

## **Complaint**

Mrs B complains that Lex Autolease ("Lex") unfairly failed to notify her of the additional tax charge that it passed onto her as part of a hire agreement.

## **Background**

In April 2022, Mrs B signed a regulated hire agreement with Lex in order to hire a brand-new car. This hire agreement was to last for 48 months from the date that the car was delivered. The agreement stated that Mrs B would pay an initial rental of £1,242.14 followed by 47 monthly rentals of £414.05. These rentals included an amount to pay the expected annual vehicle excise duty ("VED") due on the car over the four years.

While Mrs B entered into the agreement in April 2022, the car wasn't delivered straight away. The car was ordered in April 2022 and it did not arrive until December 2022. There isn't anything unusual about this and Mrs B knew that there would be a wait while the car was built by the manufacturer. Mrs B took delivery of the car when it arrived in December 2022 and the hire agreement commenced at this point.

In December 2023, Mrs B received a road tax invoice from Lex. This invoice was for £486. The £486 was made up of an additional road fund licence charge of £405 which was levied by the government when the car was taxed for the year and VAT of £81.

Mrs B was unhappy with this charge and complained saying that her monthly rentals were supposed to cover the VED that needed to be paid over the term of the agreement and she wasn't told about any additional charges. Lex didn't uphold Mrs B's complaint. It said that Mrs B's monthly rental charges covered the standard element of the VED. However, as the car Mrs B acquired had a list price of over £40,000.00 at the time that it was first registered, it incurred an additional VED amount of £405.

It further stated that Mrs B's rentals were based on the estimated VED and as the manufacturer's list price of the car altered from the £39,725.00 estimated in April 2021 to £43,270.00, this meant that the estimated VED didn't include the additional charges which were due to be paid in years two, three and four of Mrs B's agreement. Hence, these charges were not covered by Mrs B's monthly rentals and Lex was passing these charges on as it was permitted to do under the terms of the agreement. Mrs B remained dissatisfied at Lex's response and referred her complaint to our service.

One of our investigator's considered Mrs B's complaint. She thought that Lex hadn't acted unfairly as the additional VED was payable in this instance and she agreed that the terms of the hire agreement allowed Lex to pass on any costs that it hadn't anticipated when the agreement was signed. So the investigator didn't recommend that Mrs B's complaint be upheld.

Mrs B disagreed with the investigator's assessment and asked for an ombudsman's review of her complaint.

## My findings

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

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I'm satisfied that Mrs B's complaint relates to charges due under a regulated hire agreement, which we are able to consider complaints about.

Having carefully considered matters, I've not been persuaded to uphold Mrs B's complaint. I'll explain why in a little more detail.

### *Is the additional VED due on the car?*

Bearing in mind Mrs B's comments in her completed complaint form, I think that it's worth me starting by saying that I'm satisfied that the list price of the vehicle Mrs B acquired, was £43,270.00 at the time it was first registered in December 2022.

The gov.uk website on vehicle tax rates<sup>1</sup> provide the details on vehicle tax rates for the tax year 2024/2025. There is a section regarding vehicles which were registered on or after 1 April 2017 and would have cost more than £40,000.00 at the time of acquisition. It states:

***“Vehicles with a list price of more than £40,000***

*You have to pay an extra £410<sup>2</sup> a year if you have a car or motorhome with a 'list price' of more than £40,000. You do not have to pay this if you have a zero emission vehicle.*

***The list price is the published price of the vehicle before it's registered for the first time. It's the price before any discounts are applied*** [my emphasis].

*You only have to pay this rate for 5 years (from the second time the vehicle is taxed).”*

Bearing in mind the above and as the list price of Mrs B's vehicle is clearly over £40,000.00, I'm satisfied that the car does attract the additional VED payment Lex has passed on.

### *Is Lex entitled to pass on the cost of the additional VED to Mrs B?*

As I've previously explained, Lex has said that when Mrs B signed her agreement, the list price of the car was estimated to be £39,750.00. So when it agreed the terms of the hire agreement with Mrs B, Lex did not expect the car to attract the additional VED (as a result of having a list price of over £40,000.00 at first registration) and this was not factored into the rentals.

Furthermore, section 2 of Mrs B's hire agreement is entitled ***‘YOUR PAYMENTS AND WHAT THEY COVER’***. Subsection (e) refers to VED. Section 2(e) states:

*“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:*

*(i) the duty for the Vehicle increases above what it is at the hiring start date, or*

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<sup>1</sup> <https://www.gov.uk/vehicle-tax-rate-tables>

<sup>2</sup> As this is the 2024/2025 rate, this is the reason for it being slightly higher than the amount on Mrs B's invoice in December 2023.

- (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."*

As the cost of the additional VED means that the VED now payable is higher than what was estimated and what was included in the monthly rentals, I am satisfied that the terms and conditions of the hire agreement permit Lex to recover the additional VED from Mrs B and ask her to pay the difference.

*Should Lex have notified Mrs B of the additional VED sooner than it did and would this have made a difference to her entering into and continuing with her hire agreement?*

In reaching my conclusions, I accept the possibility that Lex did find out about the change in the list price of the car and the impact this would have on the additional VED sooner than when it sent Mrs B the first invoice in December 2023.

I'm prepared to accept the possibility that Lex became aware of this at the time the car was first registered in December 2022. I've also seen Mrs B has said that she ought to have been made aware of this by the time the car was delivered to her, in December 2022, and that if Lex had told her she wouldn't have gone ahead with the agreement.

I've considered what Mrs B has said. I don't completely discount the possibility that she would have decided against proceeding with the agreement if she'd been told about the additional amounts she'd have to pay on or around when she took delivery of the car. However, I'm required to consider what I think is more likely than not to have happened, in light of all the available circumstances. In doing so, I need to weigh up Mrs B's current submissions, which have been made with the benefit of hindsight and in support of a complaint, against the fact that Mrs B had chosen the vehicle in question and clearly wanted it as she had waited around eight months for it to arrive.

Furthermore, the list price of the car was determined by the manufacturer and not Lex. As I've set out above in the extract from the gov.uk website, the need to pay the additional tax was dependent on the manufacturer's published list price being over £40,000.00 before any discounts or deals etc are applied. So I'm satisfied that the additional VED will have been due on this car irrespective of where the vehicle was acquired from. And therefore Mrs B will have had to pay the additional VED to drive the particular make and model of car she has, regardless of where she sourced it from.

I've also noted that Mrs B has also said that she wouldn't have paid the extra £2,088.00 required in taxes if she'd be told about the additional VED. However, I think that Mrs B's calculations are based on her having to pay an extra amount for each of the four years of the agreement. The additional VED is only payable in year 2, year 3 and year 4 of the agreement.

In these circumstances, Mrs B answer is based on paying over £2,000.00 extra rather than the around £1,500.00 she would pay (subject to any government changes in the taxation rates) for three of the four years of her agreement. I accept that the additional amount Mrs B is being asked to pay is not insignificant. Nonetheless, in considering whether she would more likely than not have accepted to pay this, I do need to consider this additional amount in the overall context of how much she was already prepared to pay to begin with.

Bearing all of this in mind, I accept that Mrs B is unlikely to have been aware of the additional VED she needs to pay at the time she ordered the car. I also understand how disappointing it will have been for Mrs B to find out she'd have to pay more. However, having considered all of the circumstances, I'm not persuaded that it is more likely than not that Mrs B would have decided against taking delivery of the car and entering the agreement had she been told about the change in the manufacturer's list price, or the effect this would have on the VED she'd have to pay, when the car was delivered in December 2022.

In my view, Mrs B is likely to have been annoyed, but given she wanted the car and the only way to acquire it was by agreeing to pay the additional VED, I think she more likely than not, albeit begrudgingly, would have agreed to do so and gone ahead to the agreement. Although I accept that Mrs B may not agree with my conclusion.

So overall and having considered everything, while I can understand Mrs B's sentiments and appreciate why she is extremely unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs B. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons given above, I'm not upholding Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 February 2025.

Jeshen Narayanan  
**Ombudsman**