

## **The complaint**

Ms A complains that Lex Autolease Ltd has unfairly charged her rentals for a car, under a hire agreement, which wasn't of satisfactory quality when it had unreasonably delayed collecting it from her.

## **What happened**

In March 2018 Ms A entered into a 48-month contract hire agreement with Lex Autolease for a new car. The agreement had an initial rental of £8,621.28 and 47 monthly payments of £718.44. The contract hire agreement had an annual mileage agreement of 10,000 with a total mileage limit of 40,000. An excess mileage fee of 28.39p per mile would be applied if the mileage limit was exceeded when the agreement ended.

Ms A experienced issues with the car's power in September 2020, when repairs were undertaken. The car required further repairs in relation to engine faults in October and again in November 2020.

Ms A complained to Lex Autolease in November 2020 about the quality of the car. Lex Autolease wrote to Ms A in January 2021 upholding her complaint as it said, in light of the number of repairs, it couldn't be said that the car was sufficiently durable. Lex Autolease said it would support Ms A's request to terminate the agreement early at no cost, though it said charges for damage or excess mileage may still apply. Lex Autolease also said it would offer Ms A £250 compensation to reflect the distress and inconvenience caused by having to deal with the faulty car. Unfortunately, Ms A says she never received this letter and wasn't aware of its existence until around December 2021, when it was raised with her during a phone call with Lex Autolease.

Ms A says that the car wasn't fixed in November 2020, and the fault with the engine's power cutting out remained, though it wasn't returned to the garage for further investigations or repairs. Ms A says she didn't think the problem with the car was repairable, so she hadn't pursued getting it fixed.

Ms A made a number of attempts to contact Lex Autolease about returning the car between November 2020 and February 2022. In May 2021, there was an exchange of emails between Ms A and Lex Autolease during which Ms A provided all the necessary information for the agreement to be terminated and the car collected. But this wasn't processed due to an error between the internal departments of Lex Autolease.

The car was collected from Ms A in February 2022. The car's mileage at this point was recorded as 57,220 and an excess mileage charge was raised by Lex Autolease.

Ms A says that due to her concern about driving the car it had been agreed that a family member would use the car and she would use theirs. Ms A says she had no choice but to make this arrangement, as she couldn't afford to replace the car until the agreement had officially been ended.

Ms A complained to Lex Autolease about the delay in collecting the car and the poor service

she had received. It upheld Ms A's complaint about the poor service in arranging the car's collection. Lex Autolease said the rentals and excess mileage fee would still apply because the car had been used and the mileage limit had been surpassed. It said it recognised there had been a service failure, but it would be unreasonable for Ms A not to expect to pay for the use of the vehicle from November 2020 to February 2022. Lex Autolease offered Ms A £150 compensation for the distress and inconvenience caused.

Ms A was unhappy at Lex Autolease's response and complained to this service. She said it was unfair for Lex Autolease to charge for the use of the car after she had tried repeatedly to return it due to its faults. She said she had no choice but to use the car.

Our investigator recommended that Ms A's complaint should be partially upheld. He said that Ms A had made around ten attempts to contact Lex Autolease to arrange the return of the car and, although it had sufficient information to terminate the agreement early in May 2021, it hadn't done so. He thought in the circumstances that compensation of £500 would be fair to reflect the impact dealing with delays in collecting the car had had on Ms A and the distress and inconvenience she had experienced.

However, our investigator said that the car had been used throughout the time it had been in Ms A's possession; that the mileage limit had been exceeded by over 17,000 miles (over 14,600 miles had been driven in the car between March 2021 and February 2022) and there was no evidence that the car had been in an unsatisfactory condition after the repairs carried out in November 2020. He said, taking these things into account, he thought it was fair that the contractual monthly hire payments should stand, as should the excess mileage charge since the agreed mileage limit under the agreement had been exceeded.

Ms A disagreed with our investigator's view. She said the only reason the car had been used was because Lex Autolease had failed to collect it despite all her extensive efforts to hand it back. Ms A said the car wasn't roadworthy and was dangerous, as the repairs in November 2020 hadn't fixed the problem with the engine periodically cutting out. And that after the third visit to the garage for repairs it was clear the problem couldn't be fixed and so there was no purpose in pursuing further investigations and work.

Lex Autolease agreed that £500 compensation was fair in the circumstances.

As the parties were unable to reach an agreement the complaint has been passed to me.

### **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 appreciate Ms A feels very strongly that it is unfair for Lex Autolease to charge her for the use of the car after she had tried to return it and end the agreement. She says the car wasn't fit for purpose and was dangerous, and it was only used because of Lex Autolease's failure to collect the car. Lex Autolease says that it's reasonable for the monthly rental payments to be made as well as the excess mileage fee as the car was used extensively even though Ms A's had requested to return the car.

I've seen that Lex Autolease has accepted that following the car requiring three sets of repairs in respect of engine faults in September, October and November 2022, that it wasn't sufficiently durable and so wasn't of satisfactory quality. In January 2021, it had agreed that it would be fair for the contract hire agreement to be terminated early at no cost to Ms A. However, this termination wasn't then processed as Ms A didn't respond to this offer as she didn't get the letter. I don't know why this letter wasn't received by Ms A, but I can't

reasonably say this was due to any fault of Lex Autolease. And I don't think Lex Autolease acted unreasonably in not chasing up its offer to terminate with Ms A.

I've seen Ms A had made a number of attempts to contact to Lex Autolease, both on the phone and by email. And, by May 2021, she had provided all the necessary information for Lex Autolease to process an early termination of the contract as it had agreed to do in January. Unfortunately, there appears to have been a breakdown in Lex Autolease's own internal communication systems which meant this wasn't then done. I've also seen that Lex Autolease has accepted that an increase in the amount of previously offered compensation would be reasonable when taking this into account, and the consequent impact it would have had on Ms A. And I think that Lex Autolease has acted fairly in recognising that.

Ms A says that Lex Autolease shouldn't be able to charge the contractual monthly rentals for using the car when that was solely the result of Lex Autolease's failure to collect it from her. She says she had no choice in the circumstances but to use the car. While I appreciate why Ms A's holds her view, I'm afraid I disagree it would be reasonable that there should be no rental payments to cover the use of the car from November 2020 until February 2022. This is because, even though it wasn't Ms A who was using the car, it was being driven up until the point of collection. And, looking at the mileage that was added to the car, I can't reasonably say the car was unusable. I've seen that the mileage recorded at the MOT undertaken in March 2021 was 42,550, it was 46,379 in May 2021 when Ms A provided the mileage to Lex Autolease and was 57,220 at the point when the car was handed back in February 2022. So, an additional 14,670 miles had been driven between March 2021 and February 2022, which I can't fairly say would have been only minimal use. The car was subject to extensive use. I also don't think I can fairly disregard that the contractual mileage limit for the car was exceeded by just over 17,000.

Ms A says the car was dangerous, but I haven't seen any corroborating evidence that would support the final repair carried out on November 2020 wasn't successful and the car wasn't roadworthy. Ms A has provided a short video of the car engine cutting out but it's difficult to see when this was recorded and, without more information, it is also difficult to say this was due to a failed repair. I've seen that the car successfully passed its MOT in March 2021. So, I don't have enough information to say that the car was dangerous to use and not roadworthy. Plus, as set out above, the car was being regularly driven to the point that the contractually agreed mileage was exceeded by a large number of miles.

I can appreciate Ms A's loss of confidence with the car and that there was an arrangement for someone else to use the car. But, in line with agreement's terms and conditions, Ms A remained responsible for the car and also for the contractual monthly payments until the agreement was terminated. Ms A says she had no choice but to use the car and, while I accept the delay in collecting it would have been the cause of distress and inconvenience to her, looking at the mileage in that period, I think it's fair that this usage is paid for.

So, looking at the use of the car, I think Lex Autolease has acted fairly in requiring the contractual monthly payments are paid by Ms A up until the point the contract hire agreement was terminated. I also think it is fair and reasonable for Ms A to be liable for the excess mileage charge.

However, I accept Lex Autolease has mishandled the termination of the contract hire agreement and that this would have caused Ms A distress and inconvenience. I think £500 compensation in these circumstances is fair and reasonable in reflecting the impact this has had on Ms A. I'm therefore partially upholding Ms A's complaint.

### **Putting things right**

I'm asking Lex Autolease to pay Ms A £500 compensation for the handling of the early termination of the hire contract and its impact on her.

### **My final decision**

For the reasons set out above, I'm asking Lex Autolease Ltd to pay Ms A £500 compensation for the distress and inconvenience caused to her by its mishandling of the early termination of the contract hire agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 13 December 2022.

Jocelyn Griffith  
**Ombudsman**