

The complaint

Miss C has complained to us about the administration of a hire agreement by Volkswagen Financial Services (UK) Limited trading as Audi Financial Services (“VWFS”).

What happened

During the hire period Miss C was said to have incurred four Penalty Charge Notices (“PCNs”) and a fifth Parking Charge Notice (the “fifth notice”) for parking contraventions. The parking management companies sent all the notices to VWFS. In turn VWFS sent some of the notices to Miss C so she could deal with them. However for a minority VWFS paid the fines itself, then notified Miss C that it had paid and would take money from Miss C’s bank account by direct debit.

Miss C was unhappy with VWFS paying these fines and that it didn’t allow her to deal with them herself, as it had done with the other parking contraventions. She cancelled her direct debit. This resulted in late payments, and VWFS notified credit reference agencies of this. Miss C complained to VWFS.

VWFS sent Miss C its final response on 13 December 2022. In summary it said that paying fines formed part of the terms and conditions Miss C agreed to. It said she could dispute the amount with the issuing authority. It said that the PCNs were issued while the car was parked in a train station car park and it was unable to transfer liability to Miss C due to railway bylaws. It said it was at risk of increased costs or being taken to court by the fine issuer. In relation to the late payment marker on Miss C’s credit file, it said it was obliged to report true and factual information to credit reference agencies.

Our investigator gave their opinion. They said, in summary, that they didn’t think the complaint should be upheld. They said that the information provided wasn’t enough to identify the dates the parking incidents happened. Miss C had given the dates when she got letters, but hadn’t provided dates of the incidents themselves. And it wasn’t possible from the many letters provided by VWFS to match the dates to what Miss C had described. They said that on some occasions VWFS had transferred liability to Miss C. But on the occasions Miss C was complaining about, VWFS was unable to transfer liability. And the hire agreement Miss C agreed to required her to pay the fines. So he didn’t think VWFS had done anything wrong.

In response to our investigator’s first view Miss C provided us with the dates of the parking contraventions she was complaining about and sent copies of the notices to us. She was also able to provide us with letters and invoices from VWFS.

It became clear to our investigator that two of the fines Miss C wanted to complain about happened after she complained to VWFS, so didn’t form part of this complaint. Our investigator notified VWFS of this and VWFS consented for the two fines to be added. In total, Miss C now complains about five fines.

Our investigator issued a second opinion. In summary, in relation to the four PCNs, they said they were satisfied that VWFS paid them because it couldn’t transfer liability. Under the

agreement, Miss C was responsible for these payments. In relation to the fifth notice they said that VWFS had written to Miss C on 18 May 2023 telling her about the notice and giving her the opportunity to deal with the fine herself. It then subsequently received another letter from the parking operator on 22 May 2023 and so it paid the fine. Our investigator said they were satisfied that VWFS provided Miss C with a chance to deal with the PCN herself and it was understandable it paid the fine to prevent further action.

Miss C remained unhappy so the complaint was passed to me to decide.

I issued a provisional decision on this case on 24 May 2024. In this I said:

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence. Having done so, I think this complaint should be upheld in part and I'll explain why.

Miss C has made it clear to us that she doesn't dispute that the fines were her responsibility. What she is complaining about is that VWFS didn't allow her the opportunity to deal with five of the fines herself.

First of all, I've looked at the terms and conditions Miss C agreed to. The agreement states that Miss C will be liable for fines associated with the car.

"4.4 You must pay all licence fees, taxes, insurance premiums, fines and other payments associated with the Vehicle or arising out of or as a result of the seizure of the Vehicle by any statutory authorities as they fall due."

The agreement also stated that Miss C agreed to pay administration fees as follows:

"2.4 We will charge you an administration fee of up to £25 (including VAT) for each unpaid or cancelled cheque, standing order or direct debit and for each reminder letter, notice or demand we make on you."

The terms and conditions above state that Miss C was liable for the fines, but they don't set out any particular procedure or process to be followed. So I've considered the circumstances surrounding VWFS's payment (and subsequent recharging to Miss C) of these five fines to determine if it acted fairly and reasonably.

Looking at the available information, it's clear to me that VWFS did allow Miss C to deal with numerous parking contravention fines by transferring liability to her, and she handled them. This also meant that it was open to her to appeal the fines if she wanted to. Miss C told us that there was no reason why VWFS couldn't have let her handle all of the five fines about which she complains.

The four PCNs

VWFS has explained that in relation to these it was unable to transfer liability as the parking contraventions took place in a train station carpark. VWFS says that railway byelaws applied and so it was required to deal with the fines.

I note that the actual PCNs sent to VWFS referred to the Railway Byelaws. So in looking at this complaint I've considered the Railway Byelaws published by government. (I have arranged for a copy to be sent to Miss C with this provisional decision). Byelaw 14 states: "The owner of any motor vehicle, bicycle or other conveyance used, left or placed in breach of Byelaw 14(1) to 14(3) may be liable to pay a penalty as displayed in that area."

This refers to liability to pay attaching only to the "owner," of the vehicle. It doesn't mention anyone who – as was Miss C's position in this case – hires or drives the vehicle. This tends

to persuade me that the operation of the byelaws meant VWFS wasn't able to transfer liability to Miss C for these PCNs.

As well as this, I've had regard to a guidance document issued by the British Vehicle Rental and Leasing Association. (I've arranged for a copy of this to be sent to Miss C with this provisional decision also.) This states that in the case of most criminal parking contraventions, liability cannot be transferred by the hiring/rental company.

In relation to criminality byelaw 24 states:

"Any person who breaches any of these Byelaws commits an offence, and with the exception of Byelaw 17, may be liable for each such offence to a penalty not exceeding 3 on the standard scale."

This, taken together with the BVRLA guidance and byelaw 14, supports what VWFS says about being unable to transfer liability in the case of these particular PCNs.

So on the balance of probabilities, I'm persuaded that it was fair and reasonable for VWFS to pay the PCNs; it was fulfilling an obligation as the owner of the car. By paying them promptly, the amounts were lower than if more time was allowed to pass; so in doing this VWFS kept the amount payable by Miss C to a minimum. Moreover Miss C agreed in the terms and conditions that she would pay a £25 administration fee when VWFS sent her notices. So overall, I'm satisfied VWFS didn't do anything wrong in charging her for these administration fees. I have looked at the issues of how VWFS communicated with Miss C and the notifications to the credit check companies below.

I understand that Miss C has told us that VWFS transferred liability on other occasions, even when other parking contraventions took place in the same train station carpark. I think it's most likely that when VWFS transferred these PCNs to Miss C it made an error. Overall, I am persuaded by the Railway Byelaws and BVRLA guidance.

The fifth notice

The notice for the fifth parking contravention was sent to VWFS on 5 May 2023. VWFS wrote to Miss C and invited her to handle the fine. We've been given a copy of this letter. There appears to have been some delay in VWFS writing, because the letter is dated 18 May 2023. Next, VWFS then received a further letter dated 22 May from the car park management firm. This said that because fourteen days had gone by, the fine had gone up to £100. At this point VWFS seems to have decided to pay it.

Unlike the other four, there's no indication that this fifth notice concerned a parking contravention subject to the Railway Byelaws. VWFS has told us that the particular car park management firm wouldn't allow it to transfer liability. But there's no information to support this. Instead the notice contains information that seem to directly contradict this; it invites the recipient to complete an online transfer of liability form.

In addition, the BVRLA guidelines indicate that all non-criminal parking contraventions are transferrable. So, based on the available information, it's unclear why VWFS decided it needed to pay the fine.

Next I've considered what impact this action had. VWFS told Miss C in its correspondence that if she didn't accept liability for the fine, she could appeal. But numerous sources of information contradict this. For example, numerous council websites state that once a parking contravention fine is paid it is no longer possible to appeal. In addition Citizens Advice Bureau information online also states that once such a fine is paid, the case is closed. These various sources of information make me think that by paying this particular fine, it's most likely VWFS precluded Miss C from appealing it.

Overall, in relation to this fifth notice I think it's most likely VWFS didn't act fairly or reasonably by failing to transfer liability to Miss C. But I've also considered that it's entirely possible that Miss C wouldn't have been successful in appealing. If she'd been unsuccessful she would still have had to pay £100. However, looking at everything in the round I am persuaded that VWFS was able to transfer liability in this instance, and it's clear it had a system for doing so – it had done so for other cases in the past. So I think overall, VWFS has made an error here. And I've considered what VWFS can do to make this right. It seems fair that it pay back Miss C the money for this fine (£100) and the administrative charge it made (£25). I've set this out below under Putting Things Right.

Credit file marking

Lastly I've considered the complaint Miss C has made about VWFS notifying credit reference agencies that she missed payments. Miss C has explained that when the money for the fines was taken from her bank account, it put her in financial difficulty and so she cancelled her direct debits. This resulted in payments being missed.

We've been provided with a copy of the statement of Miss C's account. It is clear from these that some payments were missed. Some roughly follow after the dates of the PCNs and the fifth parking notice.

I've considered how VWFS communicated with Miss C regarding the PCNs, the notice and the payments. It told her that she could pay in various ways or alternatively the money would be collected at the same time as her monthly direct debit. Miss C's direct debit fell at the end of the month. Most of the communications she received from VWFS were well in advance of month's end. For example, in relation to the charge relating to the first PCN, it wrote to her on 6 January 2022, the second on 3 May 2022.

Having reviewed the correspondence I think VWFS made it reasonably clear to Miss C why, when and how the charges for the fines would be taken from her account. She also had enough time to contact VWFS about her problem if she was in financial difficulty. I understand that Miss C felt she had no choice but to cancel her direct debit, however based on the information we have been given thus far, I cannot see how VWFS can be said to have acted in a way that was unfair.

The charges concerning the fourth PCNs and fifth notice were notified later than this; on 12 May 2022 and 18 May 2023 respectively. This was closer to the end of the month and so gave less time for Miss C to respond about them. However I still consider this to have been a reasonably adequate time frame. In addition, I've taken into account that she had experience of the process from the charges relating to the previous three fines.

Overall, given the circumstances I can't say that VWFS has done anything wrong by notifying the credit reference agencies regarding the missed payments relating to the first four railway PCNs. But in relation to the payment missed which relates to the fifth notice, as I've explained above I think VWFS should have transferred liability for this. So, if it has notified credit agencies regarding this late payment, I think the appropriate thing for it to do is take the necessary steps for that to be removed. I don't think it would be fair or reasonable to require VWFS to do anything more in this regard.

My provisional decision

Volkswagen Financial Services (UK) Limited should pay Miss C £125*.

*This amount should have 8% simple interest per annum added from the date of payment to the date of reimbursement. If Volkswagen Financial Services (UK) Limited is required by HM Revenue & Customs to remove income tax from this interest it should tell Miss C how

much it has taken off. And it should provide Miss C a certificate to show this if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

My provisional decision is that I intend to uphold this complaint in part and direct Volkswagen Financial Services (UK) Limited to pay Miss C as I've set out above, and to take the necessary steps to remove the late payment marker for the missed payment which related to the fifth parking notice.

I asked the parties for their comments in response to the provisional decision. VWFS said it agreed with the decision and Miss C did not reply.

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.

Neither party has added anything that would make me change my provisional findings, I still consider the outcome I set out in the provisional decision to be fair and reasonable for the reasons already stated.

Putting things right

VWFS should pay Miss C the compensation as set out below, and take the necessary steps regarding any late payment marker for the missed payment which related to the fifth parking notice.

My final decision

My final decision is that Volkswagen Financial Services (UK) Limited should pay Miss C £125*.

It should also take the necessary steps to remove any late payment marker for the missed payment which related to the fifth parking notice.

*This amount should have 8% simple interest per annum added from the date(s) Miss C was deprived of the £125, that is from the date(s) the payment(s) were taken from Miss C's account, to the date(s) of reimbursement. If Volkswagen Financial Services (UK) Limited is required by HM Revenue & Customs to remove income tax from this interest it should tell Miss C how much it has taken off. And it should provide Miss C a certificate to show this if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 18 July 2024.

Katrina Hyde
Ombudsman