

complaint

Mrs S is unhappy that under her contract hire agreement she has with Ald Automotive Limited (Ald). It settled a parking charge without giving her the opportunity to appeal it.

background

Mrs S is represented, for ease any comments or actions done by the representative will be referred to as Mrs S.

Mrs S entered into a contract hire agreement with Ald in April 2017 for the hire of a car. In November 2018 Mrs S paid to park the car. Unfortunately she didn't realise she had keyed in the wrong vehicle registration number and as a result a parking penalty was issued. The penalty notice dated 13 December was sent to Ald as the registered owners of the car. The parking charge was £100 but if it was paid within 14 days it would be discounted to £60.

Ald paid the penalty later than the 14 days. But it says it has only passed on the £60 fine to Mrs S. It has also invoiced her £42 administration fee plus VAT, total £102.

Mrs S is unhappy that Ald didn't pass the penalty notice to her when it received it. This would've given her the opportunity to provide evidence to show that she had purchased a parking ticket and to dispute the penalty with the parking company. She feels if Ald had given her the time to dispute the penalty she wouldn't have to pay the admin fee.

Ald says it doesn't take up individual appeals with parking companies. And failure to take appropriate action will leave it liable for the charge if the matter is escalated further and the costs could also increase. So, they say they had no choice but to pay the charge and re-charge Mrs S.

Our investigator didn't uphold the complaint. She thought that it was reasonable for Ald to have settled the charge and pass on the administration costs as per the terms and conditions of the hire agreement.

Mrs S didn't agree as she feels that Ald should've informed her of the parking ticket prior to settling it. This would've enabled her to intervene early and have the penalty withdrawn. Mrs S said the parking company has a limited appeal process and when Ald paid the penalty charge the parking company considers the matter closed. So the complaint has been passed to me to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what's fair and reasonable in the circumstances I need to take into account the terms and conditions of the hire agreement.

Under section 4, the term says:

IMPORTANT: Potential Financial Responsibilities of the Customer for Claims, Fines, Damage, Charges and Fees

'..the Customer agrees to indemnify and keep indemnified Kia Contract Hire against any sums incurred or losses suffered as a result of:

...b. any fines, fees, charges, Invoices or other penalties resulting from use of the Vehicle contrary to any applicable laws; motoring offences or violation from traffic or parking regulations or restrictions ...'

It also says:

'The Customer agrees to pay, upon Kia Contract Hire's demand, Kia Contract Hire's reasonable administration charges and any other reasonable costs or fees incurred by Kia Contract Hire directly resulting from the breach by the Customer of any of its obligations under this Agreement...'

I think that the terms make it clear that Mrs S would have to pay any penalties in connection with the use of the vehicle and I think it is reasonable to conclude that the parking charge is a penalty. The penalty charge is in the name of the registered owner – Ald. I can't say that it was unreasonable for it to pay the charge to prevent further action and costs and I don't think it made any mistake by doing so.

I understand Mrs S feels strongly that if she had known of the penalty at the time she would've had an opportunity to dispute it at an earlier stage and get the penalty withdrawn.

I'm sympathetic to Mrs S situation. I can see that she paid for a parking ticket in good faith and hadn't realised that the wrong vehicle registration number had been entered when purchasing the ticket. I also understand that the parking company indicated to Mrs S that if it had been disputed earlier in the process they would've '*considered*' waiving the charge. However, *consider* doesn't mean it would've actually waived the charge.

I've also seen the subsequent emails between Mrs S and the parking company. It continues to say the penalty charge was issued correctly. So I think on balance it unlikely that it would've waived the charge even if Mrs S had appealed it earlier. But as our investigator has already explained this service isn't able to look into the actions of the parking company as it not a regulated financial service within our jurisdiction. If Mrs S wants to take the matter further she would have to complain directly to the parking company.

I understand Mrs S is also unhappy that the administration charge has been applied to the invoice sent to her from Ald. But regardless if Ald sent the penalty charge at the time of issue or after it paid it as it did in this case Mrs S would've always been liable under the terms and conditions to pay an administration fee. It follows that I think the administration charge made by Ald is fair and reasonable in the circumstances. It is explained in the terms and conditions and I think it is a reasonable charge to reflect the costs involved in dealing with the parking charge.

I will therefore not be asking Ald to do anything more on this complaint. I know this isn't the answer Mrs S was hoping for. And so my decision will likely come as a disappointment to her. But I hope she can understand why I've decided this is a fair outcome for the reasons I've explained.

my final decision

I don't uphold this complaint for the reasons I've given above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 October 2019.

Angela Casey
ombudsman