

The complaint

Mr P complains Lex Autolease Ltd (Lex) didn't extend his hire agreement as he requested.

What happened

In August 2017, Mr P entered into a 36 month hire agreement for a car. He paid an initial rental of £2,876 and he was required to make monthly payments of £479.

The agreement was due to come to an end in August 2020 but due to the Covid-19 pandemic Mr P requested for the agreement to be extended by six months.

Lex sent a modified agreement to allow a further six months hire of which Mr P would be required to pay £409. Based on a previous extension request, it appears Lex said in order for the extension to be granted, the signed modified agreement had to be returned to them by email or post. Wanting to proceed with it, Mr P said he signed the agreement and returned it via email. However he said he was told by Lex this couldn't be accepted as the image wasn't clear so he sent it by post on the same day which he said was 19 August.

In December 2020, Mr P noticed the direct debits taken from his account were for £546 which was more than he had agreed to. He complained. Lex looked into matters and said as they never received the modified agreement, the extension hadn't been set up. This meant, Mr P's agreement had fallen into an informal extension at a cost of £546 per month.

The car was later collected on 1 February 2021 and Lex said there was an outstanding balance of £1,092 (two months of informal extension rental) for Mr P to pay.

Unhappy with their response, Mr P referred the complaint to our service. Our investigator recommended the case wasn't upheld. They accepted it's most likely the signed agreement was sent by Mr P but as it was never received by Lex, they hadn't done anything wrong by not setting up the extension. They said it would've been irresponsible for Lex to do so without signed confirmation it had been accepted by him.

Mr P disagreed. In summary he said:

- Lex's offices were closed due to the pandemic so it wasn't his fault if it wasn't received;
- He spoke to a female advisor who confirmed receipt of the signed modified agreement;
- He requested on several occasions for Lex to collect the car but they didn't for over four weeks and he's been charged for it;
- He had difficulty contacting Lex both by email and phone and he felt their level of service was poor;
- He had received persistent emails and calls about the outstanding balance and this caused him distress.

In February 2022, I issued my provisional decision upholding the complaint. I said:

“Extension

Both parties accept Mr P requested a six month extension as the agreement was due to end in August 2020. What’s in dispute is whether the signed modified agreement was sent by Mr P and received by Lex. On one hand, Mr P said he sent it by email but as it wasn’t accepted, he sent it by post, on the other hand Lex said they had no record of receiving it by post. There is limited information in this case as Mr P is unable to provide proof he initially sent it by email, proof it was posted such as a tracking number nor have I seen evidence of Lex advising him his email attaching the modified agreement wasn’t acceptable in August 2020.

In the absence of documentary evidence, I’ve thought carefully about Mr P’s version of events and I’m persuaded by them as he’s been consistent from the outset. I say this because based on his testimony about his request for an extension, I’m satisfied it was more than a simple query. Mr P said he had a discussion with the advisor and he was offered the extension at a lower rate than the contractual amount given the mileage needed. I note the proposed extension was for a lower amount at £409 so this matches with what Mr P said.

Mr P said he tried sending the signed agreement by email but a Lex agent responded by email and said it couldn’t be accepted as it wasn’t clear and it needed to be posted. Ideally I would’ve liked to have seen evidence of this exchange but neither party has provided the same. However I note when Mr P complained in December 2020, he provided a copy of the signed agreement that was originally sent in August 2020. Lex said they weren’t able to read it and it had to be sent by post. Based on what Mr P said, this is what he was also told in August 2020 by Lex so I believe this is likely to be the case, Mr P was told to send it by post.

Mr P was required to sign two copies of the modified agreement and return one. For the one he kept, he has provided a picture of it and I can see it was signed and he has written “Posted 19/8/19”. Although the year was incorrect, I have no reason to believe this is nothing more than a typo. I think this is another indication it was indeed posted in August. For these reasons, I believe Mr P did try to send it by email in August 2020 but he was advised to send it by post. This strengthens my belief that it was clear to Lex that Mr P wanted to extend the agreement and he was trying to do so.

Given the effort Mr P had gone through to get the extension set up, I see no reason not to believe he didn’t post it. Like the investigator, I find that he did. I note Lex has commented because Mr P hasn’t provided a tracking number there is no proof it was sent. While it would’ve been helpful to have the same, this doesn’t mean it wasn’t posted. For whatever reason, Lex said they never received it.

Shortly after sending the modified agreement, Mr P said he spoke to Lex and he was advised by an agent that it had been received and it had ‘gone upstairs’. There is insufficient evidence of such a call on Lex’s contact notes. Nevertheless on balance, I’m satisfied the signed agreement was posted by Mr P but it appears to have gone astray. For that reason, I can’t hold either party responsible for that, such unfortunate events do happen from time to time.

In light of the above, I need to consider what I believe to be fair and reasonable in the circumstances. Had the signed agreement been received, the agreement would’ve been extended by six months, the instalments would’ve been £409 and it would’ve ended in February 2021.

Given Mr P’s plausible and persuasive testimony, I also can’t see any reason why Lex wouldn’t allow the extension to be backdated once the circumstances had come to light in

December 2020 when Mr P complained. I believe this would've been the reasonable thing to do.

For the reasons explained above, I believe it's fair for Lex to treat the agreement as being extended by six months. To put things right, they should treat the payments for the six month extension as £409 and refund Mr P the difference based on what he paid from September 2020 onwards. This refund should be offset from the amount Mr P owes.

Informal extension

The car was collected in February 2021 and Lex said Mr P owed £1,092 which is the equivalent of two months informal extension rentals covering the months of December 2020 and January 2021. They said Mr P's last payment was on 13 December 2020 which covered up to 1 December 2020. Mr P disputed this amount as he said he asked on several occasions for the car to be collected. Due to the ongoing dispute about the extension, he said he stopped using the car but despite his repeated requests, Lex delayed in collecting it.

I haven't seen evidence of Mr P's requests for the car to be collected prior to December 2020. I've seen a copy of an email dated 31 December 2020 to Lex where he said the car could be collected after 18 January 2021 and I note the car was collected in February 2021. On this basis I don't agree there was a delay in Lex collecting the car. So I find they are entitled to charge for December 2020 and January 2021 but for the reasons above, this should be charged at £409 only.

Other

Mr P has explained he received letters and phone calls demanding payment of the balance for December and January. He said this was distressing and caused him worry. Based on his level of communication with Lex, it's clear it was having a negative impact on him. Lex said because there was an outstanding balance, automated communication was sent to Mr P. I find there was an outstanding balance owed as Mr P's last payment was in December 2020 and he remained in possession of the car up to when it was collected in February 2021. Although he chose to stop using it, that doesn't mean this money wasn't owed to Lex so I can understand why communication about the arrears were sent as Lex is required to accurately report the status of the agreement.

However given the level of communication from Mr P to Lex, it was clear this was causing him distress. He didn't believe the amount was correct and for the reasons explained above, I agree with him, I find the amount they were demanding was incorrect due to the reasons I've explained above. Given these circumstances, I believe Lex should also pay £100 compensation to Mr P for the trouble and upset caused".

Response to my provisional decision

Both parties were invited to respond. Lex accepted the provisional findings, Mr P didn't have any further comments.

What I've decided – and why

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On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr P's complaint.

To put things right, Lex Autolease Ltd must:

- Treat the agreement as being extended for six months at monthly instalments of £409 and refund any difference owed to Mr P plus pay 8% simple interest from the date of payment to the date of settlement. The refund should be offset from the amount owed by Mr P*;
- Remove any adverse information from Mr P's agreement from September 2020 onwards upon the agreement being fully settled;
- Pay £100 compensation for the trouble and upset caused.

*If Lex Autolease Ltd (Lex) considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 April 2022.

Simona Charles
Ombudsman