

## **The complaint**

Mr A complains that Ald Automotive Limited (“Ald”) paid two penalty charges without appealing them, and then held him liable for them.

## **What happened**

In February 2020 Mr A entered into a regulated hire agreement with Ald for a used car. In early 2023, he received four penalty notices for driving in a bus lane. He successfully appealed against all of those penalty notices. But the same local authority sent two more penalty notices to Ald, also for driving in the same bus lane. Mr A says that Ald paid both of those penalty notices without appealing them, and then demanded that he reimburse them.

Mr A says that the same grounds of appeal that he used successfully for his own four penalty notices would also have succeeded with the two penalty notices that were sent to Ald, if Ald had only consulted him instead of paying. Therefore it was not reasonable for Ald to hold him liable for them. He has not paid them, and he complains that Ald has threatened him with debt collectors.

Ald says that it did try to have the two penalty notices re-issued to Mr A, but that the local authority’s only response was to increase the penalty, register the debt with a court, and threaten to instruct bailiffs to seize Ald’s goods. It had therefore paid the penalties to avoid the situation escalating. It said it had then be entitled to pursue Mr A for reimbursement.

Our investigator did not uphold this complaint. She accepted that Ald had tried to transfer the penalties to Mr A. When that had not succeeded, she thought that Ald had acted reasonably by paying the penalties. The terms and conditions of the hire agreement said that Ald was entitled to pass on the charges to Mr A.

Mr A did not agree with that decision. He reiterated that the same grounds he had used on the four penalty notices would have also worked on the two that Ald had paid. He argued that Ald should not have paid them, but should have told the local authority that the penalties were his responsibility, “meaning the council would have HAD to deal with me thereafter.” And if he had lost the appeals then he would have paid the penalties at once. He asked for an ombudsman to review his case.

## **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 do not uphold it. I will explain why.

I have no doubt that if all six penalty notices had been sent to Mr A, then he would have successfully appealed them all. I don’t think that is idle speculation; the evidence and issues were the same in each instance. The only obstacle was that two of them were sent to Ald.

The relevant law about who is responsible for paying a penalty notice may be found in

regulation 6 of the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 ("regulation 6") (which is wrongly described as regulation 5 in the penalty notices), and regulation 5 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 ("regulation 5").

Regulation 6(2) says (emphasis added):

"(2) Where—

(a) the vehicle is a mechanically propelled vehicle which was, at the material time, hired from a vehicle-hire firm under a hiring agreement,

(b) the person ("P") hiring it had signed a statement of liability acknowledging P's liability in respect of any penalty charge notice served in respect of any road traffic contravention involving the vehicle during the currency of the hiring agreement, and

(c) in response to a notice to owner served on the owner of the vehicle, the owner made representations on the ground specified in regulation 5(4)(d) of the 2022 Appeals Regulations *and the enforcement authority accepted those representations,*

the penalty charge is payable by P."

The ground specified in regulation 5(4)(d) is that the recipient of the penalty notice was a vehicle-hire firm and that the criteria in regulation 6(2)(a) and (b) are met.

Paragraphs (a) and (b) of regulation 6(2) were clearly met. Ald's terms and conditions included a statement of liability in paragraph 4.1.

Paragraph (c), however, is only fulfilled if the enforcement authority accepts the representations made by the owner. Ald had no control over that; this was entirely at the discretion of the local authority in question. And the representations have to be on the ground set out in regulation 5(4)(d). That is the only way in which the owner of a hired car can make the hirer responsible for a penalty notice, because regulation 6(4) says:

"(4) In a case not falling within paragraph (2), the penalty charge is payable by the person who was the owner of the vehicle involved in the contravention at the material time."

I have seen evidence that Ald did write to the local authority to tell it that the vehicle had been hired by Mr A at the relevant time, and provided his name and address. When it received no response, Ald sent chasing letters to the local authority. The only response Ald received to those letters was the authority's threats about courts and bailiffs. By then, the time limit for appealing against the notice on some other ground had expired.

I don't think Ald was under any obligation to do more than that. The facts on which Mr A had successfully appealed his four penalty notices were not within Ald's direct knowledge, which is why the correct course of action for Ald to take was to try and have the penalty notices reissued to Mr A so that he could appeal them himself. That failed because the authority chose not to accept Ald's request. That is not Ald's fault, and I cannot hold Ald responsible for the authority's decision.

Once it had become obvious to Ald that it could not escape liability to pay the notices, it

realistically had no choice but to pay them. It was then entitled, under paragraph 4.1 of its terms and conditions, to require Mr A to reimburse it, and to take steps to enforce payment.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 March 2024.

Richard Wood  
**Ombudsman**