extended period was not covered by the advance payment he'd made at the start of the agreement. They said this only covered the period of the original agreement.

They did accept that there had been a lack of contact from them and offered £200 compensation.

They said they didn't pay this as Mr W hadn't replied to say how he wanted this to be paid. They didn't uphold his complaint about the damage to the car or the arrears notice.

Mr W was unhappy with their response and brought his complaint to our service. He said he wanted a refund of his extra costs such as MOT and insurance, and still disputed the damage and excess mileage charges.

Our investigator didn't uphold Mr W's complaint. He didn't think Lex had acted unfairly by charging Mr W for the damage to the car. He was satisfied the damages charged for exceeded fair wear and tear as set out in the BVRLA's guidance on damages. He also thought the delays in issuing the invoice were reasonable due to the Covid 19 pandemic.

He also explained why he was satisfied that the mileage was accurate, and why it was reasonable for Lex to charge Mr W for the excess miles he'd driven in the car.

He also explained why he didn't think it was reasonable to ask Lex to pay Mr W's costs for insurance, a battery, a service and an MOT. This was because Lex had already agreed to write off the outstanding balance of the other costs due.

He was satisfied that Lex had been clear to Mr W that he had to reply with his preferred option for the payment of its earlier offer of £200. So it wasn't unreasonable that they hadn't acted when Mr W failed to reply to their offer.

Our investigator also explained why he wasn't able to look into the issues regarding the delay in collecting the car, Lex's failure to contact Mr W at the end of the lease, the increase in monthly payments, and the removal of the credit markers from his credit file. This was because Mr W referred the complaint to this service a year after Lex had issued their final response letter.

Mr W disagreed and asked for an ombudsman decision. He was also unhappy that the investigator hadn't looked into the initial complaint points because of the time that had passed.

### **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 W was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

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. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this. I'd like to reassure Mr W that I've read all the information and comments he's supplied.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

### *The original complaint*

The time limits I'm required to consider and are relevant to this case are set out in DISP 2 of the Financial Conduct Authority (FCA) Handbook. The specific rule that is relevant here is DISP 2.8.2. It says;

*"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

- (1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication..."*

I'm satisfied that Lex issued their final response to Mr W on 7 May 2021. And Mr W doesn't dispute that he received it. In this letter, Lex responded to Mr W's complaints about their lack of response to his collection requests made since May 2020, their failure to contact him when the lease ended in March 2020, and the increase in monthly rental fees. They upheld parts of his complaint and offered him £200 for the inconvenience caused.

The letter informed Mr W of his right to bring a complaint to this service and the requirement for the complaint to be brought within six months of the response. Lex also state in the letter that they will not consent to this service looking into the complaint if he didn't bring it on time.

Mr W said he didn't bring the complaint to this service as he was trying to resolve the complaint directly with Lex. He said this was why he hadn't paid attention to deadlines, and what he described as small print.

Because he brought his complaint to this service on 7 May 2022, 12 months later, it's been brought too late.

Our rules say that I can set that time limit aside if I'm satisfied that the failure to comply with it was as a result of exceptional circumstances. The rules give an example of exceptional circumstances as where a consumer might have been incapacitated. Mr W says Covid caused delays for all parties including him, and he also attempted to resolve the complaint himself.

I accept that was what he was doing. But it didn't prevent him from raising the complaint with our service within the six month period. And he hasn't told us about any other circumstances which would've effectively prevented him from bringing the complaint in time. So, I find no reason to set the time limit aside.

I appreciate that this will come as a disappointment to him, but I cannot consider this part of his complaint against Lex.

I can look at the issues he raised with Lex in September 2021, to which they issued a final response letter on 10 November 2021. Mr W raised this complaint with this service on 7 May 2022.

### *Not implementing the resolution from the first complaint*

In their final response letter of 7 May 2021, Lex offered Mr W £200 compensation for the inconvenience caused. They said *"Please let us know whether you would like this to be paid as a personal cheque or deducted from your outstanding balance."*

Mr W said he felt this was “*effectively blackmail*” by Lex, forcing him to accept the offer. I disagree. I think this was a reasonable request, giving him the option of receiving the whole amount, or having it offset against monies owed. I’ve seen complaints where firms have implemented one of these options without giving the customer a choice.

Lex also said that they were happy to remove credit markers after 1 May 2020 if he confirmed the relevant dates. I accept that they couldn’t do that until he’d confirmed how he wanted the compensation paid, as that may have impacted the markers if he’d chosen to use the offer to offset. So I think this was a fair and reasonable offer. Mr W said he had communicated with Lex after that date – but in his own words he said that he didn’t accept their offer of compensation. So I can’t say that they’ve unreasonably failed to implement the previous resolution.

If he hasn’t already done so, Mr W should inform Lex how he wants the £200 to be paid.

#### *Invoice for damage to the car and excess mileage*

Mr W complains that he didn’t receive the invoice or the evidence of the damage until eleven months after the vehicle was collected. Lex said they sent an invoice explaining the charges to Mr W on 3 May 2021, a few days after the car was collected. He said he didn’t receive it. But he did say it was included on a statement letter.

I’ve seen the report. It is dated 30 April 2021, and shows the mileage as 49,568 at the time of inspection. I have no reason to believe the invoice wasn’t sent to Mr W. But even, if it wasn’t, there was evidence of him being told the amount at the time in the letter he did receive. Having reviewed the report and photographic evidence, I’m satisfied that the charges are justified. They show damage which is greater than the allowance for wear and tear in the BVRLA guidance.

These are the scratches to the bonnet, the rear bumper, the left hand rear door, and the right sider front wing. The damage is clear. So I’m satisfied that it’s reasonable that Lex charge Mr W for the damages.

Mr W said that the car had been on his drive for nearly a year waiting for Lex to collect it. He said that Lex can’t show that the damage was done before May 2020, when the contract ended, so he shouldn’t have to pay for it. I disagree – the car was in his possession, he said he didn’t drive it (and that is supported by the evidence), so it’s more likely than not that the damage was done during the term of the agreement.

I’m also satisfied it’s reasonable he’s charged for the excess miles. I’m satisfied that a photograph of the odometer is reliable evidence. There is no evidence to suggest it was fabricated or taken at a time other than the collection point.

The agreement he entered into allowed for an “*extra mileage charge*” if the car had travelled in excess of the agreed contracted amount. I acknowledge that Mr W is unhappy that he wasn’t sent an invoice in the four week period set out in the BVRLA guidance.

But I’m satisfied that the charge is due, that mileage has been exceeded, and therefore its reasonable that Mr W pay for the excess miles as he agreed to when he entered into the agreement.

#### *Invoices*

Lex have confirmed that they will backdate invoices to 1 May 2020 – the date the contract ended. They've also said that they would remove credit file markers from this date. I think this is fair and they should go ahead and amend Mr W's credit file as they have suggested.

### *Compensation*

Mr W has asked that Lex pay him for storing the car on his driveway. He said this saved them storage costs. I accept this may have been inconvenient, but I'm not making an award for this. Lex, like others, had issues with collection and storage due to the restrictions put in place during the Covid pandemic. So I think it was reasonable to expect that the collection was delayed by a significant time.

He also asked for expenses he incurred whilst having the car on his driveway. These were: Insurance premiums costing £539.20, a new car battery costing £76.19, a service costing £498, and the cost of the MOT £39.99.

I agree with our investigators approach. Lex has agreed to support these costs. And they have also agreed to write off an outstanding balance of £2,016, that would otherwise have been payable. So it would be unreasonable to ask them to pay Mr W a further £1,153 on top of this as it would unfairly compensate Mr W for more than the losses he has incurred.

This matter has been protracted, and I understand Mr W's frustration. But I think Lex have been reasonable in writing off the balance, backdating the invoices, and correcting his credit file. So I won't be asking them to do any more.

### **My final decision**

For the reasons explained, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 October 2023.

Gordon Ramsay  
**Ombudsman**