

The complaint

Mr P is unhappy as Lex Autolease Ltd (Lex) are holding him liable for additional road fund licence costs under a hire agreement he has with them.

When I refer to what Mr P or Lex have said or done, it should also be taken to include things said or done on their behalf.

What happened

In October 2021, Mr P entered into a hire agreement with Lex to acquire a car. Mr P had to pay an initial rental of around £1,072 when the car was delivered, followed by 47 monthly rentals of around £357.

Mr P said that in October 2021, when he placed the order for the car, he was told he would have the road fund licence included for the time of his hire agreement. But then suddenly in May 2023, almost a year after receiving the car, he received an invoice for recharged road fund licence in the amount of £498. He said he immediately queried this with Lex, but they told him that between him ordering the car and receiving it, the list price increased to over £40,000. So, they said that car was subject to an extra yearly premium.

Mr P said that he was completely unaware that cars over a certain value had a premium to pay. He said that when he checked his paperwork, the order list price at the point of order was £38,600. And, Mr P said, he was told by Lex that his monthly payments had been calculated at that list price. Mr P said that at no point, prior to receiving the car, did Lex advise him that the list price had increased and that the tax rate would be based on the list price at the time of registration instead of at the point of order. Mr P said that, had Lex been open and honest as a responsible lender, he could have exercised his right to cancel the order for the car.

Mr P said that he spoke to the manufacturer of the car, who advised him that the list price of the car changed in April 2022 to over £40,000, so Mr P said that Lex had two full months to advise him of this change. Had they done this then he could have made an informed decision on whether to continue with the order for the car or decline it and make alternate arrangements. Mr P said that he had to borrow money to pay this fee, as he could not pay this with a credit card, and he is unhappy that every year he will need to find this extra amount. So, he has complained to Lex.

In June 2023, Lex responded to Mr P's complaint. In summary, they said that in between the date Mr P placed the order to the date of delivery of the car, the manufacturer increased the list price to above £40,000 and within Mr P's agreement, in the payments section (2e), there is an explanation that the list price may change between the order date and the delivery date. Lex said, as per the finance agreement, any increase in the road fund licence will be passed on to the customer and, unfortunately, this means they are unable to uphold his complaint as they felt that there was no failing in the service provided by them to Mr P.

Mr P was unhappy with Lex's response, so he brought his complaint to Financial Ombudsman Service (Financial Ombudsman).

Our investigator thought that Lex did not act unfairly, and that they did not need to take any further action regarding Mr P's complaint because the invoice, sent to Mr P for the extra road fund licence costs was in line with the terms and conditions of the hire agreement Mr P entered into.

Mr P did not accept the investigator's outcome. So, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Mr P acquired the car under a hire agreement, which is a regulated hire agreement. Our service can look at these sorts of agreements.

Mr P is unhappy that Lex is asking him to pay an increased road fund licence, which is sometimes referred to as road tax. And according to the road tax information provided on the United Kingdom government website, cars registered on or after 1 April 2017 must pay a first-year tax rate of which the calculation is based on the car's CO2 emissions. The subsequent years' tax is a flat rate based on the car's fuel type. The site also states that cars with a list price of more than £40,000 would have to pay an extra amount annually from year two, for the following five years (from the second time the car is taxed).

The terms of Mr P's hire agreement state:

"If there is a change in the cost of the vehicle excise duty or any other relevant or alternative tax on the Vehicle or its use, we will charge you the increase or refund you the decrease for the relevant year. Further charges/refunds may apply in later years. See clause 2(e)."

And then later under: "2 YOUR PAYMENTS AND WHAT THEY COVER" the agreement states:

"(e) We will pay the cost of the annual vehicle excise duty required by law for the Vehicle. The estimated cost of this duty for each year of the Minimum Period is included in your Rentals. If:
(1) the duty for the Vehicle increases above what it is at the hiring start date, or
(ii) the actual duty for the Vehicle is greater than the amount of duty estimated by us at the time the Vehicle was ordered by you from us, or
(iii) any other tax is imposed that results in the duty being more than is due at the hiring start date, you must reimburse us the difference on demand. But, if the cost of the duty or tax decreases, we will pay you the amount of the decrease for the relevant year. Further charges/refunds may apply in later years.
(f) We have calculated the Rentals by assuming that the rate and relevant rules for VAT applying to our sale of the Vehicle at the end of this agreement are the same as when this agreement starts. We may make a charge if the VAT rate or rules change so as to reduce our after-tax rate of return for the Vehicle's purchase, hiring or disposal. But we will pay you the amount of any increase in our after-tax rate of

return if the VAT rate or rules change so as to increase our after-tax rate of return for the Vehicle's purchase, hiring or disposal."

Considering the above, I think most likely Lex did not act unfairly because the invoice, sent to Mr P for the extra road fund licence costs due was in line with the terms and conditions of the hire agreement he entered into. And as such Mr P is liable for the extra road fund licence costs.

I know Mr P said that Lex had two full months to advise him of the changes so that he could make an informed decision on whether to continue with the order for the car or decline it and make alternate arrangements. And he is unhappy that every year he will need to find this extra amount. But the terms of Mr P's hire agreement do explain what will happen if the actual excise duty, or any other relevant or alternative tax on the car, is greater than the amount estimated at the time the car was ordered. So, I still think that Mr P would have, most likely, been aware what will happen if there are any changes. But for completeness, I have also considered if it was Lex's responsibility, and/or if they should have done more, to tell him about the changes.

In doing so I have considered, among other aspects, if Section 56 of the Consumer Credit Act 1974 would apply here. Section 56 deals with "antecedent negotiations" and it explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier (in certain circumstances) before the consumer takes out the credit agreement. But considering all the circumstances of this case, I think most likely, this section does not apply. I say this because I have not seen enough evidence to be able to say that Lex was acting as negotiator in respect of the antecedent negotiations. And I have considered common law principles of agency to establish whether a broker acted with authority or apparent authority on behalf of Lex. But I have not seen evidence to show that Mr P dealt with Lex or discussed the proposed transaction with them at any point. As I think, most likely, it was the broker who Mr P dealt with, and I do not think the broker was acting as Lex's agent in this particular case. When arriving at this conclusion, I have considered section: "5 RESTRICTION OF OUR LIABILITY" of the hire agreement Mr P entered into, which states:

"(a) If a dealer, operator, broker or manufacturer has been involved in this transaction they are not our agent, we are not responsible for anything they have said, done or not done. The only exceptions to this are when we have specifically authorised it in writing or the law makes them our agent."

Considering the above and the circumstances of this specific case, I have not seen enough to be able to say that, most likely, Lex authorised the broker to act as their agent or that the broker acted with actual or apparent legal authority on behalf of Lex. So overall, I do not think it would be reasonable for me to hold Lex liable for the actions of the broker considering the circumstances of this specific case.

While I appreciate Mr P's strength of feeling regarding his complaint, I do not think it is fair or reasonable for me to require Lex to take any further action regarding his complaint.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 December 2024.

Mike Kozbial

Ombudsman