

## **The complaint**

Ms M complains that Ald Automotive Limited trading as Kia Contract Hire (KCH) applied charges at the end of a hire agreement despite the car being faulty.

## **What happened**

In September 2020, Ms M acquired a car through a hire agreement with KCH. The duration of the agreement was 48 months. Ms M made an advanced payment of around £370, followed by 47 monthly payments of around £370.

Ms M returned the car in September 2024 when the term of the agreement ended. KCH arranged an inspection of the car. It said the car had been returned with damage that went beyond reasonable wear and tear – and charged £905 for this. It also applied further charges for excess mileage.

Ms M didn't think it was fair for KCH to apply the charges, as she'd had a number of issues with the car. She said it needed to be returned to the garage more than five times for extensive repairs, including a complete engine rebuild. She said the car had been unreliable from the start of the agreement and that she should be compensated for the inconvenience and anxiety caused by this. She thought KCH should waive some or all of the charges as a result.

KCH reconsidered the charges it applied. It agreed to refund some of the damage charges totalling £445. But it said the rest of the charges were applied correctly. It also said it wasn't previously made aware of any issues with the car during the term of the agreement, so it couldn't compensate Ms M for them. KCH didn't think the problems Ms M had experienced with the car were relevant to the charges it had applied.

The complaint was referred to this service. KCH didn't think we should consider the complaint – as Ms M had already referred the matter to the British Vehicle Rental and Leasing association (BVRLA) and received a response from them. One of our Investigators said it wouldn't be appropriate for us to consider Ms M's complaint about the damage charges – as the BVRLA had already considered that complaint. Ms M didn't agree, so the complaint was passed to an ombudsman.

The ombudsman dismissed part of the complaint about the excess mileage charges but said we could consider the end of contract charges relating to damage, and the problems Ms M had with the car.

Our investigator looked into the complaint and said that the damage charges were fair. She also said that KCH didn't need to do anything further to resolve the complaint about faults with the car as it wasn't aware at the time.

Ms M asked for the complaint to be decided by an ombudsman, 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.

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.

Firstly, I am very sorry to hear about the difficulties Ms M has described to this service. I can't imagine how she must feel. But I thank her for bringing her complaint.

Ms M has provided detailed submissions both before and in response to our investigator's view. I acknowledge her strength of feeling and she's put forward her point of view passionately and articulately. I've read and considered the evidence submitted by both parties but I'll focus my comments on what I think is relevant. If I don't comment on a specific point it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it.

Several parties have been involved in this complaint. Our service is only able to look directly into the actions of the finance provider, and not the selling or repairing garage, or the manufacturer which are separate entities.

### End of contract charges

As Ms M has not agreed with the reduction in charges, I am making a final decision on this case. Both parties have broadly agreed that the initial charges found in the inspection were removed, so I don't consider it necessary to focus on all aspects of this complaint in detail.

Our investigator has provided a detailed assessment of each of the remaining charges. I also don't find that I need to go into as much detail here. However, for completeness I will cover my findings on the key matters.

Ms M doesn't seem to have made any further comments specifically about each charge. She's been more focused on whether the charges are fair considering the problems she had with the car, which I will address later. In my view the faults with the car aren't related to the charges for the damage as these are separate matters.

KCH set out in the terms of the agreement that there is an expectation that the car will be returned in a good condition, and that damage beyond fair wear and tear will be chargeable in line with the BVRLA guidance. When Ms M entered into the hire agreement, she accepted these terms and conditions.

In making my decision I've taken into account relevant industry standards from the BVRLA. The guidance says that age and mileage are factors which need to be taken into account when considering what would be deemed fair wear and tear. When the car was returned it was around four years old and had covered around 69,200 miles since supply.

For the avoidance of doubt, I've considered each of the images carefully, the guidance and our investigator's assessment. I agree that the damage shown for the remaining charges, is more than fair wear and tear for this age and mileage, and fairly chargeable in line with the guidance. I also think each charge itself is fair and not excessive.

Ultimately the car may have achieved more on disposal had it not been damaged. I think Ms M was fairly warned about the terms relating to damage outside of fair wear and tear when she entered into the agreement. So, she had the opportunity to rectify the damage before returning the car. I'm not able to consider why she wasn't charged on other agreements, but considering the terms of this agreement I don't think KCH have acted unfairly in passing these on. Therefore, I'm not recommending any of the remaining charges are refunded.

### Faults with the car

KCH is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

I am satisfied there are relevant implied terms that apply here in respect of the requirement to supply goods of 'satisfactory quality'.

The quality of goods will be 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 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, and safety.

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

The car was new when supplied in September 2020 and Ms M had agreed to pay 48 payments of around £370, a total of around £17,800. So, I think it's fair to say that a reasonable person would have expected the quality to be high, and that the car wouldn't have had any major problems for quite some time.

KCH is responsible for the quality of the car when it was supplied and not ongoing issues such as maintenance and servicing. In this case around ten months had elapsed since the goods were supplied to Ms M before she experienced any significant issues.

The first reported problem related to the engine being rebuilt in July 2021. In May 2022 there was a further issue with the tensioner failure. In June 2022 the exhaust temperature sensor failed. In December 2022 the windscreen camera failed. In November 2023 the turbo failed. And finally in December 2023 there was a failure of the central console/audio unit/cameras/parking sensors.

Ms M has provided several job cards which confirm that there were faults with the car. There isn't an independent report but there's enough information on the job cards to indicate that parts had failed and were replaced under warranty. The initial failure is at around 8,900 miles and seems a significant problem with the engine components, which cost around £5,500 under warranty. The following job card from May and June 2022 might indicate a failed repair or perhaps something else, but I don't have a lot of information about that, so it's difficult for me to reach this conclusion. The mileage was around 22,600 and 25,400

respectively and the total cost of around £350 was covered by the warranty. The job card from June 2023 indicates a warranty recall due to crankshaft repairs at a cost of around £120, the mileage is around 46,000. In November 2023 the turbo and other parts were replaced under warranty at a cost of around £1,400, the mileage was around 52,500. In December 2023, the audio unit was replaced at a cost of around £730 under warranty, the mileage was around 53,600.

Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long will also depend on a number of factors.

Considering this was a brand-new car that needed an engine rebuild in the first year at under 9,000 miles, it seems unlikely that needing at least five major repairs before it had driven 54,000 miles is a matter of wear and tear. It suggests something more fundamental was wrong with the car. I've seen a couple of invoices for servicing in June 2023 and August 2024. So, I don't have a complete record of how the car was maintained, but Ms M told KCH she'd kept the car fully maintained as recommended. But in any case, considering the description of the faults they don't appear to relate to a lack of maintenance.

I have to reach a decision on the available evidence and sometimes the issues aren't clear cut. In this case I think that on the balance of probabilities at least some of the problems were inherent in the car and as such they would have been present at the point of supply. Arguably though, some of the issues might have been caused by a failed repair and I don't have enough evidence about this. But, I'm generally satisfied that the car was not of satisfactory quality at the point of supply because it wasn't sufficiently durable.

Although I think the car wasn't of satisfactory quality at the time it was supplied, as far as I can see Ms M hasn't had to pay for the repairs as they've been carried out under warranty. So, I haven't been shown that she incurred a financial loss due to a breach of contract.

Ms M is also claiming other damages or financial losses (and non-financial losses) as a result of a breach of contract. She's shown invoices for a hire car, but it isn't clear whether these costs were all covered by the warranty. She's also said multiple repairs have caused a lot of inconvenience and anxiety which she should be compensated for. But there's a lot to think about when deciding whether losses should be payable in these sorts of situations. I need to think about whether the losses were directly flowing from the breach of contract; whether Ms M has tried to mitigate her losses; and whether they were reasonably foreseeable or too remote.

The problem in this case is that I don't find I have the grounds to say KCH should be responsible for the losses Ms M said she incurred. KCH wasn't aware of any of the issues or repairs until September 2024, and it isn't responsible for the service provided by the selling/inspecting/repairing garage or the advice she was or wasn't given about her statutory rights.

Given the extent and number of repairs, I find it likely KCH would have offered further support or even arranged for her to be able to exit the agreement early had it been aware, in line with the various remedies available. Had Ms M contacted KCH, I think it likely that she might not have incurred these additional losses or experienced a lot of the inconvenience. I can appreciate she's been dealing with the dealer and/or manufacturer and might not have been aware of her rights. But I can only look into a complaint about the finance provider here and I don't think it would be reasonable to make an award for the losses, or inconvenience she experienced in these particular circumstances.

I appreciate my decision will be disappointing to Ms M, but I don't find I have the grounds to

instruct KCH to refund any of the damage charges or settle her claim for breach of contract.

Ms M doesn't need to accept my decision. She might decide, after taking appropriate legal advice, to pursue the matter through other avenues such as through the court.

### **My final decision**

For the reasons set out above my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 24 July 2025.

Caroline Kirby  
**Ombudsman**