

## The complaint

Mr O complains about the quality of a car that was supplied to him under a conditional sale agreement with Hyundai Capital UK Ltd, trading as Kia Finance.

## What happened

In August 2022 Mr O signed a conditional sale agreement with Kia Finance for a new car. He says he sourced the car through a dealer based over 200 miles away because the dealers in his area had long waiting lists for new stock.

The cash price of the car and road tax came to £33,245. The agreement terms required an advance payment of £13,245. Mr O says this comprised a payment of £12,745 from him and a £500 contribution from Kia Finance. He was then required to pay 36 monthly instalments of £183.09, followed by a final payment of around £16,000.

Mr O says that, within the first month, he noticed a problem with the car failing to change into sixth gear. He says he contacted the manufacturer's UK customer service team, and that they advised him to ask one of their garages to assist him.

Mr O says he took the car to a manufacturer's garage based in his area on 18 October 2022. He's told us that they were unable to replicate the fault, but they advised him to book in again so they could carry out recalls and updates recommended by the manufacturer.

Mr O took the car back to the manufacturer's garage the following month. He says he told them he was having the same problem with the gears - and that he'd read a newspaper article suggesting this was a wider problem with this model. Again, the manufacturer's garage found no fault.

Mr O says the problems with the car not correctly changing through the gears got worse, and that he saw a noticeable drop in fuel economy. In December 2022 he complained to Kia Finance, saying he wanted to reject the car.

Kia Finance arranged for the car to be inspected by an independent engineer on 11 January 2023. The engineer's report concluded:

*"... we were able to identify a defect with the vehicle at the time of our inspection with regards to the vehicle's transmission as this is holding onto fifth gear and not retaining sixth gear. This will clearly have a detrimental effect upon the miles per gallon which the vehicle could possibly attain.*

*"... it does appear that the vehicle's fault would have been present or in development at the point of sale and is the selling agent's responsibility..."*

Kia Finance issued their final response to Mr O, saying they hadn't upheld his complaint because he'd had unauthorised repairs carried out at a third party garage. They said this meant they were unable to determine the origin or liability of the faults noted, so they couldn't hold the supplying dealer liable under the Consumer Rights Act 2015.

Dissatisfied with this response, Mr O brought his complaint to us.

Our investigator said she was satisfied the car hadn't been of satisfactory quality when it was supplied to Mr O – and that no repairs had been carried out. Moving on to how things should be put right, the investigator initially said she thought Kia Finance should either arrange for the car to be returned to the supplying dealer, or for repairs to be completed at a garage local to Mr O.

Mr O was unhappy with this suggestion. He stressed he'd taken the car to a manufacturer's garage in his local area because that's what the manufacturer had advised him to do. He said he'd specifically asked the manufacturer's garage to investigate and rectify the fault on two occasions, but they'd been unable to do so. He expressed concern that the manufacturer hasn't yet found a solution to this problem - and that this could mean a repair might drag on for many months.

The investigator reviewed the evidence again and revised her proposals for how the complaint should be resolved. She said that, as Mr O had already taken the car to a manufacturer's garage on more than one occasion to find and repair the fault, she thought he should now be able to reject it.

The investigator thought Kia Finance should refund 10% of the monthly payments Mr O made from October 2022 to reflect the fact that the car wasn't performing as it should. And she thought he should receive a full refund of payments he'd made since 15 January 2023, when he'd stopped using the car altogether.

The investigator said Kia Finance should return the advance payment Mr O had made at the beginning of the agreement. And she thought they should pay him £150 compensation for the distress and inconvenience he'd been caused.

Kia Finance didn't accept the investigator's revised view. I'll summarise their main points:

- The CRA relates to the business that sold the vehicle. Kia Finance say they're a finance provider, and that they're not the dealer who sold the car. They feel they simply provided the loan that enabled Mr O to purchase the vehicle from the supplying dealer.
- Mr O should've given the supplying dealer the opportunity to repair the car. Instead, he took it to a manufacturer's garage that was local to him. Kia Finance feel he didn't comply with the Consumer Rights Act 2015 – and that these were unauthorised repairs.
- The manufacturer's garage didn't make any attempts at repair because they were unable to confirm the fault Mr O had reported. The supplying dealer has agreed to investigate the complaint and should be given an opportunity to do so.
- Mr O's opinion as to whether the manufacturer currently has a suitable fix is irrelevant and shouldn't be considered as part of the assessment of this complaint.
- Kia Finance take their responsibility for providing financial products and services seriously. They investigate all complaints and enforce the correct outcome, even if the supplying dealer doesn't agree with their decision. Kia Finance accepted, and still accept, the investigator's initial assessment of the case.

Kia Finance asked for an ombudsman to review the case again, so it was passed to me to make a final decision.

### **My provisional decision**

After reviewing the evidence, I issued a provisional decision saying:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr O's complaint relates to a conditional sale agreement with Kia Finance. Entering into consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can look into this complaint.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory. I don't think there's any dispute that this car wasn't of satisfactory quality when it was supplied to Mr O. But for completeness, I've reviewed the evidence about this.*

*I've seen a copy of the independent engineer's report of the inspection on 11 January 2023, at which time the car was recorded to have travelled just 5,548 miles. I find this report to support Mr O's complaint that the car wasn't selecting the appropriate gear - and that this would have a detrimental effect on its fuel efficiency.*

*The engineer thought the fault would've been present or developing when the car was supplied. Given how soon this problem came to light, I agree. And I don't think a reasonable person would consider it satisfactory for a brand new car costing around £33,000 to be unable to consistently select the appropriate gear for the driving speed and conditions. So, I don't consider this car to have been of satisfactory quality when it was supplied to Mr O.*

*I think it's fair to say the point in dispute is how the problem should be resolved. The CRA sets out remedies for consumers whose right to receive goods of satisfactory quality has been breached. Kia Finance feel very strongly that Mr O hasn't complied with those provisions. I've considered the points they've raised.*

*Kia Finance say they're a finance company, not a car dealer, and that any complaint about the quality of this car should be a matter for the supplying dealer to resolve. But that isn't quite right. I'll explain why.*

*Under a conditional sale agreement, Kia Finance is the supplier of the car. This is made very clear in the agreement Mr O signed on 11 August 2022. It says: "We agree to sell and you agree to buy the goods shown on the front page of this agreement." It goes on to explain that Kia Finance will buy the car from the supplying dealer, so Kia Finance can then sell it to Mr O under the terms of the finance agreement.*

*For this reason, Kia Finance is responsible for a complaint about the car's quality.*

*Mr O says he initially contacted the manufacturer to ask whether they were aware of the issue he was experiencing, because he knew some problems with modern cars can be software-related. He says the manufacturer advised him to take the car to one of their garages in his local area, so that's what he did. I don't think that was unreasonable.*

*Mr O told us he sent his complaint to Kia Finance on 6 December 2022 – and they've confirmed that they raised a complaint two days later. The independent engineer's report states the fault was present when the car was inspected on 11 January 2023. So, I'm satisfied that this fault came to light within six months of the car being supplied to Mr O.*

*The CRA says Mr O had the right to require the trader to repair the car. But it goes on to explain that he can't require the trader to do this if it would be an impossible or disproportionate way of resolving the issue. The CRA also makes it clear that, if the consumer requires the trader to carry out a repair, this must be done within a reasonable time and without significant inconvenience to him.*

*For the reasons I've already explained, in this conditional sale contract 'the trader' was Kia Finance. Mr O says having spoken to the manufacturer and twice taken the car to one of their approved garages for the issue to be diagnosed and fixed, he wanted Kia Finance to allow him to reject the car instead of requesting another attempt to repair it.*

*I appreciate Kia Finance feel Mr O hasn't followed the procedure they'd usually expect here. In essence, they think he should've allowed them an opportunity to make arrangements for the car to be repaired before he could exercise the right to reject it. I've considered what difference that would've made in this case.*

*The CRA doesn't impose any obligations or restrictions as to who Kia Finance should appoint to carry out repairs. But I'd expect Kia Finance to cover the cost of transporting the car their chosen repair centre. And I note that the supplying dealer is based around 260 miles away from Mr O's home.*

*I also bear in mind that, if Kia Finance were asked to repair the car, the CRA places an obligation on them to do so within a reasonable time and without significant inconvenience to Mr O. They've shown us a copy of their internal email correspondence about the possibility of returning the car for repair by the supplying dealer. This confirms that, although the supplying dealer is happy to look at the car, they can't say whether they'd be able to mend it until they've seen it.*

*Kia Finance have shown us copies of the invoices Mr O had sent them. These confirm Mr O took the car to one of the manufacturer's approved garages on 18 October 2022, 22 November 2022, and 29 November 2022. And that he'd specifically asked them to look into the problem with the gears on the first two of these visits.*

*The invoices show that although they "Reset basic settings on gearbox", "Carried out checks and test inline with technical" and road tested the car twice, they were unable to diagnose or fix the fault. I remind myself that these checks and tests were carried out by one of the manufacturer's networks of approved garages, who had access to technical help from the manufacturer.*

*Having thought about all of this, I'm not persuaded that the supplying dealer is any more likely to be able to successfully diagnose and fix the fault. And I think returning the car there would incur additional transportation costs for Kia Finance, as well as increasing the length of time Mr O has been waiting for this matter to be put right.*

*I've considered whether there's any other reason why it would be unfair for me to direct Kia Finance to allow Mr O to now reject the car, following the failed attempts to diagnose and repair the fault at the manufacturer's garage in his area.*

*In their final response to Mr O's complaint, Kia Finance said they were unable to determine the origin or liability of the faults due to unauthorised repairs completed by a third party garage. I'm not persuaded of this. I've seen no evidence to suggest the manufacturer's garage did anything to the car that might make it more difficult for Kia Finance to find out what was causing the issue with the gears, or who'd be liable to put it right.*

*For these reasons, I think the best way to resolve this complaint would be to allow Mr O to reject the car. This means Kia Finance should arrange to collect the car at no cost to Mr O and return the advance payment he made. To be clear, this should be the advance payment amount shown on the agreement, less any contribution made by the supplying dealer or finance company.*

*Based on what Mr O has told us, I think the car performed as he expected for a little while. The first invoice from the manufacturer's garage confirms he was experiencing a problem with gear selection by 18 October 2022. I'm satisfied this would've meant it was using more fuel than Mr O expected. So, I think it's fair that he should receive a 10% refund of the monthly payments he made from 18 October 2022 onwards.*

*Mr O has provided a recent photo of the dashboard display, showing the car has only covered 5,744 miles in total. He's told us he stopped using it altogether on 15 January 2023. He says he felt he had no choice after the independent engineer confirmed there was a fault with the gearbox.*

*I've seen nothing to suggest the independent engineer gave any advice to Mr O about whether he should stop driving the car. But, on balance, I don't think that was an unreasonable decision. So, I think it would be fair for Mr O to receive a full refund of the payments he's made for the period after 15 January 2023.*

*Mr O says he wanted a reliable vehicle due to his age and the very rural area he lives in. He's told us he had to buy a much older car after he stopped using this one. He says the issue with this very expensive car - and the difficulty he's had trying to get it put right - has caused him a great deal of worry and distress. He feels our investigator's suggested award of £150 doesn't adequately cover this.*

*Mr O has recently shared some personal information with us about the very severe impact this ongoing situation has had on him. I'm very sorry to hear he's been having such a tough time. I've thought very carefully about what he's told us.*

*I do understand his reasons for taking the car to a manufacturer's garage in his area, instead of asking the supplying dealer or Kia Finance to arrange for it to be repaired. But I think that meant Kia Finance had relatively little information about the problems with the car. I think they may reasonably have believed it simply wasn't performing as well as expected. I don't think they could've foreseen or known the full impact this issue was in fact having on Mr O.*

*For that reason, I think it would be fair for Kia Finance to pay Mr O £150 compensation for distress and inconvenience caused by being supplied with a car that wasn't of satisfactory quality.*

*For the reasons I've explained, I intend to uphold Mr O's complaint and direct Kia Finance to:*

- *Collect the car and end the agreement, at no further cost to Mr O.*
- *Refund the advance payment Mr O made. This should be the amount shown on the agreement, less any contribution made by the supplying dealer or finance company.*
- *Refund 10% of the payments Mr O made for the period since 18 October 2022.*
- *Refund 100% of the payments Mr O made for the period since 15 January 2023.*
- *Interest should be added to each of the refunded amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.*
- *Pay Mr O £150 compensation for the distress and inconvenience he's been caused.*
- *Remove any adverse information that's been recorded on Mr O's credit file about this agreement.*

*I invited both parties to send me any further information or comments they'd like me to consider. Mr O said he accepted my provisional decision and had no further points to raise. Kia Finance didn't respond.*

### **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.

As I received no additional information or comments in response to my provisional decision, I see no reason to change my mind.

### **My final decision**

For the reasons I explained in my provisional decision, I uphold this complaint and direct Hyundai Capital UK Ltd to:

- Collect the car and end the agreement, at no further cost to Mr O.
- Refund the advance payment Mr O made. This should be the amount shown on the agreement, less any contribution made by the supplying dealer or finance company.
- Refund 10% of the payments Mr O made for the period since 18 October 2022.
- Refund 100% of the payments Mr O made for the period since 15 January 2023.
- Add interest to each of the refunded amounts, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr O £150 compensation for the distress and inconvenience he's been caused.
- Remove any adverse information that's been recorded on Mr O's credit file about this agreement.

If Kia Finance consider tax should be deducted from the interest element of the award, they should tell Mr O how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 31 August 2023.

Corinne Brown  
**Ombudsman**