

The complaint

Miss B complains that the car Hyundai Capital UK Limited (“Hyundai Capital”) supplied to her under a conditional sale agreement was not of satisfactory quality.

What happened

Hyundai Capital supplied Miss B via a car dealership with a used car. Within a few days of receiving the car Miss B complained to the car dealership about what she saw as faults with the car including a key fob error.

Miss B gave the car dealership a chance to fix the car on behalf of Hyundai Capital. But after this attempted repair the key fob error continued.

The relevant consumer law makes it a term of the contract between Miss B and Hyundai Capital that the car should have been of satisfactory quality when supplied. Miss B considered that the car was not working correctly due to faults that made the car not of satisfactory quality and that therefore there had been a breach of contract. Dissatisfied, Miss B complained to Hyundai Capital.

Hyundai Capital is, amongst other things, the supplier of the car. Therefore, as I’ve mentioned above, it is responsible if its car was not of satisfactory quality when supplied, Hyundai Capital accepted this premise. However, it did not agree that there was anything for it to put right in this instance. Specifically, Hyundai Capital’s initial stance was that its car was of satisfactory quality when supplied, and therefore it declined to uphold Miss B’s complaint.

Miss B remained dissatisfied, she had a car that was not working properly and which by this point, she no longer wanted. Further, her stance remained that there had been a breach of contract and Hyundai Capital was responsible for it. But Miss B had not got the remedy she thought she was entitled to from Hyundai Capital. Therefore, Miss B complained to our service. To put things right, at this point, Miss B wanted Hyundai Capital to take back its car and refund all the monthly payments she’d made towards her agreement with it.

One of our investigators looked into Miss B’s complaint. Our investigator came to the view that the car was likely not of satisfactory quality when supplied and this was a breach of contract. Hyundai Capital had been given the chance to repair its car, but its repair failed. Therefore our investigator recommended Hyundai Capital take the following steps:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Miss B.
- Refund the customer’s deposit/part exchange contribution of £4,795.
- Pay a 10% refund of rentals to cover any loss of use, or impaired use, of the car because of the inherent quality issues.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay £300 for distress or inconvenience that’s been caused due to the faulty goods.
- Ask the credit reference agencies to remove any adverse information it has asked

them to register on Miss B's credit file in relation to the agreement.

Initially both Miss B and Hyundai Capital accepted this recommendation, but things did not go smoothly from here.

First, Miss B changed her mind and decided she wanted to keep the car and get it repaired. Then Miss B decided she did want to reject the car after all, when she found it could not be repaired.

Subsequently, Hyundai Capital arranged with Miss B to collect the car on three separate occasions and each time, Hyundai Capital says on the day and without notice Miss B refused to hand its car back, despite having agreed beforehand to return the car. Finally, Miss B told Hyundai Capital that she intended to buy a new car but until she did so, she was going to keep and use its car, as she needed it to get around.

Approximately three months after our investigator had made her recommendation, Miss B handed the car back to Hyundai Capital. By this time Miss B had purchased a new car, however she told us she was out of pocket because she had not received the full financial part of the redress as set out in our investigator's recommendation. She had intended to use that money to buy her new car. But instead she'd had to use her credit card in part to pay for the car. Therefore she'd run up charges on her credit card account which she thought Hyundai Capital ought to take responsibility for paying.

Hyundai Capital told us once the car was returned to it, it realised the following:

- Miss B had driven 4,600 miles since the date of our investigator's view. Therefore, it wanted to charge Miss B for this mileage at the rate of 30 pence per mile. The total charge was £1,380.
- Moreover, in breach of the contract Miss B had never serviced its car, plus the car was damaged so it intended to charge her £392 for this.

It appears that Hyundai Capital therefore made a payment to Miss B in line with the recommendation but in addition it took off £1,380 and £392 from the total.

Miss B objected to this on the basis that she did not think Hyundai Capital was entitled to deduct these charges from the total. Further, from Miss B's perspective, the charges were only run up due to mistakes made Hyundai Capital after our investigator made her recommendation. Specially, Miss B told us, *"I agreed to give them the car back and was waiting for them for ages"*.

The complaint could go no further at this stage, so I was asked to take a fresh look at the complaint.

I reviewed Miss B's complaint and having considered the available evidence, I was minded to uphold the complaint in part. But the redress I suggested was not the same as our investigator's given all that had happened after she'd made her recommendation.

In the circumstances, I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

"What I've provisionally 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

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 consider is most likely to have happened in the light of the available evidence and the wider circumstances.

The issue about the quality of the car is no longer in dispute. Hyundai Capital has now accepted that the car was not of satisfactory quality, when supplied, therefore it can be held to account for this. The only remaining issue is what is a fair and reasonable remedy for this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Damage to the car and lack of servicing

As far as I am aware Miss B is not disputing that the car was damaged and that she did not service it. She just does not agree she should have to pay for these matters.

In holding Miss B to account for the damages to the car and the lack of servicing to the car Hyundai Capital is relying on the terms of its contract with Miss B. Those terms make Miss B liable to it for these charges.

I think it is reasonable to assume, as a starting point, that when a person reads and signs an agreement (as Miss B did here) – they understand the terms of the agreement and they are agreeing to be bound by them. It follows that on the face of it, Hyundai Capital is acting reasonably in asking Miss B to pay the charges that she contracted to pay.

I also think it is significant that the lack of servicing of the car, will almost certainly have led to Hyundai Capital losing money. I say this because either Hyundai Capital will have had to pay for the car to be serviced before selling it on. Or, because Hyundai Capital may have got less for the car on the open market because the car had an incomplete service history. I don't find that it is fair and reasonable that Hyundai Capital should take this loss. This is another reason why I find it fair and reasonable for Hyundai Capital to ask Miss B to pay it these charges.

When I look at the circumstances of the complaint, I don't agree I can fairly say Hyundai Capital treated Miss B unfairly by keeping her waiting to collect the car and this led to these charges. The facts of the complaint as they've been presented to me don't support that version of events, quite the opposite. It follows, I don't agree Miss B is only facing these charges because of something Hyundai Capital did wrong.

It follows for all of these reasons I've no proper basis to uphold this part of Miss B's complaint.

Use of the car

Miss B and Hyundai Capital always agreed that Miss B would pay Hyundai Capital for the use of the car. That is what their contract provides for. The question now is should Miss B have to pay for the use of the car she's had since May 2022 (when our investigator issued the view in which she made her recommendation) and August 2022 (when Miss B handed back the car). And If Miss B should pay for that use, how much should she pay?

We would expect that when parties agree to a recommendation that one of our investigators has made that they'd comply with it without delay. That is not what happened here. I don't find that is the fault of Hyundai Capital. Rather, I can see from Miss B's perspective she wanted to keep hold of the car until she could find a new one. But that being so she has to pay for the use she had.

That said, I can't see on what basis it would be fair and reasonable for Hyundai Capital to use the methodology it has suggested to calculate the payment for the mileage use. After all Miss B never agreed to pay it 30p per mile for the use of the car. That's a provision that Hyundai Capital has retrospectively and unilaterally asked Miss B to accept. Rather, she agreed to the monthly repayments so that is the yardstick that should be used. Specifically, Hyundai Capital can charge Miss B the pro rata contractual monthly fee for the period between the date our investigator issued the view in which she made the recommendation to the date Miss B handed back the car. Hyundai Capital must take 10% off that figure to acknowledge Miss B's impaired usage during this time.

Nothing in the agreement between Miss B and Hyundai Capital has ever said that Miss B is entitled to drive Hyundai Capital's car for free which is what Miss B appears to be asking for. I say this because, I also note that it appears that the last time Miss B made any repayment to Hyundai Capital was in October 2021 therefore she drove the car for free from the date of that last payment until the date our investigator issued her view. That's around seven months of free motoring that Miss B has already benefitted from. Hyundai Capital has not asked her to pay for this period of use, although it could have done.

Moreover, Miss B appears to have driven a substantial amount of miles in this period. Hyundai Capital says in those months she drove 4,600 miles. Miss B has not said this is untrue. That amount of extra mileage most likely led to a loss in value in the car. I don't find that it is fair and reasonable that Hyundai Capital should pay for a loss that Miss B caused.

For all of these reasons I've no proper basis for saying Hyundai Capital cannot charge Miss B for the use she's had of the car between the date our investigator issued her view, and the date Miss B returned the car. Rather, I am saying it can charge for this use, but it must calculate the payment she owes by reference to the monthly repayments.

As far as I am aware Hyundai Capital has already carried out all of the redress recommended in our investigator's view save that it took £1,772.56 = £1,380 + £392.56 off the final settlement. It might be useful to see the figures that make up the settlement, so I've set them out below.

However, if I am incorrect and Hyundai Capital has not completed all of the redress that was recommended in the view please can the parties tell me in responding to my provisional decision. The redress in this decision just focuses on how to calculate the financial settlement.

Calculation of settlement to date provided by Hyundai Capital

10% of monthly instalments: £108.80

Compensation for distress and inconvenience: £300

Deposit: £4,795

Interest: £513.26

Total £5,717.06 (I'll call this the "total before deductions")

Deductions:

-£1,380 for 4,600 miles at 30 pence per mile where the customer has used the vehicle since the view.

Service/damage invoice: -£392.56

Total already paid to Miss B by Hyundai Capital: £3,944.50

It follows that all Hyundai Capital has to do now is to behave as if instead of charging Miss B for mileage at 30 pence per mile, it charged her the pro rata monthly payments instead, minus 10%.

Miss B has in the past asked us for calculations. It is not this services' role to perform calculations such as are required in this case, and we will not provide them. But it is Hyundai Capital's role to provide such calculations. So please can it do this calculation and send it to us when it responds to my provisional decision. Because we can insist that the businesses which fall within our jurisdiction demonstrate that their calculations are correct.

Miss B's credit card expenses

I appreciate Miss B tells us she incurred expenses on her credit card when she decided, to buy a new car on her credit card in anticipation of receiving the settlement money from Hyundai Capital. That was Miss B's choice to make, but I can't fairly hold Hyundai Capital responsible for her decision to do this, or for the cost to her of doing so. It follows I don't uphold this part of her complaint.

A point of clarification

I'll add for completeness nothing in the redress that our investigator recommended in her view, prevented Hyundai Capital from insisting on its contractual rights in relation to charges that had already been incurred prior to Hyundai Capital ending the agreement.

My provisional decision

My provisional decision is that I intend to find that Hyundai Capital UK Limited can deduct the following sums from the total before deductions:

- The pro rata sum that equals the monthly payments Miss B would have paid between the date our investigator issued her view and the date Miss B returned the car to Hyundai Capital UK. However, it must deduct from this sum 10% to reflect that Miss B's use of the car was impaired due to the inherent fault with the car.*
- The £392.56 for the servicing and damages.*

Whatever sum this comes to I'll call the "total after deductions".

If the total after deductions is more than the £3,944.50 then Hyundai Capital UK must give Miss B the difference between the two."

Both Miss B and Hyundai Capital responded to my provisional decision. I summarise below what they each said.

Miss B responded to say she disagreed with some of the things I'd said in my provisional decision. Specifically, she'd not driven the car for free between November 2021 and August 2022. On the contrary, she'd made every monthly payment during this period. But Hyundai Capital refunded the payment she'd made in August 2022 as she'd returned the car in July 2022. Miss B sent us extracts from her bank statements to demonstrate this. According to Miss B Hyundai Capital collected the car on 25 July 2022. As a result, she owes it nothing for driving the car.

Miss B added she wants Hyundai Capital to give her the £1,380 it took off her settlement in mileage charges. She also wants it to pay her 10% interest on this sum on the basis that if she'd had this money she would have put it in the bank and achieved this rate of interest on the sum.

Further, Miss B wants Hyundai Capital to pay her a further £300 for distress and inconvenience. To be clear this is in addition to the £300 it has already paid her for distress

and inconvenience. Miss B considers she is entitled to this sum to reflect the time that has gone by between when Hyundai Capital paid her £3,944.50 and now. The £300 would also reflect that Hyundai Capital provided this service with inaccurate information about her payment history. Miss B considers that Hyundai Capital provided this inaccurate information deliberately.

Also, Miss B sent us one photo of the car which she told us she returned in “*excellent condition*”.

Miss B considers she’d have been better off selling Hyundai Capital’s car by using it in part exchange for a new car.

Hyundai Capital told us that Miss B had made her contractual monthly payments to it from November 2021 until June 2022. It had refunded the June 2022 payment already and had received no further payments from Miss B. Hyundai Capital sent us copies of its internal records to support what it had said about this. These records showed all payments it had received and all payments it had made.

Up until now Miss B had only shown us a limited extract from her bank statements. We asked to see the full statement for June 2022 to see if it showed she’d already received a refund for this month. Miss B questioned why this was necessary. We explained why. Miss B sent us a full statement.

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 thank the parties for their replies. I’ve reviewed the file again and revisited my provisional decision.

Monthly fees

It is not ideal that the information that Miss B has provided, and that Hyundai Capital has provided do not tally.

However both parties have sent us information about payments made and payments refunded. So I think they’ve both provided us with as much information as they have.

I don’t find it likely that either party has provided incomplete or inaccurate information on purpose. However, something does not add up here.

Given that the information provided by each party is to some extent contradictory, I have to decide this point on the balance of probabilities.

Miss B has provided us with information from an impartial third party, that is her bank. Hyundai Capital has provided us with information from its own records.

I take on board that until we asked it to Hyundai Capital did not supply us with the most up-to-date information about the payments it received and returned. Whereas Miss B did as soon as she realised this information was required.

Miss B has the most to lose here. Plus Hyundai Capital did initially provide us with inaccurate information which suggests that its information retrieval systems might be prone to error.

That said, Miss B indicated that from the date she received the view from our investigator she had made the car available to Hyundai Capital for collection and it dragged its heels. But the evidence I’ve seen demonstrates this is incorrect. So I recognise that Miss B has not always given us accurate information either.

That said, on balance, in the circumstances, I am persuaded by Miss B’s account of the monthly payments she made. That is that she paid all of her monthly payments between

December 2021 and July 2022. I'm also satisfied that Miss B did return the car in July 2022, so she owes nothing for August 2022.

Mileage charge

Nothing I've seen suggests to me that the mileage charge is appropriate. In particular, Hyundai Capital has not told me why it ought to be able to charge for this in addition to the monthly payments. It follows that I think Hyundai Capital cannot fairly charge Miss B for this.

That said, Miss B asks for interest on this sum on the basis that if she'd had this money earlier, she would have put it in the bank and earned 10% interest on it. But she's also told us she would have used this money immediately to buy a new car.

Moreover, she has not demonstrated which bank account she could have put this money into and earned 10% interest in any event.

So, for all of these individual reasons, I'm not persuaded by what Miss B says about being entitled to interest on this sum.

I also note that Hyundai Capital does not appear to have charged Miss B for any of the three attempted car pick-ups which she cancelled. It seems some of these pickups were meant to be from far flung locations, certainly not from Miss B's home. And I find it likely that Miss B cancelled these pick-ups without notice. There would most likely have been a cost associated with each of these attempts. Hyundai Capital might have fairly charged Miss B for all the failed pickups but as far as I am aware it did not. So Miss B has potentially benefitted financially from this.

For all of these reasons I have no proper basis to tell Hyundai Capital it must pay any interest on the £1,380.

Damage to the car and lack of servicing

At the point when I issued my provisional decision Miss B had not disputed the damage to the car. Now she is saying she returned the car in "*excellent condition*". But her photograph does not throw any light on matters. I say this because it is not a close-up photo. It also appears to show the opposite side of the car from where the damage was found. Whereas Hyundai Capital has shown us a close-up photo of the damage.

I also note that the charge for the damage to the car was relatively modest. I have no reason therefore to say the amount charged was unreasonable. In any event, Hyundai Capital might reasonably have charged this amount, for the lack of servicing alone.

In the circumstances, I've no proper basis for saying Hyundai Capital cannot charge Miss B for the damage to the car and the lack of servicing.

Distress and inconvenience

I don't find that Hyundai Capital is responsible for any delay in Miss B receiving her financial settlement. Therefore it follows I find that if Miss B has experienced distress and inconvenience in this time, it is not because of anything Hyundai Capital has done wrong.

Miss B is correct to say that Hyundai Capital should have provided accurate information to us about her payment history, and it did not. We look at the circumstances of individual complaints and, on a case by case basis, make findings about whether a financial business has failed its customer in any way. Where we find it has, we make awards designed to make the business put things right with the complainant customer. Our awards are not designed to punish a business for example for providing inaccurate information, that is the role of the regulator.

It follows I am not persuaded that it is fair and reasonable to tell Hyundai Capital it must pay Miss B a further £300 for distress and inconvenience.

Possible sale of the car by Miss B

Miss B indicates she might have been better off selling the car. But since she is not the owner of the car and never was, I cannot see how that option was ever open to her. It follows that I cannot fairly ask Hyundai Capital to compensate Miss B because she did not exercise a right she did not have.

What has happened so far

As far as I am aware Hyundai Capital has carried out all of the redress recommended by our investigator save for the entirety of the financial portion of that recommendation, which has now been amended in any event by me in my provisional and final decisions. I specifically asked Miss B and Hyundai Capital to tell me if I was mistaken about this. Neither one of them has said anything about this. I take it therefore that my understanding of this point was correct.

I've thought about whether I should ask Hyundai Capital to add interest to any of the refunds I've required it to make. I've already said why I don't require Hyundai Capital to pay interest on the refund of the mileage charge. As to the other refunds, in the circumstances, I don't find that Miss B has been deprived of these funds for so long due to anything Hyundai Capital has done wrong. Therefore I don't find that it is appropriate to ask it to pay interest on these refunds.

In my provisional decision I asked Hyundai Capital to provide new calculations for the redress, it has not. Given the history of the complaint and that there is now seemingly a level of distrust between Miss B, and Hyundai Capital I anticipate Miss B is going to ask for these. I think it would be prudent for Hyundai Capital to get on the front foot and prepare these calculations.

My final decision

My final decision is that Hyundai Capital UK Limited,

- Can deduct from the total before deductions £392.56 for the servicing and damages.
- Must refund Miss B 10% of the payments she made between December 2021 and July 2022. But to be clear if the £108.80 it has already refunded already includes a refund for this period of time then I am not saying Hyundai Capital UK Limited has to make the same payment twice.

Whatever sum this comes to I'll call the "total after deductions". It must then add the £1,380 to the total after deductions. This is the total after deductions plus mileage charge added back in.

If the total after deductions plus mileage charge added back in is more than the £3,944.50 then Hyundai Capital UK must give Miss B the difference between the two.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 December 2023.

Joyce Gordon
Ombudsman