

## **The complaint**

Ms A is unhappy that Volkswagen Financial Services (UK) Limited (VWFS) paid, and then invoiced her for a parking notice, thereby preventing her from appealing the charge.

Ms A's legal representative, Mr F, brought this complaint on her behalf, so I'll also refer to him throughout. When I refer to what Ms A has said and what VWFS has said, it should also be taken to include things said on their behalf.

## **What happened**

In September 2021 Ms A entered into a hire agreement with VWFS for the supply of a new car. In December 2024, VWFS passed on a parking charge notice ("PCN") to Ms A and asked her to either appeal or pay the charge directly to the private parking operator (PPO). Around a month later, VWFS told Ms A it had paid the charge after receiving a payment reminder from the PPO. VWFS then wrote to Ms A with an invoice for the PCN and the administration fee.

Mr F, on behalf of Ms A, complained to VWFS. He said VWFS:

- Incorrectly referred to the PCN as a penalty and/or fine.
- Incorrectly referred to the circumstances of the PCN as an offence.
- Failed to transfer responsibility for the PCN to Ms A under the provisions of the Protection of Freedoms Act 2012 (PoFA).
- Prevented Ms A's appeal against the PCN by paying the charge.

VWFS issued a final response to say that:

- Payment of fines forms part of the terms and conditions of the hire agreement.
- It will always try to transfer liability to the hirer (Ms A) so that she can challenge or accept the PCN.
- If liability is not transferred, its policy is to pay the fine and recharge the hirer.
- It received a payment overdue letter from the PPO, which it paid in line with the hire agreement to avoid additional costs.
- If Ms A wanted to appeal the notice, she would need to do so directly with the PPO.
- If Ms A's appeal was successful, it would refund the charge on receipt of a refund from the PPO.

As VWFS didn't uphold Ms A's complaint, Mr F brought the matter to us for investigation. His preferred remedy was for VWFS to:

- Cancel the invoice demanding payment of the PCN and administration fee.
- Refrain from recording Ms A's refusal to pay against her credit record.
- Remove any adverse credit marker already recorded.
- Compensate for the "*negligent handling*" of the PCN.
- Compensate for the "*negligent handling*" of the complaint.

Our investigator said VWFS had attempted to transfer liability to Ms A so she could pay the PCN. But, because it received an overdue payment reminder from the PPO, VWFS paid the PCN and recharged it to Ms A's account. Our investigator thought VWFS had acted in line with the hire agreement, so he didn't think there was anything to put right.

Mr F didn't agree with the investigator. He said the conclusions "*fly in the face of the facts and the law and are plainly wrong*" and he asked for the evidence, including a notice to hirer dated 19 January 2024, to be passed to an ombudsman.

Because Mr F didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations. Ms A was supplied with a car under a contract hire agreement. This is a regulated consumer credit agreement covered under the Consumer Rights Act 2015 (CRA), which means I am able to consider the merits of Ms A's complaint about it.

### Complaint Handling

Before I explain why I've reached my decision, it's important for me to set out exactly what I've been able to consider here. Mr F has complained about how VWFS handled and responded to Ms A's complaint, and he wants any compensation to reflect the impact this had. Complaint handling is an unregulated activity, so it falls outside of our service's jurisdiction to consider. I haven't considered the way VWFS handled the complaint as part of my decision.

### PCN and fine

Firstly, I'll address the complaint that VWFS treated the matter as a 'fine' or a 'penalty'. I've thought about Mr F's clarification that it was a parking charge notice, which is neither a fine nor a penalty. The agreement states:

#### *Fines*

*In the unfortunate event you receive a fine on the vehicle it's your responsibility to pay any fines, these may include;*

*Congestion Charge  
Bus Lane fines  
Speeding fines  
Parking fines*

*If any fines are forwarded to us, we may have to pay the fines on your behalf. In this instance we will invoice you plus a £25 admin fee.*

Having considered this, I think it's reasonable to include a PCN under the heading. That's because:

- VWFS does not say the list is exhaustive.
- It includes a charge as an example, as well as fines.
- A reasonable person would likely consider a fine and a payment request for a parking contravention amounts to the same thing.

I also think it's reasonable to accept that where the term penalty was used, it was a simple error when referring to the 'P' in PCN.

The PPO's formal notice of the PCN correctly refers to it as a parking charge, therefore I'll consider any reference to a fine or penalty as referring to the PCN.

Mr F challenged the use of the word 'offence'. While this would be used correctly for an illegal act, I accept that it is commonly used for something which is against the rules. I think it's reasonable to accept that the use of the word offence was simply intended to mean the act which led to the PCN.

Essentially, I'm accepting that these words reflect common usage rather than intending to reflect the strict definition.

#### PoFA

Mr F said VWFS failed to follow the PoFA which provides for a simple transfer of responsibility of the PCN to Ms A.

Based on the available evidence, I don't agree. That's because VWFS notified the PPO of the transfer of responsibility on 27 December 2023 and again on 23 January 2024. While I accept that its letter to Ms A suggested it hadn't transferred responsibility, its actions prove otherwise. I also note that Ms A received a letter directly from the PPO, dated 19 January 2024, stating that VWFS had named her as the responsibility party.

I've considered whether VWFS's letter to Ms A would've meant she didn't think she needed to pay. It said:

*What do you need to do?*

- *If you accept liability please make payment...*
- *If you do not accept liability please appeal to the authority. You have 28 days, from the time the notice is issued...*

I think it's clear that Ms A needed to pay or appeal. So, regardless of VWFS's comment about being unable to transfer liability, I'm satisfied Ms A was aware that a PCN had been issued for the car she used under the hire agreement and that she needed to take action.

I note that Mr F also commented on the incorrect use of the word 'authority'. For clarity, I've applied the same common usage approach as explained above, so I won't comment further on this.

### Appeal

Mr F said that because VWFS paid the PCN, it prevented Ms A's opportunity to appeal.

I've concluded that VWFS notified both Ms A and the PPO of the correct responsibility for the PCN. But I haven't seen any evidence to indicate that Ms A tried to pay or appeal the notice before VWFS paid it. So, when VWFS received a payment reminder stating that the opportunity to appeal had passed, I think it was reasonable that it paid the charge. This is in line with the terms of the hire agreement to prevent escalating charges.

When VWFS told Ms A it had paid the charge, it also gave the information she needed to appeal. Therefore, I don't find that VWFS did anything wrong here which would've caused Ms A to miss the opportunity to appeal the PCN.

### Credit file

Mr F wanted VWFS to remove any adverse records in respect of the unpaid recharge from Ms A's file.

Based on the evidence, I'm satisfied that the recharge VWFS applied to Ms A's account for payment of the PCN is valid. Therefore, I see no reason to ask it to make any amendments to its own records or to any information it has already submitted to the credit reference agencies in respect of this matter.

### Conclusion

Overall, I find that VWFS notified both Ms A and the private parking operator of the parking charge notice, and I haven't seen any evidence to indicate that Ms A was prevented from appealing the charge. I'm satisfied that VWFS paid the charge in line with the hire agreement and fairly and reasonably applied the charge to Ms A's account. Therefore, I don't think there's anything VWFS needs to put right here.

### **My final decision**

For the reasons explained, I don't uphold Ms A's complaint about Volkswagen Financial Service (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 25 February 2025.

Debra Vaughan  
**Ombudsman**