

## The complaint

Miss P complains Hyundai Capital UK Limited trading as Kia Finance unfairly ended her conditional sale agreement.

## What happened

On 11 January 2020, Miss P entered into a conditional sale agreement to acquire a used car. The cash price of the car was £19,000 and the total amount payable over a term of 48 months was £22,656.98. The monthly repayments under the agreement were £319.93 followed by 1 payment of £7,300.34 on the 49<sup>th</sup> month – this payment is also known as the balloon payment.

On 13 January 2020, Miss P says she contacted Kia Finance to ask if she could change the date of her monthly repayments to the 22<sup>nd</sup> of each month. Kia Finance agreed to this.

On 20 February 2020, Kia Finance received a letter from an Insolvency Practitioner (IP) informing them that Miss P was entering into an Individual Voluntary Arrangement (IVA). This letter included a list of Miss P's creditors that were to be included in the IVA.

On 21 February 2020, Kia Finance wrote to Miss P letting her know it had come to their attention that Miss P withheld information about the impending IVA, so they were going to rescind the agreement with immediate effect and repossess the car.

On 24 February 2020, Miss P says the car was repossessed at her place of work. On 27 February 2020, the IP wrote to Kia Finance again and said Miss P's conditional sale agreement is to be treated as a priority commitment and so it's to be excluded from the IVA.

### *Agreement being rescinded*

Kia Finance said Miss P didn't tell the dealership about the impending IVA at the time. And because of the IVA, Miss P was in breach of a clause in the agreements' terms and conditions which set out. Therefore, a settlement letter was sent to Miss P in February 2020 letting her know that the settlement figure was £19,355.14 – Kia Finance said this was as a result of deducting a rebate of £3,301.84 from the outstanding balance of £22,656.98.

However, since then, Kia Finance sold the car at auction for a total of £12,295 and Kia Finance have provided us with a screenshot to show an additional £3,651.98 was deducted from the balance for reasons that are unclear to me. So, from the screenshot Kia Finance have sent us, the outstanding balance appears to be £6,705.

Miss P didn't think this was fair for Kia Finance to do as she says she'd only looked into the details of entering into an IVA, but she didn't go ahead with it. Miss P also says she made one payment towards the agreement which was on 24 February 2020 – when her car was repossessed. But that Kia Finance refunded her this payment.

Miss P says her employment details were incorrect on the conditional sale agreement. Miss P says the dealership used her previous employer name and got her length of employment

incorrect – it was down as 31 years. Miss P says she was told that as she'd only been at her current employer for around a month, that it was better to use her previous employer details as she'd been there for a long time. However, Miss P says the dealership got her length of employment incorrect and that what they put down couldn't have been right as it would mean she would have started work with this employer at the age of ten.

Kia Finance say the application went through an auto-underwriting proposition. So, they hadn't seen the application and therefore, couldn't challenge the discrepancy in employment details. Kia Finance asked the dealership about this and they say the length of employment on the agreement was a typing error – that it wasn't supposed to display as 31 years. However, the length of employment was correct on a different form which Kia Finance say was completed by Miss P. In any case, Kia Finance said had the correct term of employment been entered, the agreement still would have been accepted.

Kia Finance then said they checked with the department who reviewed Miss P's finance application and they confirmed Miss P met their affordability and credit checks that were undertaken. However, Kia Finance also say that further checks should have been done at the underwriting stage as Miss P's financial situation wasn't suitable for the agreement. Due to the employment details being incorrect, Kia Finance later told us they rescinded the agreement for this reason – which is different to the reason previously provided.

#### *Miss P's belongings in the car*

Miss P says when her car was repossessed, she didn't get the chance to retrieve some of the items that she left in there. Miss P has provided us with messages between her and the recovery agent on 2 March 2020 where she let them know she had items in the car that she wanted to collect. The recovery agent asked Miss P when she wanted to collect them, however, there's no further evidence of a response.

Kia Finance have provided us with a letter they sent to Miss P on 11 March 2020 asking her to arrange a time to collect her belongings and listed the two items that were in there. Miss P says she had an additional five items in the car which weren't mentioned in Kia Finance's letter.

On 16 March 2020, Miss P called Kia Finance to let them know she'd received their letter and wanted to email over a list of items that were in the car. Miss P was advised that she would need to email the auction house as they were going to sell her car.

On 1 May 2020, Miss P told Kia Finance that the items were no longer in the car. Kia Finance went to find out about this and during a call on 26 June 2020, Kia Finance advised that the auction house provided images showing only two items were in the car – the same two items that were listed in Kia Finance's letter on 11 March 2020.

Miss P remains adamant there were more of her items in the car and doesn't think it's fair that these weren't returned to her.

#### *Impact on Miss P*

Miss P has provided us with detail about the health issues she suffers from and that have been made worse due to what's happened. Miss P says it was distressing for her to find out that the repossession agents had turned up to her previous employers and her current employers to find out where the car was. Miss P feels this is a breach of her information and made her health issues worse by the inconvenience caused. Miss P also feels that this issue has impacted her credit file and that she won't be able to take out another finance agreement for a car due to this.

### *What our Investigator said*

Our Investigator looked into Miss P's concerns and concluded that Kia Finance hadn't been consistent in their reasons for repossessing the car. And he felt that Kia Finance weren't fair in relying on the clause they mentioned in the terms and conditions as this was under the heading 'bankruptcy'. So, he didn't think this was relevant in Miss P's circumstances as she enquired about an IVA. Therefore, our Investigator didn't think Kia Finance acted fairly. In any case, our Investigator said if Kia Finance had concerns about Miss P's financial situation at the time of the application, they should have conducted further affordability checks and that it wasn't fair for them to do so after.

In relation to the employment details on the application form, our Investigator said he was persuaded by Miss P's version of events and that he felt it was more likely than not that Miss P was advised by the dealership to use her old employers' details for the purpose of the application. But as Kia Finance said, the agreement would have been accepted with the correct employment length.

In terms of Miss P's items that were left in the car, our Investigator didn't think Kia Finance had acted unreasonably because they'd informed Miss P that there were items in the car and provided her with information on how to collect the items. Our Investigator said Kia Finance had also contacted the relevant parties to find out what items were in their possession, and that they'd confirmed there were only the two that Kia Finance told Miss P about. So, he didn't ask Kia Finance to do anything more.

Ultimately, our Investigator looked at what Kia Finance needed to do to put things right for Miss P as a result of acting unfairly when they rescinded the agreement. In summary he said:

- Arrange an affordable repayment plan with Miss P to pay her liability towards this agreement which should be no more than £2,881.09. Our Investigator said this was because the vehicle order form showed Miss P had a previous hire purchase settlement amount of £10,361.09. Miss P part exchanged her previous car for £7,750 when entering into this conditional sale agreement. So, this left her with £2,881.09 to settle her previous agreement. And this amount was added to the cash price of the car that was finance under this conditional sale agreement.
- Remove any adverse information recorded about this agreement from Miss P's credit file.
- Pay Miss P £500 compensation for the distress and inconvenience caused in rescinding the agreement.

### *What Kia Finance and Miss P said in response to our Investigator*

Kia Finance responded and in summary they said, when underwriting checks were completed, they couldn't check for an IVA – they're only alerted to a potential IVA once an application is made, which is what happened in Miss P's case. They also said while the clause in the terms and conditions doesn't specifically refer to an IVA, there's a broad range of scenarios covered in the clause. Kia Finance also explained that when an agreement is rescinded, they are entitled to the return of the goods and the amount financed, less interest, deposit, any payments and the sales proceeds of the vehicle. As there was a loss after the car was recovered and sold, Kia Finance said this was why they held Miss P liable for the amount that was outstanding.

Miss P responded and I've summarised the key points she made. She remained of the opinion that there were more of her items in the car and that they were taken out before it was sold. Miss P said she didn't see why she should have to pay anything at all, as she's at a loss and she no longer has the car. She also said Kia Finance haven't been honest as they've provided more than one reason as to why they decided to rescind the agreement and repossess the car. So, the complaint has been passed to me.

### **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.

Firstly, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made and no discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

#### *Agreement being rescinded*

There seems to be some disagreement about who filled out the application form at the time and about Miss P's employment details on the form. Additionally, there also seems to be some conflicting information from Kia Finance as to why they rescinded Miss P's agreement.

Having carefully thought about the information available, I think it's reasonable to suggest that, despite the different reasons Kia Finance gave for rescinding the agreement, that they did so on the basis of the IVA Miss P had enquired about. I say this because Kia Finance have given this as a reason more than once and have also confirmed the clause in the finance agreement they relied on when rescinding the agreement. Additionally, the letter Kia Finance sent to Miss P in February 2020 clearly explained they were rescinding the agreement with immediate effect due to the IVA. So, I'll go on to decide whether Kia Finance fairly rescinded the agreement because of the IVA.

Soon after Miss P entered into the agreement, Kia finance were made aware that Miss P was entering into an IVA by an IP. Miss P says she only enquired about an IVA, and there actually wasn't one in place at the time she entered into this agreement. Kia Finance have made the point that Miss P ought to have made the dealership aware that she was going to enter into the IVA. So there seems to be some discrepancy about whether Miss P had entered into an IVA at the point she took out the agreement and whether she'd made the dealership aware at the time or not. On balance, I don't think it likely Miss P would have told Kia Finance about the IVA as she's been consistent in saying she'd only enquired about an IVA and had never agreed to entering into one. So, I don't think Miss P would have thought there was any reason to mention it to the dealership at the time given Miss P says she hadn't entered into an IVA.

After Kia Finance received the notification about Miss P's IVA that was being proposed, they contacted Miss P to let her know were going to rescind the agreement as Miss P had withheld information about the impending IVA.

In any case, Kia Finance say they rescinded the agreement because Miss P was in breach of clause 5.1 of the agreements' terms and conditions. Having looked at this clause, it displays as:

## **"5 BANKRUPTCY**

*5.1 You will not permit a petition for a bankruptcy order to be presented against you, or permit an application for an interim order to be made against you, or call a meeting of creditors, or reach any agreement with them."*

I don't think it was fair for Kia Finance to rely on this term as it's quite clearly under the heading 'bankruptcy'. I appreciate Kia Finance say that 5.1 covers several scenarios – one being 'call a meeting of creditors' which is what was referred to in the letter of 20 February 2020 sent by Miss P's IP. However, I don't think it's reasonable to apply this clause to Miss P's scenario given an IVA is very different to filing for bankruptcy. On balance, I don't think it would have been unreasonable for Miss P to read this clause and assume that it didn't apply to her as she hadn't applied to become bankrupt. So, I don't think Kia Finance fairly rescinded the agreement by relying on this term.

I note Miss P says her employment details were inputted incorrectly on the agreement – and that this was done by the dealership. Miss P says the length of employment was also quite clearly incorrect as it would've meant she started employment at the age of ten. Kia Finance say the length of employment was a typing error, but that Miss P gave these employment details. In any case, Kia Finance say they would have accepted the application for finance based on the correct employment details. While I've considered both parties' arguments, I'll never be able to know exactly what happened - it's clear something went wrong as the length of employment is incorrect and I don't think it likely Miss P would have said she was employed from the age of ten. Kia Finance have also told us they should have completed further checks at the underwriting stage and I think had this been done, it's likely they may have picked up on the employment discrepancy. With that said, as I've explained, Kia Finance appeared to have rescinded the agreement due to the IVA, so this is what I've looked into.

I've next gone on to consider whether Miss P owes anything under the agreement as a result of it being rescinded. When thinking of what Kia Finance need to do to put things right, I think it's fair for Miss P to be put back in the position she was in before this agreement was put in place.

Miss P says she changed her payment date to 24 February 2020 – which was the same day her car was repossessed. Having looked at the statement of account, I can see a payment was made in February 2020 and March 2020, but these were then refunded at the end of March 2020 and May 2020. So, I don't think there's any more monthly payments owed to Miss P.

I don't think it's fair for Miss P to be held liable for the outstanding balance that Kia Finance say is due under this agreement. I say this because I've already concluded that Kia Finance didn't act fairly when they rescinded Miss P's agreement. So, I won't be recommending Miss P repay this amount.

From looking at the vehicle order form Miss P provided us with, I can see she had a previous hire purchase agreement in place that had a settlement figure of £10,631.09. The invoice shows Miss P part exchanged her previous car for £7,750. So, this left Miss P with £2,881.09 outstanding under her previous agreement. I note Miss P doesn't feel she should be liable to pay anything. However, Miss P would've needed to pay the £2,881.09 that was left outstanding on her previous finance agreement – if she hadn't taken out the agreement with Kia Finance. So, I think it's fair for Miss P to repay this amount. I think it's fair for Miss P and Kia Finance to discuss the process for Miss P to repay this amount and to agree an appropriate and affordable way of repayment.

Given my finding that I think Kia Finance shouldn't have rescinded the agreement, I don't think it's fair for them to report adverse information about this agreement on Miss P's credit file. Therefore, Kia Finance should remove any adverse information about this agreement from Miss P's credit file.

#### *Miss P's belongings in the car*

Miss P has given us a list of items she says were left in the car, such as a bag worth £200, CD's, a card and drinks - although Miss P doesn't have evidence of these items being left in the car. So, I'm unable to determine exactly the losses Miss P's incurred.

I've looked at the letter Kia Finance sent Miss P on 11 March 2020 where they asked her to collect her belongings and they listed two items. I note Miss P has shared some messages between her and the collection agent from 2 March 2020 where she asked to collect her belongings. The collection agent then replies and asks Miss P when she'd like to collect them – these messages don't mention what items were in the car. The letter Kia Finance sent Miss P was dated after this message exchange and I can see from Kia Finance's contact notes that Miss P called them on 16 March 2020. The contact notes show Miss P acknowledges receiving Kia Finance's letter of 11 March 2020 as she explains she wanted to email a list of belongings she had in the car.

On 20 March 2020, Kia Finance advised Miss P that she'd need to email the auction house that the car was being sold at and on 1 May 2020, Miss P made Kia Finance aware that her belongings were no longer in the car. Kia Finance confirmed that they'd contact the collection agents as well as the auction house. Kia Finance attempted to contact both parties again on 29 May 2020 to find out about the belongings Miss P referred to. So, I think it's reasonable to suggest Kia Finance were doing what they could to help Miss P at this point.

On 26 June 2020, Kia Finance's contact notes show that the auction house provided images of only the two items Kia Finance included in their letter of 11 March 2020. However, Kia Finance haven't provided evidence of these images. Miss P can't provide evidence of the items she's mentioned neither. However, the items that were confirmed by Kia Finance in the letter of 11 March 2020 are also the same items mentioned in Kia Finance's contact notes which were confirmed by the auction house at a later date. So, I think on balance, if there were more items in Miss P's car that they would have been noticed by at least Kia Finance when they sent their letter to Miss P or the auction house. And without evidence of the losses Miss P says she's incurred; I can't fairly ask Kia Finance to reimburse her for these.

#### *Impact on Miss P*

Miss P has told us about her mental health issues which she says were made worse due to this issue. Miss P also told us the distress caused when her car was repossessed at her place of work – Miss P says her employers weren't aware of the situation and the fact that this happened at her work caused her embarrassment. Miss P also says the repossession agents first turned up at her previous place of work trying to find the car and that her previous manager called her to let her know that there were people with him attempting to find her. I can appreciate Miss P was caused distress by information that was being shared about her without her consent. And that she was concerned by the repossession happening at her place of work - especially as I haven't seen any evidence to suggest Kia Finance told Miss P, they were planning on coming to her work to repossess her car. It's understandable that Miss P didn't want her employers to know about what was going on in relation to this issue.

Additionally, I don't think Kia Finance have been consistent with the reason why they rescinded the agreement. I think this has caused confusion to Miss P at a time where she was trying to get to the bottom of exactly why the agreement was being rescinded.

Miss P also says she was dealing with personal issues at the time and not having a car impacted her being able to get around and to get to a safe place. Miss P says she suffers from an injury which makes it difficult for her to walk long distances and carry shopping. But without a car, she had no choice but to find other means of getting around. While I empathise with Miss P's situation and I don't wish to downplay Miss P's health issues in any way, I don't think Kia Finance could have foreseen the difficulties repossession of Miss P's car in February 2020 was going to cause her. I say this because I can't see from Kia Finance's contact notes that they were ever aware of the personal issues Miss P was dealing with nor that she had an injury at the time which made it difficult for her to get about without a car. Nonetheless, while Miss P didn't make Kia Finance aware of the difficulties she faced as a result of no longer having a car, Miss P did tell Kia Finance in a call on 10 March 2020 that her health has been impacted and that she couldn't get about without her car. Miss P also says her health was suffering because of Kia Finance repossessing her car. So, I think it's clear Miss P was impacted by Kia Finance's decision to repossess the car.

Overall, as I've explained, I think Miss P has suffered distress and inconvenience for the agreement being rescinded incorrectly, and the impact of that on her. Therefore, I think Kia Finance should pay Miss P £500 compensation.

### **Putting things right**

As explained, I think the following needs to be done:

- Kia Finance to stop pursuing Miss P for any outstanding amount due under the agreement as I don't feel she's liable to repay this.
- Miss P to repay £2,881.09 and for Miss P and Kia Finance to discuss ways to repay this amount.
- Kia Finance to remove adverse information about this agreement from Miss P's credit file.
- Pay Miss P £500 compensation.

### **My final decision**

For reasons explained above, my decision is that I uphold this complaint. And I direct Hyundai Capital UK Limited trading as Kia Finance to carry out the actions as set out in the "Putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 21 June 2022.

Leanne McEvoy  
**Ombudsman**