

The complaint

Mrs C complains about the charges ZenAuto Limited applied when she returned a car after the hire agreement ended.

What happened

Mrs C entered into a hire agreement for a vehicle with ZenAuto in July 2020; the agreement ended in July 2023 and Mrs C returned the car. She was unhappy with the end of contract charges that were applied when she returned the car.

Mrs C told us that she was charged £4,213 in excess mileage costs. She says that the charge is punitive and does not fairly reflect the depreciation in value of the car in terms of the excess miles she drove.

Mrs C complained to ZenAuto about the charge. She offered to pay half of the charge - a sum of £2,107 - which she felt fairly reflected the depreciation in the value of the vehicle. ZenAuto rejected her complaint. It explained that the terms and conditions of Mrs C's agreement allowed for the charge to be made. Mrs C did not agree and brought her complaint to this service.

Our investigator looked at this complaint and did not think Mrs C's complaint should be upheld. They thought that ZenAuto had calculate the excess mileage charge correctly within the terms of the hire agreement and the Consumer Credit Act 1974 ("CCA").

Mrs C didn't agree with this view. She offered to pay £2,500. ZenAuto did not accept her offer so Mrs C asked for an ombudsman to review her complaint.

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 conclusion as our investigator and for the same reasons. I will explain why.

When Mrs C took out the hire agreement she agreed to pay an initial payment of £3,000 followed by 35 monthly payments of £338. ZenAuto has provided a copy of the agreement and very prominently on the front page of the agreement under 'Key Information' the excess mileage charges are set out. They say:

"Excess mileage charge: This is the charge you must pay if you exceed the Mileage Allowance for the Vehicle. For each mile in excess of the Mileage Allowance you will pay 14.80 pence per mile (including VAT)."

It goes on to state clearly that the overall mileage allowance for the agreement is 15,000 miles, with a corresponding annual mileage allowance of 5,000 each year.

In May 2021, about ten months after the start of the agreement, Mrs C applied to increase the mileage allowance to 24,000 miles for the whole agreement. This was agreed and the terms of the contract, including the amount she paid each month, were changed, although it's not clear what the new monthly payment was.

In August 2022 Mrs C obtained a further quote, this time to increase the agreed mileage to 36,000 miles. ZenAuto has provided a copy of the quote which was provided. It would have increased Mrs C's monthly payments to £548.73. She didn't accept the quote and her contracted mileage remained at 24,000.

Mrs C returned the vehicle at the end of the contract in July 2023. She returned it with 52,474 miles on the clock – 28,474 more miles (and more than double) than her contract allowed.

Mrs C doesn't dispute that she travelled far in excess of the number of miles her contract allowed. And she was clearly aware that if she planned to drive more miles it would cost her more money than she originally agreed, because she had sought to regularise her contract on two occasions (although she only followed through with it on the one occasion).

Mrs C submits that the excess mileage charge is punitive, or penal. She seeks to rely on various case law which she says supports her case that the charges are not enforceable. I have considered the rules, guidance and law in relation to Mrs C's contract. Mrs C agreed to the contractual terms and she knowingly broke the contractual terms, the charge for which was clearly set out in the terms and conditions of her contract. I do not consider the charges to be disproportionate and they are, in my view, fair and reasonable taking into account the make, model and age of the vehicle.

Given all of the above, I'm satisfied that the excess mileage charges ZenAuto told Mrs C she has to pay were applied fairly.

My final decision

I do not uphold Mrs C's complaint and so I do not direct ZenAuto Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 June 2024.

Sally Allbeury
Ombudsman