



<b><u>Decision Ref:</u></b>	2021-0067
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Car Finance
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied Dissatisfaction with customer service Increase in interest rate
<b><u>Outcome:</u></b>	Partially upheld

**LEGALLY BINDING DECISION**  
**OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant entered a business lease agreement with the Provider in **January 2017** in respect of a motor vehicle. The Complainant believed the amount financed on foot of the agreement was €36,000. However, the Provider subsequently informed the Complainant that the correct amount financed was €37,633.46.

**The Complainant's Case**

The Complainant explains that he borrowed €36,000 from the Provider to finance the purchase of a jeep, repayable over 36 months at an interest rate of 8.5%. The Complainant states that this works out at €1,136.43 per month but he was charged €1,188 per month by the Provider. The Complainant states that the Provider incorrectly maintains that he borrowed €37,633.46.

**The Provider's Case**

The Provider explains that the agreement the subject of this complaint is a business lease for a motor vehicle which was signed and accepted by the Complainant on **19 January 2017**. The Provider states that the relevant terms of the Lease are as follows:

- i. the duration of the *Primary Lease Period* under the Lease was 36 months from **19 January 2017**;

- ii. the interest rate was 8.51%;
- iii. during the Primary Lease Period, the Lease was subject to 36 monthly rental payments, the first payment being €1,029.34 plus VAT, with the remaining payments being €965.85 plus VAT;
- iv. the Provider was designated *Owner* or *Lessor* of the vehicle under the Lease; and
- v. the Complainant was designated *Lessee* of the motor vehicle under the Lease.

The Provider states that the Lease was not for the purchase of a vehicle, the purpose of the Lease was the letting of a vehicle by the Provider to the Complainant in consideration of monthly rental payments. The Provider explains that at the expiry of the Primary Leasing Period, the Complainant had two options, he could have renewed the Lease for a *Secondary Leasing Period* or he could have arranged to purchase the vehicle outright through the leased asset disposal process.

The Provider states that the Lease falls within the definition of a *credit facility agreement* under the SME Regulations because it is a *financial accommodation involving the letting of goods*. In this limited respect, the Provider states that it is appropriate to refer to credit being *advanced* or *extended*. The Provider submits that a key aspect of the complaint is the Complainant's position that a certain sum was *borrowed* by him. The Provider submits that this is not an accurate characterisation of the contractual relationship between the parties in that no sum was ever advanced to the Complainant. The Provider states that the only sum of contractual relevance between the parties was the monthly rental payment of €965.865 plus VAT. Under the Lease, the Provider states the Complainant was leasing a motor vehicle from the Provider.

The Provider states that while the sum of €36,000 is referred to in the documentation secondary to the Lease, this is only relevant as between the intermediary motor dealership and the Provider, and is clearly not intended to have any legal effect as between the Provider and the Complainant.

The Provider states that as was explained to the Complainant in correspondence from the Provider, most notably its letter dated **4 November 2019**, the sum to be refinanced under the Lease was €30,596.31 plus VAT which amounts to €37,633.46.

The Provider advises that while it can locate no evidence to suggest that, prior to completion of the Lease, the Complainant was provided with a comprehensive breakdown as to be found in its letter of **4 November 2019**, the Provider submits that it was not reasonably required to do so. The Provider states that the lease itself clearly sets out the monthly rental payments.

### **The Complaint for Adjudication**

The complaint is that the Provider overcharged the Complainant in the amount of €1,856.52 in respect of the business lease agreement.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 17 February 2021 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

### ***Background***

The Complainant signed a *Business Lease* with the Provider on **17 January 2017** in respect of a motor vehicle.

The Lease contains the following two sections:

*“Supplying Dealer*

<i>Supplier’s Name:</i>	...	<i>Supplier’s Address:</i>					
<i>Person to Contact:</i>							
<i>Cost of Goods</i>	€38,738.21	VAT	23.0%	VAT	€8,909.79	VRT	€7,102.00
<i>Total</i>	€54,750						

*Primary Leasing Period*

*The Primary Leasing Period shall be a period of 36 months from 19/01/2017.*

*The first rental payment of € 965.85 shall be made on 19/02/2017 and each subsequent rental payment shall be made in the amount and the frequency and on the due date of payment specified in the Table hereunder. ...*

**Table**

<i>Number of Consecutive Rentals</i>	<i>Frequency of Payment of each rental in the Sequence</i>	<i>Commencing date of rental payments in the Sequence</i>	<i>Finishing date of rental payments in the Sequence</i>	<i>Amount of each rental payment in the Sequence (Exclusive of V.A.T) €</i>
35	Monthly	19/03/2017	19/01/2020	965.85

...

***The above rentals are exclusive of Value Added Tax. All rentals are subject to Value Added Tax at the appropriate rate.”***

Following a query from the Complainant regarding the amount/cost of the Lease, the Provider wrote to the Complainant on **4 November 2019** as follows:

*“As you funded a Category ‘B’ vehicle on a Business Lease Agreement, the VRT amount cannot be reclaimed by either party & therefore must be incorporated into the finance amount which forms part of the Capital Amount to be repaid. Your actual borrowed amount is €37,633.46 incl VAT not €36,000. Please note that VAT schedules are supplied to you to reclaim the VAT on all monthly rentals.*

*In your previous correspondence, you noted that €36,000 @8.5% would result in monthly repayments of €1,136.43, which would be correct on an normal Lease, however as the Asset being funded was a Category B vehicle the VRT amount must be included as part of the calculation (See Tables Below).*

...

<i>Invoice Breakdown</i>	
<i>Net Cost</i>	<i>€38,738.21</i>
<i>VRT</i>	<i>€7,102</i>
<i>Vat @23%</i>	<i>€8,909.79</i>
<i>Total Cost</i>	<i>€54,750</i>
<i>Less Deposit</i>	<i>€18,750</i>
<i>Balance to Finance</i>	<i>€36,000</i>

<i>Lease – Category ‘B’ Vehicle Funding</i>	
<i>Net Cost</i>	<i>€38,738.21</i>
<i>Plus VRT</i>	<i>€7,102</i>
<i>Total Finance Amount Ex VAT</i>	<i>€45,840.21</i>
<i>Less Deposit (Ex VAT)</i>	<i>€15,243.90</i>
<i>Balance to Finance on Lease (Ex VAT)</i>	<i>€30,596.31</i>

	<i>Monthly Rentals Ex Vat</i>	<i>Monthly Rentals Incl Vat</i>
<i>Funding €30,596.31 @ 8.5%</i>	<i>€965.85</i>	<i>€1,188</i>

..."

The Complainant responded to this letter on **13 November 2019**:

*“Please note as previously outlined, I borrowed €36,000 not €37,633.46 as outlined in your letter.*

*The purchase price of the vehicle was €54,750 (including VAT & VRT)*

*I personally paid a deposit of €18,750  
I borrowed from [the Provider] €36,000  
This gives a total of €54,750*

*Can you please confirm the details of why I’m getting charged based on finance of €37,633.46.”*

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This was followed by a further series of correspondence between the parties. The Provider's response to the Complainant's correspondence was essentially the same as the position set out in the **4 November 2019** letter.

### ***Analysis***

The cost of the vehicle as per the *Vehicle Invoice* is as follows:

Net Cost	€38,738.21
VAT	€8,909.79
VRT	<u>€7,102.00</u>
Total	€54,750.00

This information is also contained in the *Supplying Dealer* section of the Lease.

The Complainant paid a deposit of €18,750.00 which reduced the total cost of the vehicle to €36,000. The evidence shows that the Complainant understood this to be the amount to be financed on foot of the Lease – the *Balance to Finance*.

However, as can be seen, this was not the way in which the Provider calculated the Balance to Finance. According to the Provider, the Balance to Finance was €37,633.43 which was calculated based on the net cost of the vehicle plus VRT less the deposit paid and all exclusive of VAT.

Having considered the evidence and the parties' submissions, I accept that the manner in which the Lease details have been presented have caused understandable confusion.

The Lease does not make any reference to the appropriate Balance to Finance figure nor does it provide a breakdown or explanation as to how the Balance to Finance was calculated. Further to this, there is no reference to the deposit paid by the Complainant or how it was factored into the calculation of the Balance to Finance nor does it explain whether it was based on a VAT inclusive or exclusive basis. It is also not clear how the VRT figure factored into the Balance to Finance calculation. Equally unclear is the manner in which the rental payments were calculated and would appear to be based on a Balance to Finance of €36,000.

The only breakdown of figures in the Lease is to be found in the *Supplying Dealer* section. In such circumstances, I accept therefore that based on the information contained in the Lease, a reasonable person reading the Lease would likely conclude that the Balance to Finance was based on the *Total Cost* minus the deposit of €18,750, which gives a figure of €36,000.

Accordingly, I consider the information furnished in relation to the Lease to be misleading and likely to cause (and has caused) confusion on the part of the Complainant. Further to this, I would consider it reasonable for the Provider to have included in the Lease or provided by way of separate document, the precise Balance to Finance amount, an explanation as to how it was calculated and a breakdown of the calculation of the monthly rental payments.

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It was not until the Provider's letter of **4 November 2019** that the manner in which the Balance to Finance was calculated was explained and also by way of comparison to the vehicle invoice amount. I believe that the information contained in this letter should have been included or incorporated into the Lease or communicated to the Complainant prior to or at the time of entering the Lease. This would have allowed the Complainant to properly understand and appreciate the true cost of the Lease and the rental payments.

While I accept that the Provider did not overcharge the Complainant in respect of the Lease, I accept that the Lease was significantly lacking in terms of providing important information to the Complainant. This resulted in the Complainant misunderstanding the correct cost of the Lease and the monthly rental payments. Therefore, I partially uphold this complaint and direct the Provider to pay a sum of €1,500 to the Complainant. I also direct the Provider to review the information it provides to customers in respect of this type of Lease arrangement.

### **Conclusion**

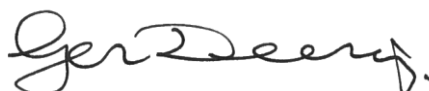
My Decision is that this complaint is partially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct the Provider to review the information it provides to customers in respect of this type of Lease arrangement.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 March 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,  
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

