

## **The complaint**

Mrs C complains about the quality of a car financed by Ald Automotive Limited trading as Kia Contract Hire ('AAL').

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

In July 2019 Mrs C leased a car through a hire agreement with AAL. However, she says that in December 2022 the car started making a loud noise. This was later diagnosed as an engine fault.

Mrs C says that AAL should have taken responsibility for fixing the car and says that it should have resolved the situation sooner as she had a car that she had been unable to use, yet continued to pay for. She says that while the car was offroad she incurred costs for alternative transport so is out of pocket.

AAL would not accept liability for the fault with the car and has pointed to the cause of the engine failure as inadequate/improper servicing.

Mrs C brought her complaint to this service but the investigator did not uphold it. Mrs C has asked for an ombudsman to look at things and make a final decision.

## **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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer hire agreement. As such, this service is able to consider complaints relating to it. AAL is also the hirer of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems

likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from here') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

I want to make it clear that although my decision is not about the warranty (which AAL does not provide) I consider that the factual circumstances around the warranty claim (and the view of the manufacturer as to the cause of the engine damage) are relevant here.

AAL supplied Mrs C with a brand new car. So I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

I note that the engine failure was identified when the car was about three and a half years old and had done around 32,000 miles. My starting point is that a reasonable person would not expect an engine to fail at that point – and without other factors in consideration it would appear that the car was not sufficiently durable.

However, in this case AAL maintains that it considers the car has failed not through an inherent fault/lack of durability but by a failure to maintain the car properly. It follows that if the car had failed because of a lack of maintenance/improper maintenance this would not be a breach of contract by AAL via the implied term as to satisfactory quality.

Furthermore, the agreement between AAL and Mrs C specifies that she opted to take the agreement 'without maintenance'. This is explained in the agreement- it says it is Mrs C's responsibility to arrange to pay for *'all servicing, maintenance and repairs in accordance with the manufacturer's recommendations and the Terms and Conditions of your Agreement'*. It follows, there would not be a breach of the express terms of the hire contract if AAL failed to take responsibility for quality issues arising as a result of the way the car has been used and maintained.

Mrs C has said the car was serviced diligently at a reputable independent garage run at the time by a family member. I recognise Mrs C's strength of feeling about the issue and she has emphasised how she would never put her family in a car that had not been properly looked after. And I am very sorry to hear about the stress having the car off road caused, along with the financial concerns about money owed under the terms of the hire agreement. I also know that Mrs C has questioned the credibility of evidence produced by AAL to support its position. However, I am not an expert in cars, nor can I look at things in the way a court might (such as cross examine witnesses).

With all this in mind I am unable to fairly say, based on the evidence available to AAL that it should have concluded the car was of unsatisfactory quality at the time of supply. I say this noting the following in particular:

- The manufacturer of the car had confirmed to it that the servicing records Mrs C initially produced failed to show the car had been serviced properly in accordance with its requirements to maintain the warranty. For example (although amended copies were eventually provided when these were rejected) the original service job sheets/invoices lacked crucial details about parts, oil type and grades. And questions were raised about the service history including incorrect mileage intervals.

- The dealer had initially stripped the engine to investigate the problem and found congealed oil within - which it diagnosed was down to a lack of/poor servicing.
- Although it initially considered coverage the manufacturer ultimately declined to cover the engine replacement under the warranty on the basis that the evidence from the dealer indicated that the car had been improperly serviced.
- AAL sent its own engineer to go to the dealership to assess the car at a later stage. He confirmed that the engine parts had a thick coating of 'semi solidified oil sludge' and that this was stopping the engine from being able to circulate oil around the engine, and usually results in extensive damage. He went on to say that if services are not carried out as per the manufacturers service schedule the oil can degrade and the condition of the engine is not consistent with the follow up service paperwork Mrs C provided.
- Photographic evidence of the engine strip down/inspection shows congealed and thick oil – which appears to support the findings of the engineer and dealership.
- Oil samples taken during the inspection were analysed and resulted in an 'immediate action / red' warning mentioning 'end of oil life' and contamination from piston and bearing wear. AAL says its engineer concluded this supported a finding that the oil was well past its useful life and had degraded to such a degree that it caused engine damage and deposits in the oil. And AAL said both the engineer and the dealership maintained the view that the damage was caused by service issues rather than an inherent fault with the car.

I note Mrs C had her own inspection carried out. However, the report does not persuasively show how the failure has been caused by an inherent fault or manufacturing defect and appears to present a series of questions and recommendations (like having the oil tested). Furthermore, the inspector only gives his first name and there are no credentials provided. I don't consider AAL has acted unfairly in not changing its position based on this report.

I also understand that Mrs C has pointed to the presence of manufacturer recall notices both before and after the engine failure and a noise from the front wheels prior to failure. AAL (either via the dealer or its own engineer) has confirmed that these issues are not linked to the failure of the engine and explained why. And while I do understand Mrs C suggested that these are not neutral viewpoints – I don't have persuasive evidence (like an expert view) that specifically links these issues to the engine failure. So as a non-expert it is difficult for me to fairly conclude otherwise.

All things considered, and in light of the matters I have highlighted above I don't think there is sufficient evidence that the engine failure was a result of a manufacturing defect. And noting the time that has passed from the supply to the failure of the car I also don't consider it unreasonable that AAL would have required more persuasive expert evidence of a manufacturing defect in order to reimburse Mrs C for claimed losses.

So for clarity – because I am not upholding this complaint (the subject matter which is about the engine failure) I am unable to fairly direct AAL to pay Mrs C related compensation, write off hire payments or write off related end of lease charges or other costs it considers due under the terms of the credit agreement. But my decision is not saying that every charge AAL raises in relation to the agreement is fair and correct – Mrs C can still query and potentially complain about charges she thinks are incorrect or unfair under the terms of the credit agreement she has with it. However, if a complaint is escalated to this service about reimbursement for the quality issues covered by my decision here we might not be able to look at some or all of it.

Mrs C is concerned about her credit rating if she doesn't pay for charges raised by AAL so she should engage with AAL about this and any financial difficulties she might be having. It will need to be positive and sympathetic in regard to these.

I want to underline that my decision is not intended to cause Mrs C offence – or indicate she has knowingly done something improper in respect of the car. I recognise her strength of feeling on the matter. But I am looking at what it is fair to ask AAL to do in the circumstances and based on the information available to it. As I have said, my role is to look at matters informally. Mrs C is able to reject my decision if she disagrees with it and consider alternative action, such as court, if she wishes. If she does want to pursue further action she should consider seeking independent legal advice.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 26 August 2024.

Mark Lancod  
**Ombudsman**