

## **The complaint**

Mr C complains that a car he acquired with credit from Hyundai Capital UK Limited trading as Kia Finance (Kia) wasn't of satisfactory quality.

## **What happened**

Mr C entered into a credit agreement with Kia in April 2022 to acquire a new car. The credit to buy the car was granted by Kia under a conditional sale agreement. This meant Kia was the owner of the car and Mr C was, in essence, paying for the use of it. As owner, Kia was responsible for the quality of the car.

The cash price of the car was £35,305. This reduced to £34,558 with a part-exchange and contributions from the dealership and Mr C paid a cash deposit of £1,563. Mr C borrowed £32,995 and the total amount owed under the agreement including interest came to £36,192.56. This was to be repaid in monthly instalments of £422.71.

Mr C told Kia in October 2022 that the car was over-revving. He said that the car had been back to the selling dealership a number of times already but it hadn't managed to replicate and repair the fault. On Kia's advice Mr C brought the car back to the dealership on 28 October but the fault remained.

Kia organised an independent inspection of the car on 14 November 2022. The inspection concluded that the fault had been present and developing when the car had been supplied to Mr C and that the dealership was responsible for the cost of repair. The dealership took the car in for repair again on 24 November. The dealer replicated the fault but said it was a characteristic of the vehicle.

Mr C referred his complaint to us and one of our investigators looked into it. They recommended that it be upheld and that Mr C be allowed to reject the car. The dealership hadn't repaired the car following the independent report and several months had now passed. Allowing a repair at this stage would cause further inconvenience to Mr C.

Kia issued a final response to Mr C's complaint on 24 February 2023, after we'd issued our recommendation. Kia concluded that there was a fault with the car which had been there when it was supplied. It upheld Mr C's complaint on the basis that he had a right to have the vehicle repaired but not that he had a right to reject it. Kia offered Mr C compensation of £200 in recognition of the distress and inconvenience the matter had caused him.

Mr C didn't agree with Kia's final response because he wishes to reject the car.

The complaint has now come to me, as ombudsman, to decide.

## **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.

I want to reassure both parties that I have considered everything they've provided though I might not directly refer to it in my decision.

As mentioned, Kia organised an independent inspection of the car on 14 November 2022. The inspector replicated the fault twice and described it as "an intermittent high revving event with the engine revving in excess of 3,500 rpm without traction over some 2-3 seconds". The report concluded that the fault had been present and developing at the inception of the agreement and that the selling agent was responsible for the cost of repair.

The dealership pointed out to Kia that the independent inspection report included incorrect details about the car, for example the chassis number and the fuel type, and so it had doubts about the report's conclusion. I've noted that the photos of the car which accompanied the report contained the correct chassis number and the report errors, bar the fuel type, were later amended.

When the dealership took the car in for repair on 24 November, it provided a replacement car for Mr C. The job card for the work recorded that on a road test the dealer replicated the fault and described it as "when pulling off rapidly the car will rev to 3,000 and hold the gear until I've taken my foot off the pedal". The dealer said this was characteristic of the vehicle and recorded that a comparison vehicle had been tested and exhibited the same behaviour. The dealer noted that they hadn't found any previous error codes recorded on the car's diagnostic system, although a flight recording on their long test had captured three instances of Mr C's concern.

As set out in Kia's final response to Mr C's complaint on 24 February 2023, it accepted the conclusions of the independent report and agreed that there was a fault with the car which had been present or developing when it was supplied. Kia said that as the fault happened within six months of possession, Kia and the dealership were obliged to repair the vehicle for the customer. Kia upheld Mr C's complaint on the basis that he had a right to have the vehicle repaired but not that he had a right to reject it. Kia offered Mr C compensation of £200 in recognition of the distress and inconvenience the matter had caused him.

It seems to me that there is no longer any dispute that the car wasn't of satisfactory quality when it was supplied to Mr C - Kia has accepted the conclusions of the independent report and upheld his complaint. What is in dispute is whether Mr C can now reject the car.

The Consumer Rights Act (CRA) 2015 is relevant here. The CRA gives customers solutions if they find themselves with faulty goods. They can reject the goods if the fault happens within 30 days, or have the goods repaired or replaced. Outside of this period the supplier has the chance to repair the goods before anything else happens. The supplier must either repair or replace the goods within a reasonable time and without significant inconvenience to the customer (Section 23). If this doesn't solve the problem and it's found that the fault was there or developing when the goods were supplied, then a consumer might be entitled to other solutions such as a price reduction or a final right to reject the goods.

Mr C took delivery of the car in early May 2022 and Kia told him in its final response at the end of February that he could have the car repaired. I understand that in the intervening nine months the car has been with the dealership four times, once after the independent report was produced. The dealership has acknowledged that Mr C's issue with the vehicle was present during its test on 24 November but the vehicle remained unrepaired by the time of Kia's final response some three months later. It's clear to me that Kia has had a reasonable period of time to rectify things for Mr C by either repairing or replacing the car, that the ongoing fault has significantly inconvenienced Mr C and that another attempt at repair now would cause further inconvenience to him.

I've concluded that Mr C should now be allowed to reject the vehicle. It should be collected from Mr C at no cost to him.

I understand that Mr C has been making his monthly repayments of £422.71. Kia can retain Mr C's monthly payments as he's had the use of the car and would likely have needed to pay something for remaining mobile. That said, I understand his enjoyment of the car has been curtailed by the fault so I think it would be fair in this case for Kia to refund a percentage of the monthly payments to Mr C to reflect this. Our investigator felt that this deduction shouldn't cover the week Mr C was given a courtesy car by the dealership at the end of November 2022. I haven't made this direction because I've assumed Mr C was unable to use the car for normal purposes during the other times it was with the dealership for investigation.

In addition, Mr C has experienced distress and inconvenience by being supplied with a faulty car. He's shared that he has a health condition and the stress of this experience has exacerbated his symptoms. There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach (which is set out on our website) which I've borne in mind alongside everything else when making this decision. Our investigator proposed an amount of £200 which seems to me to be a fair and reasonable amount in the context of this case.

### **Putting things right**

In summary, Kia should:

- End the agreement with nothing further for Mr C to pay and collect the car at no further cost to him; and
- Refund Mr C's deposit contribution of £1,563 along with 10% of his monthly repayments; and
- Add 8% simple interest per annum\* to all refunds from the time of payment until the time of reimbursement; and
- Pay Mr C an amount of £200 to reflect the distress and inconvenience this matter has caused to him; and
- Remove any adverse information from Mr C's credit file in relation to the agreement (if any).

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

### **My final decision**

For the reasons I've set out above I'm upholding Mr C's complaint against Hyundai Capital UK Limited trading as Kia Finance and it now need to take the steps I've outlined to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 May 2023.

Michelle Boundy  
**Ombudsman**