

The complaint

Mr W complains that a new car he acquired under a conditional sale agreement from Hyundai Capital UK Limited ("HCUK") wasn't of satisfactory quality, contrary to the Consumer Rights Act 2015 ("CRA").

What happened

Mr W entered into a conditional sale agreement with HCUK for a new car on 11 January 2019. The cash price of the car was £26,000. Mr W made an advance payment of £4,500 and agreed to pay the balance and finance charges by monthly instalments of £346.83 over 4 years.

In February 2019 Mr W started to experience problems with the car, namely:

- a problem with gear selection;
- a problem with the alignment of a body panel producing what he thought was an excessive gap; and
- wrinkling of the leather on the front seats.

Mr W took the car back to the supplying dealer ("SD") at the end of March 2019. SD found a fault with the gears and replaced the 5th and 6th gear. It also replaced the flywheel. It inspected the clutch, but said it wasn't excessively worn, so it didn't need to be replaced. Mr W collected the car towards the end of April 2019. He was provided with a hire car whilst the car was in for repairs.

A day after collecting the car Mr W says he noticed a noise coming from the transmission area. He contacted HCUK to raise a complaint about the rattling noise from the transmission, the misaligned body panels, and the wrinkled leather on the seats. He told HCUK he wanted to reject the car.

In the middle of May 2019, the manufacturer of the car ("M") inspected the car. By this time its mileage was 3,476. Some wrinkling was removed from the leather seats. However, M said that as it was a natural material it would crease and wrinkle as it was subjected to pressure from getting in and out of the car.

Adjustments were made to the body panel alignment, and checked against another vehicle, and M said that the body panels were now in line with its specification. The clutch was checked, but no issue was found.

The transmission noise persisted, and Mr W was still unhappy with the panel alignment. So HCUK arranged for the car to be inspected by an independent motor engineer ("IME").

Three separate inspections were completed by IME. The first, on 20 May 2019 at mileage 3,664, said there was an intermittent rattling noise coming from the gearbox area. The report

concluded that SD was responsible, and that the fault was possibly related to previous repairs.

The second report, on 17 June 2019 at mileage 3,824, confirmed an intermittent clunking noise from the gearbox area could still be heard and recommended further investigation.

SD said it had a report that contradicted the findings from IME, so a third inspection by IME was arranged on 3 July 2019, mileage not confirmed, in which the gear box was removed. IME said heavy bluing was found on the clutch centre plate central hub, the drive spline had been subjected to increased temperatures, and the dual mass flywheel, which seemed recent, had suffered from consequential heat transfer, although there was no excessive play or movement.

IME said the transmission was in a serviceable state, but bluing was noted to the bell housing. There was also evidence of substantial clutch dust and debris consistent with previous clutch failures.

The report concluded that the previous repair was most likely successful, and the most probable cause for the car's condition was due to the type of usage the car had been subjected to and/or abnormal operating technique. It said the clutch, flywheel and other parts needed to be replaced.

Aside from the problems with the gearbox/clutch Mr W said the alignment of the body panel still wasn't in line with M's specifications.

Following the third report from IME, HCUK said it didn't think it was responsible for the faults, but offered £100 compensation for any trouble and upset caused. Mr W wasn't happy with this response, and complained to us.

Our investigator recommended that this complaint should be upheld. She said that under CRA there was an implied term that the quality of the goods was satisfactory.

To be considered "satisfactory", the goods needed to 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.

The car HCUK supplied to Mr W was to all intents and purposes new – Mr W says the recorded mileage when he took delivery was 29 miles. So she thought a reasonable person would expect the level of quality to be higher than that of an older, more road worn car, and that it could be used free from defects for a considerable period of time.

On the evidence she had seen, the investigator thought there was a fault with the car. All three IME reports confirmed there were faults, and the latest report said the clutch, flywheel and other parts needed to be replaced.

In relation to the misaligned body panel, M had now contacted Mr W and agreed to cover the cost of any further adjustments that were required.

HCUK said it wasn't responsible for the faults with the clutch because the most recent IME report stated this was most likely caused by the way the car had been driven. However, she wasn't persuaded by this.

Mr W said he didn't drive the car aggressively and his family were often in the car with him. In addition to this the fault appeared only two months into the agreement, and when the first inspection was completed by IME the car had only travelled 3,664 miles.

So on the balance of probabilities, she thought it was unlikely that the fault was caused by Mr W's driving style. HCUK had already had one opportunity to repair the car, and there was evidence to show that there were still faults with the clutch and body panels.

She thought the car wasn't of satisfactory quality when supplied, and HCUK needed to do something to put things right. Considering all that had happened so far, and that Mr W didn't want to continue with more repairs, she thought it was now fair for Mr W to be able to reject the car.

Mr W had described the severe impact this complaint had had on him. He had been to his GP because of stress brought on by the complaint, and had suffered from anxiety and panic attacks. Because of this, the investigator recommended that HCUK:

- pay Mr W £400 as compensation for the significant trouble and upset he had suffered;
- allow Mr W to reject the car and arrange for it to be collected at no cost to him;
- refund the deposit of £4,500 he had paid plus 8% simple interest from the date of payment until the date it was refunded; and
- remove any record of the agreement from Mr W's credit file.

Mr W accepted the investigator's recommendation. However HCUK responded to say, in summary, that:

- the IME engineer who inspected the car and prepared the reports stated he had 27 years experience within the motor industry. He considered the faults were consistent with the way Mr W had driven the car. HCUK didn't think it was fair to disregard IME's expert conclusions without any impartial evidence to support this;
- HCUK had consulted M who confirmed it wasn't uncommon for a driver who wasn't used to a new car to inadvertently damage the clutch or flywheel mechanism by over revving, or being too heavy handed with the clutch, or not releasing the clutch early enough. This could be done very quickly – after only a few miles;
- over 3,000 miles was more than enough time to have caused damage to the flywheel and gear changing mechanisms through bad driving style and practices;
- SD replaced the clutch and flywheel in April 2019. However when IME inspected the car in May/July, the replacement flywheel was showing signs of blueing and scorching, and the clutch needed to be replaced again. HCUK thought this was unequivocal evidence of poor driving style; and
- although M had agreed to look again at the body panel alignment, this was as a matter of customer goodwill to address Mr W's unhappiness, and wasn't an admission that the alignment was outside manufacturing tolerances.

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.

What HCUK was now saying about the clutch having been replaced, and that this was unequivocal evidence of poor driving style, seemed contrary to what HCUK and Mr W had previously said about the clutch not being replaced at the time the flywheel was replaced. So I asked the investigator to check this with HCUK.

HCUK responded to say that, having checked with SD, only the flywheel was replaced. The clutch wasn't replaced, as SD was unable to find any faults with it.

I also asked the investigator to check with Mr W whether the body panels were still out of alignment, and if so by how much. Mr W produced confirmation from the manufacturer that the specification for the body panel gap was a minimum of 3mm, and a maximum of 4mm. He also produced photos taken after the third IME inspection showing several gaps exceeding 4mm, and in some cases 5mm. He says no work has been done on the gaps since then.

Mr W has complained since February 2019 that the body panel gap was excessive. SD had attempted to correct the fault. I accept that this was unsuccessful and the gap still exceeds the manufacturer's specification.

In relation to the clutch, both parties agree that it's damaged, and along with other parts needs to be replaced. However they disagree about what caused this. HCUK says it was down to Mr W's driving style, and says this is supported by the third report of IME.

Mr W says the car was faulty when delivered to him, and the present faults are due not to the way he has driven the car but to a faulty repair by SD.

I find the technical evidence in relation to the clutch to be somewhat contradictory. Mr W took the car back to SD at the end of March 2019. SD replaced 5th and 6th gears and the flywheel. It didn't replace the clutch because, as HCUK now acknowledges, it couldn't find any faults with it.

HCUK has said "*it is not uncommon for a driver who is not used to a new car or have experience driving cars with a different types of clutches to inadvertently cause damage to the flywheel or clutch mechanism by over revving or being too heavy handed with the clutch or not releasing the clutch quickly enough.*"

If this were the cause of the damage to the clutch, I would have expected this to have happened in the period when Mr W first acquired the car, when he was still getting used to it. However when SD checked the car in March/April, by which time he had covered over 3,000 miles, it found nothing wrong with the clutch.

SD returned the car to Mr W at the end of April. A day after he collected the car, Mr W noticed noise coming from the transmission area, and complained to HCUK. The existence of this noise was confirmed by IME as soon as it started inspecting the car. So it seems more likely to me that the problems are related to how the first repair was carried out by SD, as IME first thought, rather than anything to do with Mr W's driving style.

HCUK places reliance on the third IME inspection report after the transmission had been removed. IME said the most probable cause for the damage it found to the transmission was "*the type of usage the vehicle has been subjected to and or abnormal operator technique*".

However in the course of this report it said it believed the clutch had been replaced, and said it found evidence of substantial clutch dust and debris consistent with previous clutch failures. As HCUK now acknowledges, the clutch hasn't been replaced, and hasn't previously failed. So this leads me to treat this third report with some caution.

Putting things right

All in all, like the investigator, I conclude that:

- when supplied to Mr W the car had faults in the gap between body panels and in its transmission;
- HCUK was given the opportunity to repair these but has failed to do so; and

- In accordance with CRA, Mr W was, and is, entitled to reject the car.

Mr W has described the severe impact this complaint has had on him. Because of this, I think it's fair and reasonable that HCUK allow Mr W to reject the car, and pay him the compensation, and take further action, as set out fully below.

My final decision

My decision is that I uphold this complaint. I order Hyundai Capital UK Limited to:

- pay Mr W £400 as compensation for the significant trouble and upset he has suffered;
- allow Mr W to reject the car and arrange for it to be collected from him at a time convenient to Mr W and at no cost to him;
- treat the conditional sale agreement as at an end as from the date Mr W accepts this decision with no further monthly payments being due under the agreement as from that date;
- refund the deposit of £4,500 Mr W has paid plus interest at the yearly rate of 8% simple from the date of the conditional sale agreement until the date it is refunded; and
- remove any adverse credit information in respect of the conditional sale agreement from Mr W's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 February 2020.

**Lennox Towers
Ombudsman**