

The complaint

Mr M complains that the car he acquired through a conditional sale agreement from Hyundai Capital UK Limited (“Hyundai”) is not of satisfactory quality.

What happened

Mr M acquired a new car from Hyundai in November 2021. He began noticing a grinding noise from the rear of the car quite quickly, and there were several trips back to the dealership, and conversations with the manufacturer technical team, to try to resolve it. They examined the car in December 2021 and made recommendations to replace the rear brake hubs to resolve the problem. This was done in January 2022.

However, the grinding noise continued to happen intermittently, and the manufacturer’s technical team recommended further repairs, this time changing the brake pads. But this also didn’t resolve the issue, and the intermittent grinding noise continued.

The technical team recommended that the dealership replace the brake pads again, this time for a different type of pads. However, Mr M wasn’t prepared to do this, and asked to reject the car as there had already been two failed repair attempts.

Mr M complained to Hyundai in March 2022, asking to reject the car. Hyundai sent out an independent company to inspect the car, but they couldn’t replicate a fault, and said they felt the car was repaired. Hyundai issued their final response letter therefore in April 2022, not upholding the complaint.

Mr M was unhappy with this and brought his complaint to our service. An investigator her investigated the complaint and upheld it. They said that there was clear evidence of an intermittent fault, and that the dealership had confirmed the fault was still present after the second repair, so it was fair to allow Mr M to reject the car. They said he should be able to end the agreement with nothing further to pay, receive a refund of his deposit, get a 10% refund of his monthly premiums to recognise the impaired use he had suffered, and £100 for the distress and inconvenience suffered.

Hyundai initially accepted this view, then changed their mind and raised further points. After discussing these points with the investigator, they said they would accept the view. However, Mr M said that while he agreed with the assessment of the car being of unsatisfactory quality, he no longer wanted to reject the car, instead he wanted a replacement. He didn’t feel it was fair that he would struggle to source a replacement vehicle in the current climate, and had part exchanged his previous two cars when he acquired this car. He felt Hyundai should provide him with a like for like replacement and asked for an Ombudsman to make a final decision on the case.

Mr M also said that the value of the two cars he had part exchanged wasn’t their true value to him. He said that whilst Hyundai had provided him with a courtesy car whilst his car was in the garage, it wasn’t the make and model of his car and wasn’t comparable. Finally, he said he should be supplied a new equivalent car when returning his faulty car and that the level of compensation doesn’t reflect his distress or inconvenience.

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've 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 (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a vehicle under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Whilst both parties have now agreed the car was of unsatisfactory quality, I have sense checked this to ensure I agree with the investigation carried out so far. I am satisfied that the vehicle suffered an intermittent fault, which was making a grinding noise at the rear of the car. There were several occasions on which this issue was witnessed not just by Mr M but also by the supplying dealership. Alongside this, the manufacturer technical team made recommendations to fix the problem three times, which confirms there was an ongoing intermittent problem.

Mr M had acquired the car from new, and as such, a reasonable person would expect the level of quality would be high. It's also fair that the car should be able to be used, free from defects, for a considerable period of time. In this instance, the evidence shows that this wasn't the case, and the car suffered the intermittent fault from soon after it was supplied to Mr M.

I agree therefore that the car isn't of satisfactory quality, as per the Consumer Rights Act 2015 (CRA). As such, the remaining issue that hasn't been agreed is how Hyundai should put this right.

The investigator recommended that the car should be rejected, and the agreement unwound. When Mr M said he wanted a replacement car, the investigator put this to the business who were considering it. However, the investigator then clarified with Mr M whether he was expecting a like for like (i.e. used) car, or a replacement brand new car. He has confirmed he wants a brand new car as a replacement, as it's unfair that the market is now different were he to have to source a new car himself, as there are delays in obtaining some vehicles, and they may also be more expensive now.

I've considered Mr M's points, but I am not persuaded by them. I have considered whether replacement would be appropriate, as it is one of the remedies available to Mr M under the CRA. But, I need to consider that the car is now used, and I don't think it's practical for Hyundai to source another of exactly the same age, mileage, and specification - including any optional extras.

Alongside this, a replacement car which is used is not what Mr M has said that he wants. He wants a brand new replacement, but he had the car for several months before reaching this point, and I believe still has it, so has had it for over a year now. I'm not persuaded therefore that Mr M is entitled to the resolution that he wants.

So, I'm satisfied in this case that replacement isn't a practical way of putting things right, as it is unlikely to be acceptable to either party. Hyundai have not come back to us with any agreement to a request about replacement, and Mr M wants a brand new car as a

replacement, and he's not entitled to that under the CRA in these circumstances.

Instead, I think rejection would be more suitable for all parties. I have empathy for Mr M regarding him obtaining a new car when this one is returned, but unfortunately, Hyundai's responsibility here is to correctly end the agreement for the car of unsatisfactory quality, ensuring he receives the relevant refunds and suitable compensation. It doesn't fall upon them to provide him with a replacement brand new vehicle.

Mr M has also said that it's unfair that he has part exchanged his previous two cars, not at actual value. But he accepted the £10,500 price offered for them by the dealership in part exchange, so I can't say Hyundai did anything wrong here. Indeed, as the finance company, they weren't even involved in that transaction.

So, whilst I have empathy for Mr M, I can only deal with the complaint raised, and the resolution for that. I am satisfied that rejecting the car is the fair outcome here and have gone on to consider the points raised by Mr M about the rejection.

Mr M feels that whilst his car was in the garage and they were trying to repair it, the courtesy car provided wasn't the make and model he had acquired. Our approach regarding this is that first and foremost, a customer should be kept mobile if their car is not working. This has happened here, and Mr M hasn't raised any practical issues with the courtesy car supplied, just that it wasn't the same make and model as his car. I'm not persuaded that more compensation is due here.

Mr M also feels that he is entitled to a larger payment for his distress and inconvenience and has quoted £1000 compensation that he feels he should get. I've seen no evidence of this level of distress or inconvenience caused and am not persuaded to instruct Hyundai to pay more than the £100 originally recommended. I understand that Mr M feels he hasn't received the "new car experience" and I empathise with that. But based on the evidence presented, I am not persuaded this payment should be higher.

Part of the redress here will be for impaired usage; this is recognising that while the car worked, the grinding noise has caused him some concern and impacted his driving experience. I think this recognises some of the inconvenience Mr M references, and I agree that 10% of his monthly payments is a fair reflection of this.

And he should get his full deposit back, as well as having the agreement ended and the car collected at no cost to himself. Alongside this, any adverse data should be removed from his credit file. Overall, I am satisfied this is a fair package of redress for Mr M.

Putting things right

I instruct Hyundai Capital UK Limited to carry out the following:

- End the agreement with nothing further to pay.
- Collect the car (if not already done) at no further cost to Mr M.
- Refund his £10,500 deposit and pay 8% simple interest on this figure from the date of payment to the date of settlement.
- Refund Mr M 10% of each of his monthly payments to recognise his impaired use, plus 8% simple interest from the date of payment to the date of settlement.
- Pay a further amount of £100 for the distress and inconvenience caused due to the

faulty car.

- Remove any adverse information from Mr M's credit file in relation to this agreement.

If Hyundai considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I am upholding this complaint and instruct Hyundai Capital UK Limited to carry out my instructions in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2023.

Paul Cronin
Ombudsman