

The complaint

Mr R is unhappy with how Hyundai Capital UK Limited dealt with the termination of two car finance agreements with them.

What happened

In February 2014, after his mother has passed away, Mr R contacted Hyundai, asking to take over the payments of the car finance agreement his mother had with them. He said he was told he wouldn't be liable for the agreement, and the agreement wouldn't be transferred into his name. He just thought he'd be responsible for maintaining the payments under the original agreement.

In March 2016 Mr R spoke to Hyundai about returning his mother's car and terminating the agreement. The car was returned, and Hyundai sold it for £5,112. This left an outstanding balance of £1,280, which Hyundai wrote off. And Mr R wasn't charged anything.

On 16 March 2016, Mr R entered into another agreement with Hyundai. This agreement said it was a Conditional Sale PCP Agreement, but Mr R has said this is misleading – it can't be both a Conditional Sale and a PCP agreement. He said he was led to believe it was a PCP agreement, but it appears it to be a Conditional Sale agreement.

Mr R decided to voluntarily terminate (VT) this agreement on 1 February 2019. He wasn't happy that Hyundai were charging him for damages to the car, and for arrears on the agreement. He also wasn't happy that he was being charged a £250 collection fee, as this wasn't made clear in the agreement.

Hyundai reduced the damages charge to £40. But Mr R still wasn't happy. And he said that Hyundai had charged him a monthly instalment payment of over £2,000. So, he brought his complaint to us for investigation.

Our investigator said that, with respect to his mother's agreement, Hyundai didn't make it clear to Mr R what was happening. But they'd put the agreement 'in the care of' Mr R, and the debt wasn't registered against his name. What's more, none of the payment information was registered against Mr R's credit file and, when the car was returned, Mr R wasn't pursued for any outstanding amount.

So, the investigator said Hyundai didn't transfer the agreement into Mr R's name. And, while Hyundai could've explained this better, what Mr R thought had happened, had happened, and this didn't have any adverse impact on him. So, the investigator didn't think Hyundai needed to do anything more about this agreement.

With respect to the agreement Mr R took out in 2016, the investigator explained the difference between a PCP and Conditional Sale agreement was that, with a PCP agreement, the customer had the option and not the obligation to buy the goods. And the purchase didn't happen until the final (lump sum) payment was paid.

The investigator also said the agreement Mr R signed had all the characteristics of a PCP agreement, which Mr P wanted. So, they didn't think Mr R had been disadvantaged by what the agreement was called, or how it operated.

The agreement allowed Mr R to VT, with nothing more to pay, if he'd paid at least 50% of the total amount payable under the agreement, if he wasn't in arrears, and if the car was in a reasonable condition. But Mr R hadn't paid 50%, he was in arrears, and there was damage to the car that fell outside of normal wear and tear. So, the investigator thought Hyundai had acted reasonably by charging Mr R for this.

But the investigator didn't think that the agreement clearly explained the £250 collection fee, which Hyundai said was an agency fee, or that this was payable upon VT. So, they didn't think Hyundai were fair to charge this.

Finally, the investigator said he hadn't seen anything to show Hyundai had charged Mr R a fee of £2,020.67 following VT, or that Mr R paid them this amount. So, they didn't think Hyundai needed to refund this. But they said the amount outstanding should be reduced by the £250 agency fee for the reasons already given.

Hyundai accepted the investigator's view, but Mr R didn't. He said he didn't think his mother's agreement was enforceable, as the total amount payable was wrong. And he said he was charged an additional £875 for COMM VAT on this agreement on 29 April 2016. Because of this, he thinks that all the payments he made to this agreement should be refunded to him.

With regards to his own agreement, Mr R said the total amount payable is also wrong, so the 50% VT figure is incorrect. He also said that he was charged an additional £950 for COMM VAT on 25 February 2019. Mr R has also said that he believes that both agreements were mis-sold because a commission (COMM VAT) was added after termination.

Because Mr R didn't agree with the investigator, this matter has been passed to me to make a final decision.

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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr R was supplied with a car under a regulated consumer credit agreement which means we're able to investigate complaints about it.

the first agreement

I've seen a copy of Mr R's mother's agreement. This was for £10,850 with a total amount payable of £12,482.54. There was an advance payment of £1,175, 42 monthly payments of £180.23, and a final payment of £3,737.88. These payments total £12,482.54, the amount specified in the agreement. And the VT figure quoted in the agreement was £6,421.27 – 50% of the total amount payable. Given this, I disagree with Mr R that the total amount payable and the 50% VT figure for this agreement were incorrect.

Hyundai have said that, when a customer passes away, they allow the Next of Kin to take over the payments if they don't want to VT. And, in a letter dated 6 February 2014, Mr R told Hyundai *"I would like to keep the car on for the family and respect my mothers wishes. I can confirm that I would like to take over all the payments on the agreement."*

Based on this letter, Mr R continued with the agreement on a 'in the care of' basis. This meant the agreement stayed in the name of the estate of his mother, and he continued to make the payments. Mr R said he believed this meant the agreement wasn't in his name, and he wasn't liable for the agreement. And, from what I've seen, this was the case.

In March 2016 Mr R opted to VT the agreement. As more than 50% of the total amount payable under the agreement had been paid, the estate of his mother (as the legal entity in whose name the agreement was) wasn't asked to pay anything more. The car was sold for £5,112, which left £1,280.18 remaining under the original terms of the agreement. This included a COMM VAT charge of £875 which Hyundai had added on 29 April 2016 – after the agreement had been terminated – as an internal accounting entry for VAT. The £1,280.18 was written off on 10 May 2016 as part of the VT process, and neither the estate of Mr R's mother nor Mr R were charged any part of this (including the £875).

Based on what I've seen, I'm satisfied that Hyundai acted fairly and reasonably in respect of this agreement, and I won't be asking them to do anything more.

the second agreement

I've seen a copy of the agreement signed by Mr R in March 2016. This was for £10,820 with a total amount payable of £13,041.37. There was an advance payment of £250, 48 monthly payments of £197.69, and a final payment of £3,302.25. These payments total £13,041.37, the amount specified in the agreement. And the VT figure quoted in the agreement was £6,520.69 – 50% of the total amount payable. Given this, I disagree with Mr R that the total amount payable and the 50% VT figure were incorrect.

Hyundai classed this agreement as a Conditional Sale PCP. And Mr R has said that he wanted a PCP agreement, not a Conditional Sale agreement. And he's said the agreement from Hyundai can't be both.

As explained by the investigator in their view, this agreement had all the characteristics of a PCP agreement. Mr P had the option to purchase the car at the end of the agreement, by making the final lump sum payment, and he also had the option to VT the agreement, which he did on 1 February 2019. Given this, I don't think Mr R has been disadvantaged by what the agreement was called as it was both a regulated agreement and was the type of agreement he thought he was entering into.

Mr R has said that this agreement included a £1,600 shortfall that was transferred over from his mother's agreement. But there's nothing to show that this was the case and, as stated above, there was no VT shortfall from his mother's agreement. So, I'm satisfied that this didn't happen.

Under the heading 'TERMINATION: YOUR RIGHTS' the agreement says *"you have the right to end this agreement ... we will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £6,520.69. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay anything more."*

I've seen the Statement of Account for this agreement, and it's clear from this that Mr R was in arrears when the VT happened. And he hadn't paid 50% of the total amount payable under the agreement. Because of this, I'm satisfied that Hyundai acted reasonably by charging Mr R for the VT shortfall in line with the agreement he signed. Hyundai also charged Mr R £99.64 for damage to the car that fell outside of reasonable wear and tear, and a £250 agency fee which they referred to as a collection fee in error.

I've seen that, on review of the damage charges, Hyundai reduced this to £40. They also confirmed that all the late payment charges on the account had been waived as part of the VT process. And this left £1,035.76 outstanding for Mr R to pay. However, due to an error, Hyundai only asked Mr R to pay £1,005.82. And they've honoured this error by not asking Mr R for the higher amount.

Hyundai have said the £250 agency fee falls due when the car is collected. And they've referred to the agreement, which says:

"COSTS THAT MAY BE PAYABLE IN ADDITION TO THE TOTAL AMOUNT PAYABLE

9.2 The following default charges will apply:

- 9.2.1 £35 when you payment is made late and for every subsequent month that your agreement remains in arrears, limited to 3 in any single default period.***
- 9.2.2 £50 when we pass your agreement to our internal Recovery Manager.***
- 9.2.3 £250 when we pass your case to an external agency.***

The £250 charge referred to is noted as a default charge and is in a section that also refers to the need to recover the car. It doesn't specifically refer to VT, and there is no mention of this charge in the VT section of the agreement (referred to above). Because of this, I'm satisfied that any reasonable person would only expect to have to pay this charge if the car was repossessed, and not in any other circumstance i.e. VT or return of the car at the end of the agreement.

So, because the agreement isn't clear that this is a charge payable on VT, I don't think it's fair or reasonable for Hyundai to charge it.

Mr R is also unhappy with two further charges, £950 charged on 25 February 2019, and £2,020.67 charged when the car had been sold by Hyundai. The £950 COMM VAT charge was applied after the agreement was terminated and, like with the first agreement, is Hyundai's internal accounting for the VAT. This is not something that Mr R has been charged or has been asked to pay. And the £2,020.67 is the difference between the amount outstanding under the original terms of the agreement, which includes the £975, and the sale value of the car. This was written off when the agreement was terminated, and isn't something Mr R has been asked, or is being asked, to pay.

Putting things right

For the reasons stated above, I don't think it's fair or reasonable for Hyundai to charge Mr R the £250 agency fee. As the £1,005.82 VT shortfall is still outstanding, this should be reduced by £250, and a new invoice issued to Mr R.

If Mr R is in financial difficulties, and unable to repay the amount outstanding in one payment, I'd also expect Hyundai to treat him with consideration and forbearance when trying to arrange a suitable payment plan.

My final decision

For the reasons explained, I uphold Mr R's complaint, and Hyundai Capital UK Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 March 2022.

Andrew Burford
Ombudsman