

## The complaint

Miss S has complained about the way ALD Automotive Limited (ALD) administered a hire agreement she'd entered into when acquiring a car.

## What happened

To summarise, Miss S entered into a hire agreement with ALD in April 2019 to acquire a new car. I understand the agreement commenced on 25 April 2019 and had an end date of 24 April 2022. The agreement set out a £1,260.62 advance payment was due on the date of delivery of the car. The first regular hire payment of £210.10 was due during the calendar month following delivery of the car on the next occurrence of Miss S's selected payment date, which I think was the 21<sup>st</sup> of the month. The agreement set out Miss S was then required to make 34 more monthly payments of £210.10 starting one month after the date of the first regular hire payment.

Miss S also entered into a maintenance agreement with ALD, at a cost of £1,480.10, to be repaid over the term of the agreement. This meant Miss S's total advance payment amount was £1,477.23 and the regular payments were £246.21. The hire agreement came with a total contracted mileage of 24,000. Excess mileage was charged at 11.04p (excluding VAT).

From what I've seen, Miss S made the first repayment on 21 May 2019 and the advance payment on 24 May 2019. The last regular payment I can see she made on 21 March 2022. By March 2022, Miss S had made 35 regular payments and 1 advance payment as per the terms of the agreement.

I understand Miss S entered a late hire period with ALD until the car was collected on 14 July 2022. This was charged at £7.68 (plus VAT) per day. After the car was inspected and collected, ALD wrote to Miss S to say the following charges were payable:

- £360 in relation to damage not considered fair wear and tear.
- £842.58 for excess mileage.
- £276.48 late hire invoice.
- £129.02 late hire invoice.

The total payable was therefore £1,608.08.

Miss S complained to ALD. She said she wanted the invoice splitting and requested another independent assessment for the damage. She also asked whether ALD had suffered a loss in relation to the damage when it sold the car on. She asked to set up a payment plan for the excess mileage.

ALD sent a final response for the complaint in December 2022 and said the charges were valid, but it offered a reduction of £180 because it took it longer to deal with the complaint than anticipated. It said this was a 50% reduction of the appraisal invoice of £360.

Miss S decided to refer her complaint to the Financial Ombudsman. She was unhappy with the way ALD dealt with things. She said promised deductions weren't made. She asked ALD

to waive the charge for repairs not carried out and to enter a reasonable payment plan for the outstanding balance. She also wanted ALD to stop threatening court action.

Our investigator looked into things but didn't uphold the complaint. He thought the damage charges had been applied fairly and that ALD didn't have to arrange for the repairs to be completed in order to charge Miss S. He thought the £180 offer from ALD was fair. He said Miss S hadn't disputed the excess mileage charge, so he didn't comment on it further. And he said the late hire invoices were applied fairly because Miss S extended the agreement. He noted ALD had sent an email to Miss S in February 2022 saying it would authorise a late hire for the car at a daily charge of £7.68 (plus VAT).

Miss S didn't agree. She wanted to highlight she'd made two payments in the first month and those payments continued until the end of the contract, so her payments were up to date. She said she was paying in advance and not in arrears. She said she'd not been shown why she owed money to ALD. Moreover, she said the British Vehicle Rental and Leasing Association (BVRLA) says lease companies can only charge for works not carried out on a vehicle if it can evidence a financial detriment. She said ALD hadn't shown the sale price was impacted. Those made up the two main parts of her appeal.

As things weren't resolved, the complaint has been passed to me to decide.

### **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.

Miss S acquired the car using a regulated consumer hire agreement, and our service is able to consider complaints relating to these sorts of agreements.

The car was new when it was supplied to Miss S, so I think it's reasonable to assume it was supplied free from even minor defects. Therefore, any damage that was on the car when it was returned would've likely happened during the time it was with Miss S.

I'm satisfied the hire agreement set out ALD can charge sums in relation to damage outside of fair wear and tear. And it set out it would use the BVRLA guidelines, which are widely used in these scenarios. ALD applied three charges:

- £120 for damage to the near side front door.
- £120 for damage to the rear bumper.
- £120 for damage to the tailgate.

The BVRLA guidance from the time said surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable if they can be polished out. A maximum of four surface scratches on one panel is acceptable. I think the photos on the inspection report show damage that falls outside of those parameters on each of the relevant areas. I think the damage was clear enough without the need for a further inspection and I think ALD was reasonable in finding the damage to be outside of fair wear and tear.

Miss S's main argument is that ALD shouldn't have been able to apply the charges given it didn't carry out the repairs before selling the car on. But I'm mindful the relevant BVRLA guidance said *Charges can still be applied at end of lease in cases where the leasing company decides for commercial reasons not to repair damage or to replace missing equipment before the vehicle is sold*. Ultimately the car may have achieved more at sale had it not been damaged. I don't find the £120 charges for each area of damage to be unfair. I think Miss S was fairly warned about the terms relating to damage outside of fair wear and tear when she entered into the agreement, and she had the opportunity to rectify the damage before returning the car.

Taking everything into account, I don't think ALD applied the charges for damage unfairly.

The main thing left in dispute is the late hire charges. I understand the contract was due to end on 24 April 2022. But the car wasn't collected until 14 July 2022. It seems reasonable to conclude Miss S was required to pay for the further 81 days she kept the car.

After the original contract term ended, from what I can see, Miss S made a payment of £340.99 on 21 June 2022. And two further payments became due – £276.48 on 30 June 2022, and £129.02 on 31 July 2022. So the total "extra" charges came to £746.49. This tallies up with 81 daily charges of £7.68 (plus VAT) –  $((81 \times £7.68) + 20\%)$ . I therefore don't think it was unfair of ALD to ask for £746.49 for the extra days. It's not in dispute Miss S paid £340.99 towards this. But I've not seen she paid the balance by the time ALD sent her the invoice, so I don't think it was unfair of ALD to have requested that from her. From what I've seen, it was unable to take the direct debits by the time it tried to take the 2<sup>nd</sup> and 3<sup>rd</sup> payments I've highlighted.

ALD paid Miss S £180 in relation to its delays in responding to her complaint. I think this is fair and I'm not going to direct it to do more for that.

In all the circumstances, I think ALD is calculating the outstanding balance correctly. If Miss S is unable to pay off any outstanding amount straight away, I'd remind ALD to treat her with forbearance and due consideration. But I don't find I have the grounds to direct it to do more.

### **My final decision**

My final decision is that ALD Automotive Limited has done enough to put things right for Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 May 2024.

Simon Wingfield  
**Ombudsman**