

The complaint

Mr D complains Ald Automotive Limited (Ald Automotive) acted unfairly when he asked for a variation to his car hire agreement

What happened

In October 2019, Mr D entered into a 36 month hire agreement for a new car. He paid an advance payment of around £2,300 and the subsequent monthly payments were around £380. He was permitted to travel up 30,000 miles throughout the duration of the agreement.

Mr D says shortly after the Covid-19 pandemic restrictions were lifted, he spoke to Ald Automotive and asked for his monthly payments to be reduced as he expected to cover significantly less than the permitted miles. According to Mr D, he was told that wouldn't be possible and no amendments were being made due to the impact of the pandemic.

In July 2022, Mr D spoke to Ald Automotive again. He was told no variations could be made to the mileage as the agreement had less than six months left. He also spoke to them again in November 2022. Mr D says he spoke to Ald Automotive on at least three occasions.

The agreement ended in December 2022. The car was returned and it had travelled less than 17,000 miles (around 13,000 miles less than permitted).

In January 2023, Mr D complained to Ald Automotive about the conflicting information he was given. He said the agreement allowed for variations but he was initially told this wasn't possible due to the pandemic. Then later he found out variations were possible but as he had less than six months left on the agreement, one couldn't be made. He said Ald Automotive should waive the last payment as compensation for failing to vary the contract as he had asked.

Ald Automotive said it's possible to make a variation if the mileage is less than required. A new quotation would've been provided to recalculate the remaining rentals to accommodate the decrease in mileage. However there's no record of such a request from Mr D. They confirmed the details of the call in July 2022. Lastly they said there was no term to retrospectively apply a rebate or refund for a lower mileage once the agreement had ended.

Unhappy with their response, the complaint was referred to our service. Our investigator recommended the complaint wasn't upheld. She concluded Ald Automotive had acted fairly and in line with the terms of the agreement. She said there was no evidence of an earlier call but in July 2022 Ald Automotive considered his request for a mileage variation, this wasn't agreed to and the reason why was provided.

Mr D disagreed and maintained his stance. In summary, he said:

- He called Ald Automotive prior to July 2022 asking for a mileage variation;
- The terms referred to in the investigator's opinion doesn't form a part of his agreement;
- His agreement makes no reference that variation requests must be made before the agreement has six months left, the terms should be clear and not ambiguous;

- It's unfair for Ald Automotive to make amendments to the agreement, he never agreed to this and wouldn't have agreed to it if it was brought to his attention sooner;
- When he made his initial call there was more than six months left on the agreement so why did the advisor say variations weren't possible.

As an agreement couldn't be reached, the complaint has been referred 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.

Where the information is incomplete, inconclusive or contradictory, I've made an assessment on the balance of possibilities. That is, what I consider more likely to have happened than not, given the evidence available.

Mr D has raised a number of points however in this decision I will only focus and comment on what I consider to be the key aspects to reach a fair outcome. If I don't directly address an aspect that doesn't mean I haven't considered it, I have. No discourtesy is intended by this.

As a starting point, I've referred to the relevant sections of the agreement that concerns contract variations which is found in the key information section. It says:

"The regular payments, the contract mileage, the term and/or the charges for exceeding the contract mileage may also vary if we agree to vary your contract mileage after a request from you- see clause 11.3 of the attached terms and conditions.

It also says:

"If the contract mileage/term is varied this will result in a variation to your regular payments to reflect the fact that the contract mileage/term has been changed. See clause 11.3 of the attached terms and conditions"

Based on these terms, it's clear a request can be made by the agreement holder to vary the mileage and hire term. If agreed, the monthly repayments will be varied accordingly to reflect that. Mr D signed this agreement in December 2019 so I'm satisfied he was aware of the same.

It's clear from the wording that a contract variation isn't an absolute nor automatic right meaning there's no guarantee it would be agreed to. I say this because it says it 'may' vary and 'if we agree'. By using such language, it indicates it's ultimately Ald Automotive's decision as to whether a variation can be made.

Mr D says he called Ald Automotive some time around the pandemic to ask for a mileage variation and respective reduction in monthly repayments as he knew he would cover significantly less miles than permitted. He said he was told that wouldn't be possible.

Mr D is unable to provide the details as to when this conversation happened (day/month/year), nor has he provided any documentary evidence the call was made such as an itemised telephone bill. Ald Automotive say they have no call recording or system record of this call. I find they've acted reasonably by searching for the call based on the telephone numbers Mr D provided but they haven't been able to find a call from around that time. In the absence of persuasive evidence from either party, I don't have enough to reasonably say this call took place and if it did, what was said. So I can't say Mr D was given incorrect information.

However I do have the call recording when Mr D spoke to Ald Automotive in July 2022 which I've listened to. Mr D asks for a copy of the agreement as he didn't have one. He comments he's covered low mileage and asks whether the agreement could be extended. The advisor said it couldn't nor could the mileage be varied as it's within six months of the agreement coming to an end. She said a 90 day extension could be made on an informal basis and confirmed Mr D wouldn't be able to buy the car when the agreement ended. I'm satisfied the advisor considered Mr D's request of mileage variation but said it wouldn't be possible and provided a reason as to why. I don't find the advisor gave incorrect information and she provided a copy of the agreement as she said she would. Mr D says upon receiving it, he saw variations were possible.

Ald Automotive has provided a copy of their terms and conditions. This appears to be a separate document to the agreement but they've said it would've been given alongside it. They've relied on section 11.3 in defending this complaint. I note this is the same section referred to in the agreement term as stated above. Section 11.3 says:

*"We may vary the provisions relating to the Contract Mileage and/or the Agreement term referred to on the front of this Agreement, but shall only do so pursuant to a request by you. If the Contract Mileage and/or Agreement Term is so varied this will result in a variation to your regular payments to reflect the fact that the Contract Mileage and/or the Agreement Term has been changed. We will:
Agree the changes with you before we vary this Agreement
Give you notice in writing of the variation
We are under no obligation to vary the agreement under this clause"*

Mr D contests he's never seen this particular document nor term and it didn't form a part of his signed nine page agreement. He suspects Ald Automotive amended its terms but failed to let him know about it. He also says he wouldn't have agreed to such a term as he believes it's unfair and invalidates any variation requests. On the other hand, Ald Automotive say this terms and condition document would've been provided to him when he entered into the agreement.

I can see the pages towards the end of Mr D's agreement relate to how Ald Automotive will use his data, it's titled "*Use of your personal information statement*". I note it also has a section 11.3. However this is not the same section 11.3 as outlined above which can be found in the separate 'Terms and Conditions' document. This has perhaps caused some confusion.

On balance, I believe it's more likely than not the terms and conditions document was provided to Mr D when he entered into the agreement. Given he didn't have possession of the agreement (hence the reason for his call in July 2022), it's possible the terms and conditions document was also lost, misplaced or Mr D forgot about it. Which is understandable given how long ago the agreement started.

Having considered the term found in the key information section of the agreement and that found in section 11.3 in the Terms and Conditions document, I find the basis of them both to be the same. That is, a request to vary the agreement can be made but it will ultimately be up to Ald Automotive to decide whether to agree to it. The term under the key information says to refer to section 11.3 of the Terms and Conditions for more detail and it does just that. It gives the detail and clarity about what to expect should a variation be requested and it reiterates Ald Automotive aren't obliged to agree to it. I find both sets of terms are consistent with each other.

Ald Automotive has said it's their internal policy not to agree to contract variations if there's less than six months left on the agreement. I don't consider this to be an arbitrary factor but instead one that would apply to all consumers to ensure fairness. This time limit isn't specifically mentioned in the terms and I don't find it's wholly unreasonable for Ald Automotive not to do so. When variation requests are made, Ald Automotive have decided to take into account the length of time left on the agreement. That's a commercial decision and it isn't something our service would generally interfere with unless it was grossly unfair which I don't believe it is. In this case, Mr D made the request in July 2022 and the agreement was due to end in December 2022 so that's less than six months.

Mr D said had the section 11.3 term been brought to his attention, he wouldn't have entered into the agreement. However given I fundamentally believe it to be the same term as that shown in his signed agreement, I'm not persuaded by this argument. I say this because when he agreed to hire the car, he presumably agreed to do so based on the miles he anticipated to cover. There's nothing to suggest he thought he may cover significantly less than this or needed an agreement that allowed such flexibility.

I must stress the principle reason why Mr D wanted this mileage variation was due to the impact of the pandemic. But that was an unforeseen event that happened after the hire started. Nobody could've predicted the impact it would've had. Presumably if it hadn't happened, he would've covered more mileage than he did and closer to the permitted amount. So I'm not convinced this would've been a key part of decision making when he agreed to enter into the agreement.

For completeness, I've also considered whether there are any other terms that Mr D can rely on to say Ald Automotive must refund or waive repayments in the event the mileage covered is less than the permitted allowance. Having done so, there is no such provision.

Taking everything into account, I don't have enough evidence to say Mr D was given incorrect information in a call during the time of the pandemic. Overall, I'm satisfied Ald Automotive acted fairly and in line with the terms of the agreement when considering Mr D's request to vary the mileage. Therefore I won't be asking them to waive the final payment, they are entitled to this as per the terms.

My final decision

For the reasons set out above, I've decided not to uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 April 2024.

Simona Reese
Ombudsman