

The complaint

Mrs W, who is represented by her husband, Mr W complains that Hyundai Capital UK Limited (HC) rejected her complaint that her car had been an unacceptable software upgrade.

What happened

Mrs W acquired a new car in April 2021. It cost £38,500 and was funded by a deposit of £8,000 and the balance with a fixed sum loan agreement. The loan agreement shows that the funds were paid to the dealer to cover the cost of the car and the first registration fee.

The car was taken in for its first service in July 2021. I gather she told the dealer that the SIM card and UVO App were not working. The dealer carried out an AVN update which rectified the fault. This altered the colour and layout of the display screen plus the functionality which was not to her liking. HC has said that the upgrade did not change any of the key features. An invoice was produced for the upgrade which had unit price of £100 but was carried out free of charge.

Mr W asked the dealer to reverse the upgrade, but this was not possible.

Mr W suggested his wife be compensated in some way for the upgrade as he believed it wasn't carried out with reasonable care or skill. He suggested a partial refund and mentioned the figure of £2,040. HC did not accept that the car was faulty or that compensation was merited. It also declined to make a goodwill offer.

Mrs W brought her complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. Mrs W has asked that the complaint be considered by an ombudsman.

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, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Hyundai Capital UK is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of

the goods, price, and all 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 the mileage at the time of sale and the vehicle's history.

Under the relevant law 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 the goods.

I believe there are three reasons why I cannot uphold this complaint, but first I need to make clear the basis of the complaint.

Mrs W's complaint is not about the car which she was sold, but with the upgrade carried out some five months later. At the time of sale I gather it was not faulty. It seems the issue with the UVO App and SIM card arose after 30 days had elapsed but before six months had passed and this means that the dealer is entitled to one opportunity to repair it. It did so by installing an upgrade and I consider that to have repaired the issue. I appreciate that Mr and Mrs W may not like the upgraded system, but it does provide the key functionality of the earlier version. I cannot see how the installation of the new system can be said to have been a breach of contract. In simple terms the original system apparently had a fault and this was repaired.

I presume Mr and Mrs W drew the dealer's attention to the original issue and so I presume they sought to have it fixed. They did not seek to reject the car on the basis of the original issue. I would add that the original fault was such that rejection would not be something one would regard as appropriate.

I have read the extract of the brochure provided by Mr W which covers the UVO connect system and I can understand his view that he expected this to be retained in perpetuity. I don't agree. Modern cars contain a significant amount of software and most are given upgrade from time to time. I do not consider it reasonable to conclude that because the upgrade was not to Mr and Mrs W's liking that it rendered the car unfit for purpose or that the dealer was wrong to install it as a means of resolving the issue.

I would now turn to the three reasons why I consider I cannot uphold this complaint.

1. The service was not funded by HC.

Mrs W can only seek redress for an item or service funded by HC. As I have noted above the money paid over by HC to the dealer was to cover the cost of the car and the initial road fund tax. It did not cover the cost of the servicing. Additionally, the invoice from the dealer sets out how the price is made up and it states that the 3-year service plan is free of charge.

Mr W has helpfully explored who did pay for this and has identified it was Kia Motors (UK) Limited. So as part of the deal with the dealer Mrs W benefited from free servicing paid for by Kia Motors (UK) Limited. I cannot see any reference to HC making a payment to Kia Motors for the servicing.

That means HC did not pay towards the cost of the service. Therefore, I consider it follows that HC cannot be held responsible for any failings there may have been in the way the service was carried out.

2. The upgrade wasn't part of the service.

I have also noted that the dealer provided a separate invoice for the upgrade and it does not appear to have carried it out as part of the service. This invoice was made out to the dealer, I

presume as part of its internal record keeping system, but it indicates that it was carried out and funded by the dealer. If this is correct then, as I have set above, HC did not fund the upgrade. This also means it cannot be held responsible for the alleged failings.

3. A software upgrade does not contravene consumer rights.

Finally, I do not consider this upgrade contravenes Mrs W's consumer rights. I consider it to have been carried out with reasonable care and skill. The dealer is not responsible for the content of the upgrade; that lies with the manufacturer. It simply updated software which is routine these days. Mrs W's complaint is mainly about the look of the new system and the inability to alter the colour scheme.

I have some sympathy with her and her husband since they may well have preferred the old display system, but that of itself does not amount to a contravention of consumer law as it does not make the car or the display system unfit for purpose. I cannot say that this upgrade amounts to a breach of contract.

In conclusion I do not consider I have grounds which would allow me to uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 1 March 2022.

Ivor Graham
Ombudsman