

The complaint

Mrs S complains about the end of contract charges in relation to a car that was supplied through a hire agreement with Care by Volvo Car UK Limited (CBV).

What happened

In October 2020 Mrs S hired a car through a hire agreement with CBV. The agreement was a flexible mileage subscription with an annual mileage allowance of 10,000. Mrs S said within the following two years she enquired about switching her vehicle on a number of occasions but was told there were none available. In August 2022 Mrs S entered into a new hire agreement with CBV for a different vehicle.

Mrs S says she received an end of contract charge of £4,067.39 and had a further monthly repayment of £599 taken out for the car that she'd returned. She said CBV never contacted her about amending the mileage allowance despite their terms saying they would. Mrs S also believes that had she been able to get another vehicle when she enquired about it, she wouldn't be in this position.

Mrs S raised a complaint to CBV. She said she wants a refund of the £599 monthly repayment that was taken after her car was returned, and doesn't think it's fair that she should pay for the excess mileage.

In August 2022 CBV issued their final response to Mrs S complaint, which they didn't uphold. CBV said they had several vehicles available in their stock which Mrs S could have selected from, that they had no evidence Mrs S was told by them that she couldn't increase the mileage allowance during the term, and that her customer service concerns should be directed to the retailer.

Unhappy with their response, Mrs S brought her complaint to our service for investigation. Having reviewed all the information provided, our investigator recommended that the complaint should be upheld in part.

Our investigator felt CBV acted fairly when they applied the excess mileage charges, and that they weren't obliged to inform Mrs S about increasing it during the term. They concluded that the £599 was taken in error and had caused some distress to Mrs S, so recommended that CBV pay Mrs S £100 in compensation. Our investigator, however, didn't think CBV needed to refund the monthly repayment because it was used to reduce the outstanding excess mileage debt.

CBV accepted this recommendation. Mrs S didn't. She said she felt CBV failed in their duty of care towards her and that the £599 should be refunded to her. Our investigator's view remained unchanged, so Mrs S asked that her complaint be referred to an ombudsman for a 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated hire agreement. As such, this service is able to consider complaints relating to it.

Having thought about the details of this complaint, it seems to me there are three key questions for me to consider:

- Was it fair that CBV applied the excess mileage charge?
- Was CBV obliged to contact Mrs S to review her mileage allowance?
- Should CBV have refunded Mrs S £599 directly, rather than reduce the excess mileage charge?

Applying the excess mileage charge and CBV's obligation to make contact

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is a requirement for transparency in the terms. It also says if a term in a consumer contract could have different meanings, that the meaning most beneficial to the consumer should prevail.

Mrs S complains that the terms in the hire agreement led her to believe that CBV would actively contact her to review her mileage allowance.

The terms Mrs S referred to in the hire agreement were in section 8.4 where it says "*we may also contact you to offer a change in your mileage*" and "*we may also check the mileage during your subscription*"

Having considered the terms of the agreement, I don't think it was reasonable that Mrs S considered that CBV were obliged to make contact with her throughout the term of her hire agreement to review the mileage allowance or usage.

The terms say they '*may*' do so. I think it's reasonable to conclude that the actions referred to in section 8.4, were not definite or compulsory actions that CBV intended on carrying out, as a characteristic of their hire agreements. I say this because their terms also state: "*Please contact the Customer Relations Centre in the event you want to change your mileage allowance or if you have any other question in relation to the mileage allowance*".

I'm satisfied that this additional wording makes it clear (in addition to the use of the word '*may*'), that there is an onus on the consumer to inform CBV of any amendments or enquiries relating to their mileage allowance.

Mrs S said she believed the terms meant CBV would contact her. So, I've also thought about whether the terms were clear enough, so as not to be vague in their meaning. Having thought about this carefully, for the reasons given, I don't think it's reasonable to consider the terms were unclear or vague in how they were presented. So, it follows that I don't think it would be fair or reasonable to expect CBV to remove the responsibility from their consumers by monitoring vehicle usage during a period of consumer hire, and to be liable for any excesses.

As I've concluded that CBV weren't obliged to contact Mrs S about increasing her mileage allowance, and that their terms were reasonably transparent, it follows that I think CBV acted fairly by applying the excess mileage charges on Mrs S agreement.

payment taken in error

Mrs S explained to us that CBV deducted a monthly repayment of £599 despite the car being returned to them. This has been confirmed by CBV and is not in dispute. What appears to be in dispute is CBV's decision to offset the payment taken in error against the excess mileage charges by applying the credit of £599 to it, rather than refund the amount directly to Mrs S.

Mrs S says that the refund should have been made directly to her because the excess mileage charges were in dispute. However, as I've concluded that the excess charges have been applied fairly, I think it's reasonable that CBV chose to offset the refund. Mrs S owed CBV in excess of £3,000 (which I've considered to be fair), for a debt that relates to the same hire agreement as that of the monthly repayment refund. So, deducting the £599 from the amount owing, I've considered was a reasonable and appropriate action for CBV to take in the circumstances, so as to reduce Mrs S' debt to them.

Having said that, I acknowledge that CBV took the monthly repayment out in error, which had caused some distress and inconvenience for Mrs S, and so I'm in agreement with our investigator that £100 in compensation is a fair recognition of this.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Care by Volvo Car UK Limited to:

- Pay Mrs S £100 in compensation for the inconvenience caused from taking the additional monthly payment in error

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 October 2023.

Benjamin John
Ombudsman