

The complaint

Mr F has a car hire agreement with ALD Automotive Limited (ALD) and he is unhappy about the way they have dealt with a liability regarding a congestion charge.

What happened

In July 2019, Mr F entered into a hire agreement with ALD to acquire a car.

In October 2023 a £90 Penalty Charge Notice (PCN) was issued to ALD. Shortly after receiving the PCN, ALD paid it and then invoiced this to Mr F. And they charged him an additional £6 fee. The PCN stated that if the discounted £90 is not paid within 14 days, then the full penalty of £180 is payable. It also said that if the penalty charge is not paid or representations made by 16 November 2023 a Charge Certificate may be issued which would increase the amount payable to £270, and that failure to pay the increased penalty charge may result in the outstanding balance being registered as a debt in the County Court.

Mr F, in summary, felt that ALD should not have paid the PCN before contacting him, so he raised a complaint with ALD.

On 16 January 2024, ALD wrote to Mr F. In summary, this correspondence quoted a clause from the hire agreement in question that said: *"We will charge you a fee of no more than £40 plus VAT each time we handle and/or pay any fines, congestion charges, parking charges or transfer of number plates."* And ALD said they are not upholding Mr F's complaint as they said they acted in accordance with their contract.

On 19 January 2024, ALD further wrote to Mr F. In summary, they said that, at the time of sending this correspondence, the option to challenge/appeal the PCN was still available. They said this typically requires a third-party authorisation letter, so they have said they provided and attached this for him to supply alongside his appeal. Also, in that correspondence they said that they have attached an email sent to Mr F on 23 October 2023, after they received the fine notice sent to their office on 20 October 2023. ALD concluded that email by stating that, as Mr F is still able to challenge/appeal this fine at the time of sending this email, and the fact they had informed him of this fine within three days of receiving it, they did not deem this a valid complaint as they said they have acted appropriately in accordance with his contractual agreement with them.

Mr F was unhappy with ALD's response, and he felt that ALD had not addressed his complaint, so he brought his complaint to Financial Ombudsman Service (Financial Ombudsman).

Two of our investigators issued their opinions on Mr F's complaint and both did not think that ALD acted unfairly, so they felt that ALD did not need to take any further action regarding Mr F's complaint.

Mr F did not accept the investigators' outcomes. So, the complaint has been passed to me to decide.

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 need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time. Where evidence is incomplete, inconclusive or contradictory, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Mr F has very strong feelings about this complaint, and he provided detailed submissions in support of his view which, I can confirm, I have read and considered in their entirety. But I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of our Financial Ombudsman as a free alternative to the courts.

Mr F acquired the car under a hire agreement, which is a regulated hire agreement. Our service can look at these sorts of agreements.

In summary, Mr F said:

- The hire agreement does not specify how liabilities received by ALD, such as the PCN in question, will be handled nor does it specify what ALD's process is for handling them. ALD should have allowed him the opportunity to resolve before they paid the PCN on his behalf.
- He did nothing wrong as he had an autopay account:
 - o So had ALD contacted him, he could have followed up personally and have the charge assigned to his autopay account.
 - o He did everything that could have been expected reasonably to ensure that arrangements were in place, so that congestion charges are paid on time.
- ALD's final response did absolutely nothing to address the complaint that he actually raised.
- As ALD had already accepted liability and settled the PCN, he has no recourse as the body responsible for the PCN are no longer under any obligation to consider his challenge/appeal. And, he said, it was that body that made the error in issuing the PCN so it is unfair to expect that he would be practically or financially inconvenienced with a protracted appeals process and a financial penalty for a fine that should not have ever been paid in the first place.
- Mr F said that from his own research, the body that issued the PCN do not allow the liability to be transferred, but Mr F said, that this is part of the risk that ALD take on when they chose to enter into hire agreements on their cars.

In summary, ALD have said that their standard process for liabilities is to transfer the liability to the customer and when this transfer request is made, they would then contact the customer to advise that a fine had been received and liability had been transferred. However, due to the form of this liability, they were unable to transfer the liability, so their standard process is to pay the PCN to avoid any escalation of fine charges. And then they inform the customer this had been paid and provide the customer with the PCN and an invoice to show it has been paid. Customer would then be expected to pay ALD Automotive directly.

ALD feels they have acted in accordance with the terms and conditions of the hire agreement when they handled the PCN and charged Mr F a £6 fee.

They also said the option to challenge/appeal the PCN was still available when they contacted Mr F, so they have provided him with a third-party authorisation letter, so he could use this to challenge/appeal the PCN.

First, I should explain that I am aware that Mr F thinks that the body that issued the PCN made a mistake but in this decision, I can only look at the actions of ALD and not any other organisations or bodies.

Also, Mr F said that ALD's final response did absolutely nothing to address the complaint that he actually raised, so I understand that he is unhappy with ALD's processes, but I would point out that how they choose to correspond with Mr F is an internal matter and is for them to decide. It is not within the remit of the Financial Ombudsman to tell ALD how it should structure its internal processes. What I can look at in this complaint is how Mr F was treated and whether ALD's process resulted in Mr F being treated unfairly or unreasonably. But I should explain, that the Financial Ombudsman, unlike the courts, is not limited to looking at only the very narrow issues a consumer might raise in their complaint. Our approach is inquisitorial, which gives us large scope allowing us to reach a fair resolution. And to reach a fair resolution I have considered what both sides have told us and all the evidence available.

Among the evidence I have considered was the contract hire terms and conditions. These state that Mr F agrees to compensate ALD and to repay them for any sums incurred, or losses suffered, as a result of any fines, fees, charges, invoices, or other penalties resulting from the use of the car contrary to any applicable laws; motoring offences or violation from traffic or parking regulations or restrictions and/or congestion charges, whether issued by public or private entities, or other use of the car contrary to any applicable law. So, I am satisfied that ALD was therefore within their rights to pay the PCN, and to look to Mr F for reimbursement. I also cannot say that it was most likely unreasonable for ALD to charge Mr F the £6 fee as this was levied in accordance with the terms and conditions.

And there is nothing in the terms and conditions of the hire agreement that stipulates that the £6 fee will be returned if the PCN is successfully challenged. From ALD's perspective, they would have incurred administration costs in handling the PCN, whether or not the fine is or was ultimately upheld on challenge/appeal.

I also considered that Mr F could still appeal the PCN at the time ALD and him were corresponding, so I cannot say that Mr F was prevented from challenging the PCN. However, I accept that it might have been easier for him to challenge/appeal it had it not been already paid. But I think ALD had two options: they could have paid the fine, as they did, preventing potential further costs for them and Mr F; Or, they could have first contacted Mr F. And I think that, most likely, if they had done the latter, it was then possible that the body, which issued the PCN, might have increased the penalty charge. Later they also might have passed ALD's and Mr F's details over to debt collection agencies and potentially taken legal action against ALD or Mr F. I know Mr F feels ALD should have taken the second option. But I do not agree this is reasonable. I'm satisfied ALD thought they were acting in theirs's and Mr F's best interests when it paid the PCN.

While I appreciate Mr F's strength of feeling regarding his complaint, I do not think it is fair or reasonable for me to require ALD to take any further action regarding his complaint.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 March 2025.

Mike Kozbial
Ombudsman