

The complaint

Mr F complains about the quality of car supplied to him on finance by LeasePlan UK Limited ('LP').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr F leased a brand new electric car under a hire agreement with LP in March 2021. However, he says that he started experiencing problems with it primarily relating to the charging and battery. He says that the battery would not charge fully and would lose charge quickly (including when parked overnight). And it resulted in more frequent charging than expected. Mr F says that the problem has resulted in greater charging costs and LP had not been helpful in resolving the matter.

Our investigator upheld the complaint and directed LP to end the agreement and refund Mr F a portion of his payments and pay some compensation to fairly reflect the issues with the car.

LP disagreed. In summary, it says that the actual range of the car on a charge will depend on certain variables and this is normal operation. It has asked for the matter to be considered by an ombudsman for a final decision.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

It is worth noting that since our investigator's view on the matter the agreement has come to an end and LP has taken back the car. However, I don't consider this changes the fairness of what I am directing here.

Furthermore, I note that Mr F has recently raised that he is unhappy with LP's lack of clarity as to its collection process including that it applied unfair/additional charges on collection. I can understand why Mr F is frustrated with this but it doesn't form part of this complaint which is about the quality of the vehicle and not the collections process or end of contract charges. So if Mr F has not already done so he can complain to LP about this separately and escalate the matter to this service if he is unhappy with LP's response.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer hire agreement. As such, this service is able to consider complaints relating to it. LP is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle’s history.

The Consumer Rights Act 2015 says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

LP supplied Mr F with a brand new car. So I think it’s fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

The issue here is that there is a dispute over whether the car was faulty – or simply achieving different ranges per charge due to reasonably expected operating conditions.

I have carefully considered what LP has said about the range being dependant on things such as the routes, speed, use of in car functions, load in the car and other variables. However, I note that Mr F’s testimony supports a finding that what has happened with his car is beyond these reasonably expected variances. For example, in his complaint about the car he has described:

- the car not charging up to the full mileage capacity due to a message which said ‘the charger detected an internal error’;
- a full charge to 180 miles stating ‘22 miles left’ after 50 miles travelled;
- the car losing about 60 miles of range simply by being left overnight; and
- warning and fault lights appearing on the dashboard

Just from Mr F’s testimony, which has been consistent (and reinforced by his correspondence to LP) the issues appear likely to be more than reasonably expected variances in range from use and climatic conditions. But I also note that in further support of this finding there are job sheets which show Mr F brought the car in to the dealer with charging/range issues numerous times. And I note that during these visits software updates were carried out to attempt to address the problem. And while I take LP’s point that software updates do not in themselves mean a car is of unsatisfactory quality I think that depending on the purpose of the update it can evidentially point to the existence of a known fault. I don’t know the exact reason for the software updates and whether there was a known charging issue to address. However, in any event I note that during the visit a hardware fault with the charging system appeared to be identified and led to remedial work being carried out. For example an extract from the job sheets to support this is:

‘advise that fault code P12D8 13 is in the fault code log. Replaced the charge socket unit as suspect an internal fault, including powering down the HV system and then replacing the socket and cabling’

Furthermore, there was also a fault code which appeared to be related to a wheel speed sensor and was traced to a broken wire. While it isn't clear whether this could also be related to the other issues Mr F has described, it does seem possible that if the car is reading incorrect speed it could impact the range calculation and charging warnings.

I also note that LP has pointed to a subsequent job sheet from October 2023 where the dealer was unable to find any faults. But this came after the numerous times the car had been in before – and when previous faults were found with the charging system. So despite the clean bill of health at this time, I think that the previous history combined with Mr F's ongoing and credible testimony place significant doubt on the car being free of underlying issue with the electrics.

Where matters are in dispute or unclear I make my findings on the balance of probabilities. And I think that Mr F's credible testimony along with the actual discovery of hardware faults related to charging persuades me that the car was likely supplied with a defective charging system, or that it developed a defect later as a result of a lack of durability. It follows that a reasonable person would not expect this with a newer car and therefore my finding is the car as supplied was not of satisfactory quality under the CRA.

The question now is how to put things right. I understand the agreement has already been ended and the car has been collected so the question is around appropriate compensation.

Mr F has been using the car as shown by the mileage he has covered. I don't think his use of the car has been drastically impacted from the mileage I can see. I also note that when the car was taken into the garage for any work it appears Mr F had the benefit of a courtesy car to keep him on the road. So my starting point is that Mr F should not be getting a refund of all his payments for what has occurred here.

However, I do note that the issue Mr F had with the charging system has apparently impaired his use of the car. It appears the low battery issues have stopped him using the car as freely as he would like and he has been charging it more frequently - which he says has cost him more money than expected.

Our investigator recommended an impaired usage refund to reflect the issues with the car of 5% of each monthly rental from January 2022 plus out of pocket interest.

I am broadly satisfied that Mr F has not had the full benefit of the car due to the issues he has experienced – and that he likely charged it more often as a result. It isn't clear exactly how long the issues have been going on for – I note that the job sheets indicate the issue started around March 2022 – but I also note that Mr F has mentioned having problems from an earlier stage. It seems likely Mr F would take the car in soon after discovering issues – and that perhaps a bit of trial and error would mean that he wouldn't realise the extent of the issues until a few weeks later – so I think the recommendation of running the impaired use refund from January 2022 payment onward is fair.

Regarding the amount of impairment – that is not a science. Nor is it clear the extent of any extra costs Mr F incurred due to the issues with the charging system. It is clear he would always have had some charging costs – and that the issue had not always impacted his use of the car to the same degree. Mr F has not responded to our investigator's view in such a way as to make me think that the previously recommended refund is unfair. With this in mind and in the absence of further persuasive evidence to show the level of impairment/additional charging costs significantly exceed this recommendation I think that it is fair.

I also note the investigator recommended additional compensation for distress and inconvenience. I think this is fair too (factoring in what our website says about such awards)

– because Mr F has clearly been caused elevated distress and inconvenience by what has occurred. And while I can see that LP did assist to a degree with investigating the issue I think it could have done more to recognise the persistent nature of the issue, the faults that were identified and the impact on Mr F in order to resolve matters in a fair way. I can see Mr F refers in his correspondence to how this issue has impacted his financial and mental wellbeing. This is more than the usual level of distress and inconvenience suffered in everyday life – and has gone on for some time. This is not a science but all things considered I think the £200 our investigator recommended is a fair amount of overall compensation.

Putting things right

LP should put things right in accordance with my direction (below).

My final decision

LeasePlan UK Limited should:

- pay a refund of 5% of rentals paid from the start of January 2022 in respect of this hire agreement; and
- pay 8% yearly simple interest on these refunds from the date of payment to the date of settlement;
- pay Mr F £200 compensation; and
- make sure the agreement is ended with no adverse information on Mr F's credit file in relation to it.

If LP considers it should deduct tax from my interest award it should provide Mr F with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 31 July 2024.

Mark Lancod
Ombudsman