DRN-5213294

Financial Ombudsman Service

The complaint

Mr B complains about a car he leased through a regulated hire agreement with Lex Autolease Ltd (Lex). The car broke down and ultimately required a replacement engine. Mr B is unhappy that he is being held liable for the cost of the replacement engine, plus additional rentals.

Mr B is also unhappy that Lex has now recorded a default on his credit file, as he did not make all of the rentals that were due between the car breaking down and being taken back by Lex.

What happened

In January 2018 Mr B hired a new car through Lex. In return for using the car Mr B was required to make one initial rental of £1,668.16, followed by 35 payments of £556.03. Although the original agreement term was 36 months, by mutual consent, the term of the hire agreement was extended and Mr B retained possession of the car beyond the original 36 month term. Mr B continued to pay the revised monthly rental amount that was agreed between the parties.

In early January 2024, the car broke down. The car was recovered and a significant engine problem was diagnosed. The result of the fault was that the car required a replacement engine, which would therefore incur a significant repair cost.

Much discussion took place between Mr B, Lex, the manufacturer dealership, but ultimately Mr B was found liable for a significant amount of the repair costs. I understand the manufacturer did offer to cover 20% of the cost.

Mr B was unhappy about the prospect of incurring significant repair costs and complained to Lex about this. Mr B believes the car was not of satisfactory quality when it was supplied and because of this he should not be liable for the cost of the repairs. Mr B also believes he should not therefore be required to make the monthly rentals that were contractually due between the car breaking down and when it was taken back by Lex.

Since bringing his complaint to our service, Mr B has also complained about Lex applying a default to his credit file in respect of the outstanding monthly rentals. Mr B said he was assured the default would not be applied to his credit file at least until the complaint had been concluded.

The complaint was considered by one of our investigators who initially did not uphold the complaint. After further submissions, the investigator revised their view of the complaint and explained to Lex why it should be responsible for the repair costs, amongst other things.

Ultimately, both parties did not accept the investigator’s findings and as the complaint could not be resolved informally, it was referred to me so a decision can be issued under the last stage of our process. After initially considering what the parties had said and provided, I asked the investigator to obtain some further information from the parties. Both parties responded and I then issued my provisional decision, setting out why I was not persuaded

Mr B's complaint should be upheld.

In the provisional decision I set out the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I would like to say that I appreciate Mr B will likely remain very unhappy with the decision I have reached here. But I must consider the complaint impartially and while I do not doubt Mr B's disappointment at the car failing and the financial impact this is likely to have on him, this is not however grounds for upholding the complaint.

Second, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free 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 individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Requirements around quality

Lex was the supplier of the car to Mr B under a regulated hire agreement and our service is able to consider complaints about these types of regulated agreements. Our service is also able to consider complaints about the quality of the goods supplied under the hire agreement. There are implied terms into this type of agreement that require the goods supplied under the agreement, i.e. the car, to be of satisfactory quality when they are supplied. Where the goods supplied are not of satisfactory quality, Lex as the supplier, can be held liable for any costs or losses the hirer incurs as a result of the unsatisfactory quality car.

During the investigation the investigator has referred to potentially different obligations or responsibilities in a hire agreement, when compared to a hire purchase agreement. But ultimately the expectations around satisfactory quality, the liability and therefore any associated remedies are broadly the same in hire and hire purchase agreement. The fact that under a hire agreement the consumer never has the option to own the goods, unlike a hire purchase agreement, would not impact on which party was responsible for any repair costs or the available remedies.

As already referred to, the requirement in cases like this where Lex has supplied a car under a regulated hire agreement relate to satisfactory quality and this is set out in the Consumer Rights Act 2015. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car. Section 9 of the Consumer Rights Act 2015 refers to satisfactory quality and notes that the quality of goods includes their state and condition.

It goes on to list the following aspects, amongst others, of the quality of goods,

(a) fitness for all the purposes for which goods of that kind are usually supplied;

(b) appearance and finish;
(c) freedom from minor defects;
(d) safety;
(e) durability.

The goods should be of satisfactory quality when supplied, but this does not mean that issues or faults that arise later would never be considered unsatisfactory. Durability needs to be considered and this ultimately could result in a car being found to be not of satisfactory quality if an issue arose some time into the agreement term or even beyond.

The requirements of the Consumer Rights Act 2015 are not intended to address general maintenance, servicing or wear and tear items that require replacing because of use and/or age.

Was the car faulty

The car supplied here was new when Mr B first acquired it but the fault with the engine did not occur until several years into the agreement and by which time the car had travelled around 85,000 miles.

There appears to be no dispute the car was actually faulty in January 2024 and the evidence presented supports the fact that the car appears to have suffered a significant engine failure. The car broke down and was recovered and a manufacturer branded garage confirmed there was a problem with the engine, and it needed replacement.

The car has since been sold and I don't believe there was any investigation into to specific cause of the engine the failure. It would have been helpful if this had been done and it may have therefore provided some further clarity. But I can also appreciate the need to avoid the additional costs of stripping and potentially rebuilding the engine to identify the cause of the problem when it is clear the engine has ultimately failed. Mr B may have been liable for these costs, which I suspect would not be insignificant.

Lex has referred to the servicing of the car and that the car was not serviced at the exact intervals as set out by the manufacturer. The services were done but not exactly at each interval of 21,000 miles. Lex has referred to the possibility of the late servicing being the cause or contributory factor to the engine failure.

Mr B accepts that the services were not carried out exactly at 21,000 mile intervals. But they were still within the manufacturer's tolerance. Mr B also refers to the last service being at 64,595 miles and with the next service then due after 21,000 miles (excluding the time period) the service would not be due until 85,595. The car had not travelled this distance at the time of the engine failure, so the service was not actually overdue.

As I am sure Lex is aware, it is unlikely that every car is serviced exactly when it should be according to the manufacturer's recommendations. This is often due to availability at the garage and it is well known and accepted that a slightly late service is still acceptable to the manufacturer and broader industry when considering whether the car has a full or partial service history.

Having considered the specific circumstances here I consider it to be unlikely that any late servicing caused or contributed to the problems with the engine. Mr B is in my view correct in that the car had not yet reached the next service interval as 21,000 miles had not passed since the service at 64,595. So I am not sufficiently persuaded that any delayed servicing is what caused or contributed to the engine failure.

Was the car of satisfactory quality

Just because the car was faulty this does not mean that Lex is responsible. Although the car was new when supplied initially, it was almost six years old and had travelled around 85,000 miles. Had the car, or more specifically the engine or its components not been durable, I do not consider the car would have lasted as long as it did or travelled as far as it did before experiencing the failure. The engine would have likely failed much sooner. Six years is I accept not necessarily significant, but the amount of miles travelled is likely to have a greater impact on component wear and 85,000 miles is not an insignificant amount of miles.

I have noted what Mr B has said about expectations generally about how long an engine should last, and I accept that many do typically last significantly longer without failing. But that does not however mean cars or their engines are guaranteed to last a certain time or mileage before experiencing any issues.

I've also noted what Mr B has provided by way of online forum comments from others who have the same engine and have experienced a similar issue. This is a common and widely used engine and as one of the forum comments actually refers to, people rarely use these forums to talk about the reliability of an engine. This often then results in online forums of this nature only being used by those with problems. This is not necessarily therefore a fair reflection of the amount of times the same type of engine has failed when compared to the number actually made or in use. The forum comments are not therefore persuasive of there being an inherent defect within the design or manufacture of this particular engine.

While I again note Mr B's disappointment, having very carefully considered all that has been presented in this complaint, I am not persuaded the car was not of satisfactory quality when it was first supplied to Mr B. Nor therefore am I satisfied it was not sufficiently durable in relation to the engine fault.

Is Lex liable for repairs and associated costs?

The terms of the hire agreement between Mr B and Lex set out the expectations of the parties and while I have read and considered them in detail, I shall not refer to all of them here as many parts are not relevant. Of particular relevance however is section eight of the terms and conditions which refers to CARE AND USE OF THE VEHICLE.

In summary, Mr B is responsible for keeping the car in good order, repair and condition. I understand Mr B did not take out the optional maintenance package which Lex has referred to and says would have likely covered the costs of the repairs. Mr B was therefore responsible for ensuring the car was in good order, repair and condition.

I appreciate Mr B did have the car serviced, but I am not persuaded his responsibilities or therefore liability ends there and he would be responsible for carrying out any repairs or maintenance that were not considered to relate to satisfactory quality. As I have set out above, I have not found the engine issue was because of the car not being of satisfactory quality and as a result of this, I do not find that Lex is ultimately responsible for any repair costs required to the engine.

Section nine of the terms and conditions is also relevant to this complaint and this refers to RETURN OF THE VEHICLE. This sets out the expectations and obligations on Mr B when returning the car and in a similar way to section eight, requires the car to be returned in good order, repair and condition. Mr B could therefore be liable for the cost of any repairs when the car was returned.

Lex has provided further details of what happened when the car was collected by its agent

and then sold. I shall not refer to that in full detail here as some of this information may be commercially sensitive. But Lex has ultimately explained that the car was sold with a known engine issue and this is likely to have impacted on the value of the car at that time. From what Lex has set out however, it does not appear that any losses as a result of the sale proceeds being less because of the fault, are anywhere near the cost of a new engine.

Also, Lex has referred to an error on its part where it did not seek reimbursement of any sums relating to the engine repair costs or the lower value achieved from its agent. Mr B was not and is not therefore being pursued for payment in relation to the resale value or repair costs.

Mr B was however being pursued for the monthly rentals that were due between the engine failure and when the car was returned. Mr B believes it would be unreasonable to expect him to pay these sums as the car was not working then. But as I have found that the car was of satisfactory quality, Mr B would remain liable for the rentals that were due at that time. And there are no grounds for me to direct Lex to write off or waive any of the rentals that were due at that time.

The default and credit file

The unpaid rentals ultimately resulted in Lex defaulting the account and as the sums were not paid, Mr B's credit file was marked as in default. I note that Mr B was sent a default notice in April 2014 and Lex has provided a copy of its account notes, which show Mr B discussed this with Lex after receiving the default notice.

Mr B has said that he was assured his account would not be defaulted until our service had reached a conclusion. But I have not seen anything to support this and there is nothing in the contact notes or correspondence that directly or indirectly indicate Mr B was told this or given any assurances about the default not being applied.

Mr B was provided with a default notice and the amounts were actually due. As I have not seen persuasive evidence that the default would not be applied if payment was not made, I have no grounds to instruct Lex to remove the default.

Lex has however stated that should Mr B now settle the amount shown on his credit file the default will be marked as settled. I will leave this for Mr B to consider.

Lex may wish to reconsider this and remove the default entirely if Mr B pays the sum outstanding. But I should again be clear that I have not instructed Lex to do this and Mr B would not be able to complain about this if Lex maintains its position and does not remove the default.

My provisional decision

For the reasons set out above, I am not persuaded there are sufficient grounds to uphold Mr B's complaint against Lex Autolease Ltd. Consequently, there are no grounds for me to direct Lex Autolease Ltd to remove the default marked on Mr B's credit file or write off any sums due.

Lex responded to say that it accepted my provisional decision and had nothing further to add.

Mr B responded and set out why he did not accept my provisional decision. In summary, Mr B referred again to the discussions he had with Lex about the default and in particular a call he had with an agent at Lex in April. Mr B has questioned how Lex was able to issue a

default notice before issuing a final response to his complaint and highlights that defaults can be removed if added in error. Mr B also questions why Lex did not collect the car sooner and believes he should not be at fault for the car being collected in April.

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 reconsidered what the parties had initially submitted, along with the additional submissions Mr B has made in response to my provisional decision, I have come to the same overall conclusions as set out in my provisional decision, for what are broadly the same reasons.

Mr B has referred to a specific telephone call he had with an agent at Lex where he believes he was assured the default would not be applied to his credit file. As previously referred to, I have considered the contact notes recorded by Lex's agents and in particular the call that I believe Mr B is referring to. The notes are comprehensive and clear, and make no reference to Mr B being told the default would not be applied. I consider it highly unlikely they do not represent the actual call that took place at the time.

I do not therefore consider it beneficial to delay the outcome of this complaint further trying to obtain a copy of the call recording, which may or may not even be available. On balance I consider it highly unlikely it would demonstrate that Mr B was told the default would not be applied to his credit file, or anything contrary to what is recorded on the call notes.

A default should only legitimately be applied after a notice of default has been issued to a consumer and while I appreciate it may have been preferred by Mr B if this was not issued until after the complaint final response had been issued, it is not unreasonable in certain circumstances for the default notice to be issued while a complaint is ongoing. The complaint could have continued on for some time, as it has now that it has been referred to our service, and where it was found the default could legitimately be applied, after a default notice was then issued, this could be more detrimental to a consumer as it would be added later and likely remain on the credit file for longer.

Having reconsidered the circumstances here and what Mr B has said recently, I am still not persuaded there are sufficient grounds to direct Lex to remove the default from Mr B's credit file. I again remind Mr B that should he settle the amount due Lex will be required to mark the default as settled, which should reduce the impact of the default on his credit score.

Mr B also questions why the car was not collected sooner by Lex, but I remind Mr B that he and Lex were still in dispute for some time about who should be liable for the repairs required to the car's engine. The car required an engine replacement and there was no indication from Mr B that he would repair the car or assurance he would cover the repair costs or loss in sale value after the car was returned with the engine failure.

Where the parties were in agreement about who should be responsible for the repair costs, I accept the car could have been collected sooner. But that was not the case here and it would in my view be unreasonable in the circumstances here to find that Lex acted unreasonably in not collecting the car until it did.

My final decision

I fully appreciate my final decision will come as further disappointment to Mr B but for the reasons set out in my provisional decision and above, my final decision is that I do not

uphold his complaint against Lex Autolease Ltd.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 14 January 2025.

Mark Hollands
Ombudsman