

The complaint

Mr D complains about the extended rental and aborted collection fees Lex Autolease Ltd ("Lex") have charged him.

What happened

I issued my provisional decision on this complaint in March 2022. An extract from that provisional decision is set out below.

What I've provisionally 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 know it will disappoint Lex, but I don't agree with everything the investigator has suggested here. I think the extended rental charges from 3 September 2020 should be waived along with any aborted collection fees from 18 August 2020.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr D acquired his car under a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

I can see that there have been two previous complaints relating to issues with the collection of the car at the end of its lease. For clarity I would explain that I'm only concerned here with the extended rental and aborted collection charges. I'll also consider any credit markers that may have been placed on Mr D's credit file as a consequence of these charges and whether it would be reasonable to refund any insurance payments Mr D has made.

Lex have confirmed that they have waived charges for extended rentals between 4 April and 3 October 2020, so I'll not review those charges any further. But I will review extended rental charges after this and also the aborted collection fees.

Aborted collection fees

I can see that Lex charged Mr D for an aborted collection that was due on 19 August 2020. Mr D emailed Lex on 17 August 2020 to cancel the collection. Lex's terms said that a charge may be made if the collection was cancelled after 12 noon the day before collection and as Mr D cancelled the collection earlier than that the charge has been levied unreasonably and Lex should remove it.

I can see a further collection was arranged for 10 September 2020. On 25 August 2020 Mr D emailed Lex to explain that a collection wouldn't be possible on that day. He said the storage facility wasn't manned. So, I think he also cancelled that collection within time and the collection charge should be waived.

Extended rental charges

Lex emailed Mr D on 21 July 2020. In that email they explained that there may be delays collecting the car because of the pandemic. They went on to tell Mr D that he must stop using the car from the contract end date of 1 April 2020 and that he could cancel his insurance. They said he may still receive invoices for rentals during this time, but the invoices would not be charged, and they asked him to keep the car in a safe place, preferably off the road whilst collection was arranged.

Mr D moved the car to a secure location at that point and wanted Lex to pay him storage costs. I can see Lex disputed those storage costs and until late August 2020 Mr D was insisting the storage charges were paid before he would release the car.

I think Mr D could have mitigated those costs as the letter Lex sent to him in July 2020 didn't insist he kept the car in safe storage, they only asked he keep it safe.

But on 25 August 2020 Mr D sent an email to Lex in which he explained that, as Lex were threatening legal action if the car wasn't returned, he would leave it on the street outside, return the keys to them and address storage costs separately. There was no contractual obligation for Mr D to be present when the car was collected and as the keys were being returned Lex would have been able to gain access and remove the vehicle to auction.

At that point I'm therefore satisfied that Mr D had made the car available to Lex without any unreasonable demands for storage fees.

Whilst I understand that Lex were unable to confirm an exact time of collection for the car I also understand that Mr D couldn't confirm anyone would be available to release the car from storage. Lex hadn't asked him to return the keys and they didn't confirm an address to return the keys to. But Mr D returned them to an address he knew to be theirs and to a contact he'd been dealing with. So, I think it was likely the keys would be received and although they would then need to be forwarded to the collection agent I see no reason why a collection couldn't be arranged in a reasonable timeframe. Indeed, as Mr D returned the keys by registered mail on 3 September 2020 it seems feasible that the initial collection date of 10 September 2020 could still have been achieved.

So, I don't think it was reasonable for Lex to charge extended rental charges after the key for the car had been returned to them on 3 September 2020. By that time, they had told Mr D to stop driving the car and he'd left it in an accessible area and returned the keys so they could gain access without further delay.

Insurance costs

In their email of 21 July 2020 Lex explained that Mr D could now cancel his insurance and must now stop using the car.

Mr D has explained that he didn't cancel his insurance until 24 August 2020 but it's clear from Lex's letter that he could have cancelled earlier. So, I'm not asking Lex to refund any insurance costs Mr D incurred whilst there was a delay collecting the car after the end of the contract.

Reports to the credit reference agencies

Lex have an obligation to report missed payments accurately to the credit reference agencies. I'm not considering the missed final payment on the account as that has been considered in a previous complaint. But if Lex have made any adverse reports to Mr D's credit file in relation to the issues reported above they will need to remove them.

I'm not persuaded there is sufficient evidence Mr D has suffered financially as a result of any reporting Lex have made to his credit file, but I do think he's experienced distress and inconvenience as a result of their actions. Mr D will have been distressed to receive bills for aborted collections when he'd clearly cancelled them and there were occasions when Lex didn't respond to his emails e.g. when discussing the return of the keys. I think, in the circumstances, Lex should pay Mr D £250 to compensate him for the distress and inconvenience caused.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Lex Autolease Ltd to:

- *Waive any aborted collection charges made after 18 August 2020.*
- *Waive any excess rental charges made from 3 September 2020.*
- *Remove any adverse reports they may have made to the credit reference agencies in respect of these issues.*
- *Pay Mr D £250 to compensate him for the distress and inconvenience caused.*

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.

Lex didn't agree with my provisional decision. They said it wasn't for us to query their collection process and they reiterated that Mr D had obstructed their collection process by insisting on storage costs and refusing to appoint someone to be present on collection.

They said they'd asked Mr D not to return the keys to them, but he had anyway, and they'd been lost.

They also drew my attention to a previous decision made by this service on a related matter and in which the ombudsman had decided the car had been effectively abandoned. They suggested this set a precedent that I should follow.

Mr D accepted my decision but explained that he'd spent about 30 hours trying to resolve it. He therefore didn't think the £250 compensation was sufficient for the distress he and his wife had experienced.

I've not suggested Lex should be waiving collection charges before 18 August 2020 and I've not suggested they should waive excess rentals before 3 September 2020 when Mr D was asking for storage costs and the car hadn't been made available. I also explained in my provisional decision that I understood Lex hadn't asked for the keys to be returned. But Mr D had returned them, had been told not to drive the car, or insure it, and could not be considered to be obstructing collection anymore.

I'm asked to make a decision on the facts available to me and whilst I have considered the ombudsman's decision in the related matter Lex have mentioned, I don't have to agree with

everything that was said.

Whilst I accept Lex's collection process is for them to decide there was no contractual requirement for Mr D to be present and he had returned the keys to Lex and told them where the car was.

So, I've not therefore found any reason to change my provisional decision after considering Lex's additional comments.

I'm also not persuaded to increase the level of compensation I suggested. I think it's in line with what we would usually order in such circumstances.

Putting things right

For the reasons I've given above I've not been persuaded to change my provisional decision on this complaint and that now becomes my final decision.

My final decision

For the reasons I've given above I uphold this complaint and tell Lex Autolease Ltd to:

- Waive any aborted collection charges made after 18 August 2020.
- Waive any excess rental charges made from 3 September 2020.
- Remove any adverse reports they may have made to the credit reference agencies in respect of these issues.
- Pay Mr D £250 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 May 2022.

Phillip McMahon
Ombudsman