

The complaint

Mr B is unhappy that Lex Autolease Ltd have invoiced him to pay an MOT penalty and associated costs.

What happened

Mr B took out a regulated consumer hire agreement for a car with Lex Autolease in January 2017. This was arranged by a broker.

In December 2019, Mr B says he called Lex Autolease to find out when the MOT of his car was due. He says he was told that he had missed the MOT due date, which was on 31 October 2019.

Lex Autolease then sent Mr B a motoring offence invoice to pay in the sum of £77.09 – made up of £40 (DVLA fine); £12.09 (arrears of tax owed); and £25 (administration fee).

Mr B complained to Lex Autolease about this. In short, he said he shouldn't have to pay the invoice as Lex Autolease didn't make him aware that his car was due an MOT on 31 October 2019. He said he thought this would've been due three years from when the hire agreement started in January 2017.

Lex Autolease investigated the complaint and decided that Mr B still had to pay the invoice. They said reminder emails about the MOT due date were sent to Mr B, but the broker had provided them with an incorrect email address. They explained that reminder emails are sent as a courtesy only, and that it's Mr B's responsibility as the driver of the car to ensure it had an MOT. Lex Autolease also said information about the MOT requirements of Mr B's car were sent to him via his broker on 12 December 2016.

Unhappy with Lex Autolease's decision, Mr B referred his complaint to our service. One of our investigators didn't uphold the complaint. He said, having considered the terms of the hire agreement, he was satisfied that it was right for Lex Autolease to hold Mr B liable to pay the invoice. The investigator also said that the reminder emails were only an added extra and that there was nothing in the terms of the hire agreement which states Lex Autolease must notify Mr B when his MOT is due. So, he didn't think it mattered that Lex Autolease were sending their reminders to an incorrect email address.

Mr B didn't agree with the investigator's findings, so he asked for an ombudsman to consider the case. In October 2020 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as our investigator, but for slightly different reasons. I'll explain why."

It's not in dispute that getting the MOT for the car was Mr B's responsibility. He called Lex Autolease in December 2019, to find out when the MOT was due. Also, the first page of the hire agreement states no maintenance services are included within the agreement."

What is in dispute however, is whether Lex Autolease were obliged to notify Mr B that his MOT was due on 31 October 2019. Mr B says they were and their failure to do so caused him to miss the date, which means he shouldn't have to pay the penalty and associated costs.

As a starting point, I've considered the terms of the hire agreement. In doing so, there is nothing in it which states Lex Autolease are required to notify Mr B about the MOT due date. I agree that it is good practice for them to send reminders to their customers, as they typically do. But I'm not persuaded they are obligated to do so under the terms of the hire agreement. It's unfortunate that the reminders went to the wrong email address. I've not been able to establish with certainty, whether the incorrect email address was an error by Lex Autolease or if they were provided with the wrong email address as they say. But even if it could be shown that this was Lex Autolease's error, for the reasons I'll come to, it wouldn't change my opinion on the overall outcome of this complaint.

Mr B points out that Lex Autolease write to him twice a month, once to invoice his monthly payment and again to acknowledge receipt of it. He questions why a reminder couldn't have been added to these letters rather than being sent by email? I've considered this, but how businesses decide to communicate with their customers is a decision for the business concerned. And whilst I accept Mr B has made a reasonable suggestion, I'm still not persuaded this is enough to mean that Lex Autolease become responsible for the car not having an MOT and the resultant fine. Ultimately, as the driver of the car, Mr B is responsible for ensuring it had an MOT. The law requires this. I accept that if Mr B had received the reminders from Lex Autolease, he likely would have arranged an MOT in time. But it doesn't follow that this relieves Mr B of his legal responsibility to ensure the car had an MOT.

There were various ways in which Mr B could have checked the date of first registration of his car and therefore found out when the first MOT was due. These include checking on the gov.uk website or asking Lex Autolease (as he did when he believed the MOT was imminent in December 2019). The information Mr B also received from his broker at the time of setting up the hire agreement made clear that the car was 'pre-registered' and that it required an MOT at "3 years from the published taxation point."

I've seen the penalty notice sent to Lex Autolease in relation to Mr B's car and the figures involved match those quoted above. The terms of Mr B's hire agreement are clear that any such fines will be passed on to the hirer, along with a £25 admin fee. As such, I don't think Lex Autolease acted outside the terms of the agreement or unfairly, when passing these costs on to Mr B."

Lex Autolease didn't respond to my provisional decision. Mr B responded to say he disagreed and was disappointed with the outcome. He included an email to evidence that his broker had the correct email address for him.

Now both parties have had an opportunity to comment, I can go ahead with my 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.

I explained in my provisional decision why even if it could be shown that Lex Autolease were at fault for sending reminders to the incorrect email address – it wouldn't change my mind as to the outcome of this complaint.

The email Mr B provided doesn't conclusively resolve this issue and I don't think we need to, to reach what I believe to be a fair outcome. And as neither party had any further comments or evidence for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 December 2020.

Richard Annandale
Ombudsman