

The complaint

Mr J complains that Hyundai Capital UK Limited trading as Hyundai Finance (Hyundai) irresponsibly granted him a conditional sale agreement he couldn't afford to repay.

What happened

In January 2019, Mr J acquired a used car financed by a conditional sale from Hyundai. Mr J was required to make 60 monthly repayments of £529. The total repayable under the agreement was £31,738.

Mr J says that Hyundai didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Hyundai didn't agree. It said that it carried out a full credit assessment including a credit check and that this showed no affordability issues.

Our adjudicator recommended the complaint be upheld. She thought Hyundai ought to have realised the agreement wasn't affordable to Mr J.

Hyundai didn't agree. It didn't think it was necessary to carry out further checks as its assessment at the time showed no affordability issues. It noted that Mr J was able to make his repayments for 16 months without notifying it of any issues and that he then explained his circumstances had changes which was why he then experienced financial difficulties. Hyundai didn't agree that the repayments accounted for over half of Mr J's monthly income as it thought the average salary used in our adjudicator's assessment was skewed due to Mr J's change of employment.

The case has been passed to me for 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.

Hyundai will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Before providing the finance, Hyundai carried out a credit assessment and has provided a copy of the credit check results. These do not raise any immediate concerns regarding financial difficulty as no defaults, county court judgments or payday loans are noted. However, it does show that Mr J had outstanding debts of over £20,000 with monthly credit commitments of £445. While this may not have been an issue, given the term of the agreement and the size of the repayments I think Hyundai needed to gather information about Mr J's income and expenses prior to lending. Without this Hyundai wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I think it would have been proportionate for Hyundai to have asked for Mr J's income in some way. As I haven't seen that this happened, I have looked at the information Mr J has provided to see what Hyundai would likely have seen. Looking at Mr J's bank statements it appears he changed employment towards the end of 2018. In October 2018, his income was around £1,200 and in November it was around £800. Payment from a new employer was recorded in December for £1,024. Averaging these payments gives a monthly income of around £1,000.

I note the concerns Hyundai has raised about this approach given the change in Mr J's employment. However, Mr J had only received one payment from the new employer before the agreement and that was for £1,024. Hyundai noted that Mr J received £1,320 from the new employer in January 2019 but this was after the agreement had been entered into and so without evidence to show that a higher figure could be used, I think that the income figure of £1,024 was reasonable. The monthly repayments therefore account for over 50% of Mr J's monthly income. Given this I think further details of Mr J's expenditure should have been gathered to understand whether the agreement was affordable.

I've reviewed three months of bank statements leading up to the lending decision. These show that Mr J was paying £445 for a credit commitment and this links to the credit search information provided by Hyundai. This appears likely to have been previous car finance so may not have been relevant going forward. However, he had other committed living expenditure including credit commitments, utility bills, and other living expenses such as food and fuel. Excluding the other car finance payments of £445, these costs averaged over £800 a month. This shows that Mr J couldn't afford to sustainably repay the new agreement and I think Hyundai would likely have found this out too if it had completed proportionate checks, it therefore didn't act fairly by approving the finance.

Putting things right

As I don't think Hyundai ought to have approved the lending, it should therefore refund all the payments Mr J has made, including any deposit. However, Mr J did have use of the car for around 24 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £529 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr J's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr J should pay is £330 for each month he had use of the car. This means Hyundai can only ask him to repay a total of £7,920. Anything Mr J has paid in excess of this amount should be treated as an overpayment.

To settle Mr J's complaint Hyundai should do the following:

- Refund all the payments Mr J has made, less £7,920 for fair usage.
 - If Mr J has paid more than the fair usage figure, Hyundai should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
 - If Mr J has paid less than the fair usage figure, Hyundai should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Hyundai has received the fair usage amount, it should remove any adverse information recorded on Mr J's credit file regarding the agreement.

*HM Revenue & Customs requires Hyundai to take off tax from this interest. Hyundai must give Mr J a certificate showing how much tax it's taken off if Mr J asks for one.

My final decision

I uphold this complaint and direct Hyundai Capital UK Limited trading as Hyundai Finance to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 June 2022.

Jane Archer
Ombudsman