

The complaint

Mrs A complains Santander Consumer (UK) Plc (Santander) trading as Hyundai Finance (Hyundai) provided finance for a car that was not of satisfactory quality. She asks to reject it.

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity, I repeat it here.

Mrs A is represented in her complaint by Mr B. For clarity I shall refer to Mrs A throughout my decision.

On 19 September 2019, Mrs A entered into a conditional sale agreement for a used car with Hyundai Finance. The car was around 6 months old and had travelled about 7,000 at inception.

Mrs A says she began to experience problems with the car intermittently from December 2019. The nature of the first incident was the car losing power whilst driving, the AA attended the car, but the fault seemed to resolve itself. However, since then Mrs A reports a number of faults including:

- the car randomly going into limp mode
- a problem with the Anti-Locking Braking System (ABS) causing the car to swerve out of control
- random warning lights appearing during times of heavy rain
- the button to apply the handbrake sometime not working causing the car to roll backwards when uphill.

Mrs A returned the car to the dealership for investigation, but it wasn't able to identify any faults. On 6 December 2021, Mrs A's representative then contacted Hyundai to raise a complaint.

On 29 December 2021, Hyundai issued its final response. It didn't uphold Mrs A's complaint, it said after the first six months of purchase it was Mrs A's responsibility to provide evidence of a fault at the point of sale. It suggested she seek an independent inspection to identify whether there was a fault and if it was present at the point of sale.

Mrs A was very disappointed in this outcome and brought her complaint to this service. An investigator looked into things for Mrs A. He reviewed the video footage provided and the AA reports from the first incident along with workshop reports since. In his view, the collective evidence pointed to intermittent faults with the car that Mrs A had been experiencing within 3 months of purchase. Although the dealership hadn't been able to replicate the fault, he said this didn't mean it wasn't present. He upheld Mrs A's complaint as asked Hyundai Finance to:

- end the agreement with nothing further to pay and collect the car at no cost to Mrs A
- refund the deposit and pay 8% simple interest from the payment date to the date of settlement
- refund 25% of the monthly payments made by Mrs A from the date of payment to the date of settlement
- remove the agreement from Mrs A's credit file
- pay £200 for the trouble and upset this matter has caused

Mrs A accepted the investigators view. Hyundai did not respond.

Because Hyundai did not respond to the investigators view, the complaint has been passed to me for a decision.

I issued a provisional decision in this matter to allow Hyundai one further opportunity to provide any further submission it wishes me to consider. Firstly, I looked at satisfactory quality.

In considering what is fair and reasonable, I said I needed to think about the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I considered to have been good industry practice at the relevant time. The finance agreement, that is the conditional sale agreement, in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it.

Santander trading as Hyundai Finance 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 the quality of goods is satisfactory if they 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. So, it seems likely that in a case involving a car, the other relevant circumstances include things like the age and 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 goods.

In this case the car supplied was a nearly new car (six months old) with a mileage of 7,000 and had a cash price of around £19,498. In order to uphold this complaint, I said I would have to be persuaded the car was not of satisfactory quality and so a breach of the contract has taken place.

Further, Mrs A and Hyundai disagreed about whether the car had a fault at the point of supply which made it not of satisfactory quality. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I considered is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs A and Hyundai both agree that she returned the car to the dealership for investigation. But it was unable to replicate the fault. Hyundai says it doesn't agree there was a fault at the point of sale as the complaint was made outside of the first six months. But Mrs A has sent

us photos and film footage to back up what she says about the presence of the faults. I take on board that this is a nearly new car and a reasonable person would expect such a car to run smoothly and without issues for a significant amount of time after supply. In addition, Mrs A did bring this to the attention of the dealership very early on, within three months of getting the car, after the AA were called when the car failed. The law gives her the right to reject a car within this time period should it not be of satisfactory quality.

By their nature some faults can be intermittent – but that does not mean they don't exist. The nature of the faults Mrs A told us about would not have prevented her from driving the car all of the time. I said I don't agree that just because Mrs A was able to drive the car, at times, undermines her submission that the car was not of satisfactory quality when it was supplied.

I also considered the submission by Hyundai that the Consumer Rights Act (2015) places the burden of proof on Mrs A outside of the first six months of ownership to demonstrate that there was a fault present at the point of sale. But, I pointed out, it seems to have overlooked the fact that there was a fault, which required her to call out the AA within three months and that this fault occurred again in August 2020 and this time required recover assistance as the car had suddenly lost power. The other faults Mrs A pointed to are also supported by the invoices and workshop notes supplied by Mrs A.

On balance in the circumstances, I said I was satisfied that the faults were present at the time the car was supplied and that this means that the car was not of satisfactory quality. It follows that I think it is fair and reasonable to hold Hyundai responsible for this.
use of the car

Mrs A has been able to drive the car despite the problems with it. This means it wouldn't be fair and reasonable to refund all of her monthly payments as she has had use, albeit restricted and understandably not the use one would expect with a nearly new car that had only travelled 7,000 miles at inception, so I'm satisfied that refunding 25% of the monthly premium is fair and reasonable in the circumstances of this complaint.

distress and inconvenience

I can see that Mrs A has been experiencing issues with this car within a few months of ownership. She was toing and froing with the car for a number of months. She has also had to have the car recovered by breakdown assistance. I also can see that driving a car which may suddenly stop or go into limp mode could be very concerning and so I'm going to increase the award for the trouble and upset she has experienced. In the circumstances I think Santander should pay Mrs A £350 to make up for this.

To put matter right I said I intended to direct Santander Consumer (UK) Plc to:

- end the agreement with nothing further to pay and collect the car at no cost to Mrs A
- refund the deposit and pay 8% simple interest from the payment date to the date of settlement
- refund 25% of the monthly payments made by Mrs A from the date of payment to the date of settlement
- remove the agreement from Mrs A's credit file
- pay £350 for the trouble and upset this matter has caused

Both parties responded to my provisional decision.

Mrs A felt that the 25% refund of payments made should only apply until she asked to reject the vehicle (29 December 2021). She feels since that date Hyundai has delayed and protracted the outcome unnecessarily and as such, she asks that 100% of her payments be refunded from that date and in both cases 8% simple interest be paid. She agreed with the award for distress and inconvenience.

Hyundai responded. It felt this service had placed too much weight on the breakdown reports and could not understand why workshop notes or invoices had not been considered as evidence. It felt this service may have mistaken the customer reports as findings of a technician. It asked for the provisional decision to be reviewed and the complaint declined.

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 not been provided by any new evidence from either party to persuade me to alter my provisional findings, but I will address the points raised by both parties.

I appreciate that Hyundai seems to be looking for specific technical information to support a fault being present at the point of sale. Originally it had said that no fault had presented within the first six months of ownership, but I have already pointed to the breakdown information which was within the first six months. The fault reported at the time was loss of power and it is the same fault reported at a later date.

As I explained previously, where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I considered is most likely to have happened in the light of the available evidence and the wider circumstances.

I have looked at all the information provided again, and the additional submissions and I remain of the view, it is more likely than not a fault was present at the point of supply. Although, I appreciate it couldn't be replicated by the dealership, there is sufficient evidence, including video and photographic evidence to show a recurring fault, albeit intermittent – it is still a fault.

I have also considered the points raised by Mrs A. I also understand how frustrating it is that this has dragged on for so long, but again I have to balance the intermittent fault with the ability to use the car and the number of miles travelled whilst it has been in her ownership. On that basis I do not agree that 100% of the payments should be refunded since she asked to reject it.

It was however, on oversight on my part, for which I apologise, to omit the 8% simple interest from the refunded payments – I have reinstated that as part of the redress here.

The increase in the award for trouble and upset reflects the frustration and upset Mrs A has been faced with. I can understand why she may feel this is not an adequate reflection, but awards from this service are modest. This simply reflects the fact that this service is a free alternative to the courts, and I remain of the view this is a reasonable award in the circumstances of this complaint.

My final decision

For the reasons I have given I direct Santander Consumer (UK) Plc to:

- end the agreement with nothing further to pay and collect the car at no cost to Mrs A
- refund the deposit and pay 8% simple interest from the payment date to the date of settlement
- refund 25% of the monthly payments made by Mrs A from the date of payment to the date of settlement and pay 8% simple interest on those refunded payments.
- remove the agreement from Mrs A's credit file
- pay £350 for the trouble and upset this matter has caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 17 January 2023.

Wendy Steele
Ombudsman