

The complaint

Mr R complains that a car that was supplied to him under a conditional sale agreement with Hyundai Capital UK Limited, trading as Hyundai Finance, wasn't of satisfactory quality. He also complains about issues with his first payment under the agreement.

What happened

I issued a provisional decision on this complaint on 23 November 2021 in which I described what had happened as follows:

"A new car was supplied to Mr R under a conditional sale agreement with Hyundai Finance that he electronically signed in March 2020. There were some issues with the first payment under the agreement so Mr R complained to Hyundai Finance. It removed the £35 late payment fee from Mr R's account and confirmed that no adverse information had been recorded on his credit file. Mr R also complained to Hyundai Finance about faults with the diesel particulate filter and gasket. The dealer repaired the fault but Mr R complained about further issues with the car. Hyundai Finance arranged for the car to be inspected by an independent expert and Mr R complained to this service.

Our investigator thought that the car wasn't of satisfactory quality or reasonably durable at the point of supply and he recommended that it should be collected from Mr R and that Hyundai Finance should provide him with a like-for-like replacement. He also recommended that it should pay him £150 compensation due to delays since it had received the independent expert's findings.

Hyundai Finance accepted those recommendations but there were then issues with providing a like-for-like replacement to Mr R and another of our investigators considered his complaint. He said that a like-for-like replacement hadn't been found and Mr R had been offered a replacement car but the interior differed and was not to Mr R's liking. He said that the independent expert's report had confirmed that the repairs had failed and the faults would have been present at finance inception. He thought that the fairest outcome would be to allow Mr R to reject the car. He recommended that Hyundai Finance should: end the agreement and collect the car; refund the deposit, with interest; remove any adverse information from Mr R's credit file; and compensate him with £150.

Hyundai Finance said that it was liaising with the dealer about a replacement car but Mr R has asked for his complaint to be considered by an ombudsman. He says that he was only offered one replacement car which was wholly unacceptable, Hyundai Capital has consistently refused to engage with him and he still feels that his original request for the car to be replaced should be considered even though the model specification has changed. He says that if the car is to be rejected then his monthly payments should be refunded as he made his original request to reject the car within thirty days of taking delivery of it (or that he should at least be entitled to a refund of the payments made from when the car was inspected in August 2020 and found to

be faulty). He also says that a compensation payment of £150 does nothing to offset the harm that the treatment by Hyundai Finance has caused to his mental health”.

I set out in my provisional decision why I agreed with the our investigator’s recommendation that Mr R should be able to reject the car and the reasons that I considered that Hyundai Finance should do more to put things right and my provisional findings were:

- *“Hyundai Finance, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr R - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;*
- *the car that was supplied to Mr R was a new car and I consider that it was reasonable for him to expect that it would be free from even minor defects;*
- *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 that time is will also depend on a number of factors;*
- *Mr R complained to Hyundai Finance about issues with the car in March 2020, only a few days after it had been supplied to him and he said that he wanted to reject the car - but it was repaired by the dealer and returned to him;*
- *he complained to Hyundai Finance about other faults with the car in June 2020 and it arranged for the car to be inspected by an independent expert;*
- *the inspection took place in August 2020, the car’s mileage was recorded at that time as 5,875 and the inspection report confirmed that there were faults with the car’s diesel particulate filter which “would have been present at finance inception”;*
- *I consider it to be more likely than not that there were faults with the car when it was supplied to Mr R and that it wasn’t of satisfactory quality at that time;*
- *it’s clear that Mr R would have liked the car to be replaced but a like-for-like replacement hasn’t been found by the dealer, the replacement that was offered to him wasn’t acceptable and the model specification has now changed – so I don’t consider that replacing the car is a fair or reasonable outcome in these circumstances;*
- *I consider that it would be fair and reasonable for Hyundai Finance to allow Mr R to reject the car so I find that it should end the conditional sale agreement and arrange for the car to be collected from him – both at no cost to Mr R;*
- *the agreement shows that Mr R made an advance payment of £10,024.15 for the car and I find that it would be fair and reasonable for Hyundai Finance to refund that payment to him with interest (if it considers that the advance payment was less than that amount it should provide further information in response to this provisional decision);*
- *Mr R has continued to use the car and I consider that it’s fair and reasonable for him to pay for the use that he’s had from it so I’m not persuaded that it would be fair or reasonable for me to require Hyundai Finance to refund all of the monthly payments that he’s made under the agreement;*
- *his use and enjoyment of the car will have been impacted by the issues with it, particularly as this was a new car with a price of £33,288, and he’s had to return it to the dealer for repairs – I find that it would be fair and reasonable for Hyundai Finance to refund to Mr R the first three monthly payments that he made under the agreement as compensation for that loss of use and enjoyment, with interest – I consider that it’s*

fair and reasonable for it to keep the other monthly payments that he's made as payment for the use that he's had from the car;

- Mr R asked to reject the car in March 2020, the independent expert confirmed the faults with the car in August 2020 and our investigator said that he should be provided with a like-for-like replacement in January 2021 - but he says that he was only offered one replacement which was unacceptable;*
- twenty months later he still has the car that wasn't of satisfactory quality when it was supplied to him, and he's referred to the impact that these events have had on his mental health – I consider that Hyundai Finance should have done more than it has done to resolve this complaint and I consider that its failure to do so has caused Mr R additional distress and inconvenience;*
- I sympathise with him for the issues that he's experienced, the impact on his mental health and the distress and inconvenience that he's been caused and I find that it would be fair and reasonable in these circumstances for Hyundai Finance to also pay him £500 to compensate him for that distress and inconvenience;*
- Mr R has complained about some issues with the first payment under the agreement - Hyundai Finance removed the £35 late payment fee that it had applied to his account and confirmed that no adverse information had been recorded on his account; and*
- Mr R was clearly upset about those issues but I'm not persuaded that it would now be fair or reasonable for me to require Hyundai Finance to take any further action about that – though I find that it should remove any information about the agreement that it's recorded on his credit file”.*

Subject to any further comments from Mr R or from Hyundai Finance my provisional decision was that I intended to uphold this complaint. Mr R has accepted my provisional decision but says that:

- the dealer attempted to repair the fault but it was a failed repair so it's not a new issue;
- Hyundai Finance has refused to engage with him and he's had no contact from it since August 2020; and
- he suggests that he should return the car after the relevant funds have been paid to him and any rectification of his credit account has been completed.

Hyundai Finance has provided a detailed response from the dealer to my provisional decision and says that:

- it doesn't dispute that there was an initial issue with the car which was repaired in March 2020;
- Mr R's continual use of the car isn't in line with rejection and if a customer is pursuing rejection it would not expect anything more than necessary trips (if any); and
- if the car is to be rejected it would look to charge between 35p and 45p per mile as Mr R has driven more than 29,000 miles in the car.

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.

The only independent evidence about the car that is available is the inspection that was

arranged by Hyundai Finance, the report of which confirmed that there were faults with the diesel particulate filter which “*would have been present at finance inception*”. The dealer says it’s done everything possible to deal with any defects on the car and it tried to find a like-for-like replacement car for Mr R but that wasn’t possible.

The car’s mileage at the time of the inspection was 5,875 miles and Mr R has continued to use the car because a replacement hasn’t been provided and Hyundai Finance hasn’t allowed him to reject it. I don’t consider it to be unreasonable for Mr R to have continued to use the car or that his continued use of it is enough to show that the car was of satisfactory quality when it was supplied to him. Mr R has continued to make his monthly payments for the car and I’m not persuaded that he should be required to pay for usage of the car at a rate of 35p to 45p per mile.

I consider that the car wasn’t of satisfactory quality when it was supplied to Mr R and I’m not persuaded that I should change the findings that I made in my provisional decision. I can understand Mr R’s concerns about returning the car before he receives payment from Hyundai Finance but I’m not persuaded that it would be fair or reasonable for me to require it to do that and, if Mr R accepts this decision, it will be binding on Hyundai Finance so it will have to take the actions that I’ve described.

Putting things right

I find that it would be fair and reasonable for Hyundai Finance to take the actions described in my provisional decision and as set out below.

My final decision

My decision is that I uphold Mr R’s complaint and I order Hyundai Capital UK Limited, trading as Hyundai Finance, to:

1. End the conditional sale agreement and arrange for the car to be collected from Mr R – both at no cost to him.
2. Refund to Mr R the advance payment of £10,024.15 that he made for the car.
3. Refund to Mr R the first three monthly payments that he made under the agreement as compensation for the loss of use and enjoyment of the car that he’s suffered.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any information about the conditional sale agreement that it’s recorded on Mr R’s credit file.
6. Pay £500 to Mr R to compensate him for the distress and inconvenience that he’s been caused.

HM Revenue & Customs requires Hyundai Finance to deduct tax from the interest payment referred to at 4 above. Hyundai Finance must give Mr R a certificate showing how much tax it’s deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 16 March 2022.

Jarrold Hastings
Ombudsman

