

## **The complaint**

Mrs C complains about a car she hired from ALD Automotive Limited, trading as Kia Contract Hire ("Kia").

## **What happened**

In March 2020 Mrs C hired a brand new car from Kia for four years, under a regulated hire agreement. The car's cash price was £25,940. There was also a warranty agreement under which the car was to be serviced every 12 months or, if earlier, every 20,000 miles. The total contract mileage was 80,000, and a fee would be charged for any excess mileage.

The first service was in March 2021, and the second was in April 2022. The second service was carried out 21,610 miles after the first.

In December 2022 the car broke down and had to be recovered from the roadside by the AA. It needs a new engine and a new turbo.

Kia told Mrs C that the car was not eligible to be repaired under warranty because the second service had been carried out 1,600 miles late. Kia said that at the second service it had been found that the oil was of poor quality, and was described as "clumpy" and "sludgy". It argued that this would have caused damage to the engine and the turbo, and this was why they had failed. Mrs C argued that the car had been driven 17,000 miles since the second service, presumably with the right oil, and so the lateness of the second service was irrelevant. She brought this complaint to our service.

One of our investigators upheld this complaint. She said that the breach of the warranty was all very well, but that Kia had not considered its obligations under the Consumer Rights Act 2015. There was a statutory implied term of contract that goods hired to a consumer would be of satisfactory quality, and this included durability. She thought that for an engine and turbo to fail when a car was less than three years old, and had only been driven 62,600 miles, indicated that they had not been durable. She was not persuaded that driving for 1,600 miles after a service was due was the real reason why they had failed.

The investigator recommended that Kia pay for the engine and turbo to be repaired, and that Kia refund Mrs C's monthly payments during the period that she had been without the car and without a courtesy car, with interest on the refunds, plus another £350 to compensate Mrs C for her trouble.

Kia did not accept that opinion. It reiterated its previous stance, and asked for an ombudsman to consider this 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 uphold it, for the same reasons as my colleague. I will briefly explain why.

I agree that Mrs C did not comply with the terms of the warranty, and so she was not eligible to have the car repaired under warranty.

However, I am upholding this complaint on a different ground. As I've said, the Consumer Rights Act requires that goods sold or hired by a trader to a consumer must be of satisfactory quality, and the Act goes on to say that satisfactory quality includes durability. The car was brand new when it was sold, so it is reasonable to expect that the engine and turbo would last for considerably longer than three years. So when they fail after less than three years, the inference may be drawn that they were not durable, and were therefore not of satisfactory quality when they were sold.

That inference can of course be rebutted by evidence of the engine and turbo having failed due to some other reason. In this case, Kia has argued that they must have been damaged by the poor quality of the oil which was discovered at the second service. If I accepted that, then I would be unable to fairly conclude that there had been anything wrong with the car when it was delivered to Mrs C.

However, I find Kia's argument unpersuasive. I agree with Mrs C that it is unlikely that driving the car for an extra 1,600 miles after it was supposed to have been serviced really damaged the engine and the turbo so extensively that it materially contributed to their failure. I may well have taken a different view about that if they had failed just before the second service, or only a short time afterwards. But the car was driven for another 17,000 miles after being serviced, before it broke down eight months later. During that period, the oil would have been of acceptable quality, having been changed during the second service. So I doubt that the quality of the oil during the 1,610 miles driven immediately prior to the late service was the real cause of the breakdown. On the balance of probabilities, I am satisfied that the car was not of satisfactory quality when it was hired. Kia is liable for that.

### **Putting things right**

I agree with the investigator's recommended redress, which is in line with what our service would typically award.

### **My final decision**

My decision is that I uphold this complaint. I order ALD Automotive Limited (trading as Kia Contract Hire) to:

- Pay Mrs C £5,119.91 plus VAT to cover the cost of repairing the car;
- Refund Mrs C's monthly payments made during the period that she was without the car and without a courtesy car, and pay her interest on those refunds at the rate of eight per cent a year from the respective dates of payment to the date of settlement;
- Pay Mrs C £350 for her inconvenience.

If Kia considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate. Mrs C should refer back to Kia if she is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 October 2023.

Richard Wood  
**Ombudsman**