

## **The complaint**

Miss J complains about a car she hires from Hyundai Capital UK Limited (HCUL). She has referred to experiencing a number of issues and faults with the car and says she has now lost all faith in the car, so would like to reject it and end her agreement with HCUL.

## **What happened**

Around November 2020 Miss J entered into a four-year hire agreement with HCUL for a new car. Miss J paid an initial or advanced rental of £2,278 and was then required to make 47 rental payments of £253.20. Miss J has referred to having problems with the car's transmission, loss of power, crankshaft, plus other issues. The car has broken down, had repairs completed but Miss J remains unhappy and says she has lost all faith in the car, considering the number of problems she's had with it.

Miss J complained to HCUL, and it referred to discussions it had with the dealership who was involved with the repairs. In summary, HCUL referred to all of the issues being warrantable and there was therefore no charge for the repairs. HCUL explained it was unable to accept Miss J's request to reject the car. HCUL referred to no manufacturer can guarantee a car would not have any issues and this is why a guarantee is provided. HCUL appreciates Miss J has had issues with the car but as it is the finance provider and not manufacturer of the car it cannot be held responsible for any manufacturing defects or faults with the car.

Miss J remained unhappy with HCUL's response and referred her complaint to our service. One of our investigators set out why they considered the complaint should be upheld and amongst other things, why HCUL should now take back the car and end Miss J's agreement. HCUL did not accept the investigator's findings and as the complaint could not be resolved informally, it was referred to me for consideration.

I issued a provisional decision to both parties and in that decision, I set out the following:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*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. I haven't. 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.*

*I would firstly like to refer to HCUL's response to Miss J's complaint and in particular where it states, 'I am unable to uphold your complaint on this occasion as we are the finance provider not the vehicle manufacturer, due to this we cannot be held responsible for any manufacturing defects or faults on the vehicle.' I would remind HCUL that it is the owner and supplier of the car, which Miss J is allowed to drive under the terms of the hire agreement. As supplier of the car to Miss J, HCUL is responsible for the quality of the car and in accordance with the Consumer Rights Act 2015 should supply a car to Miss J that is of satisfactory quality.*

*It is disappointing to note that HCUL seeks to claim it has no responsibility for the car it supplied Miss J, as this is inaccurate. I should also remind HCUL that while a vehicle manufacturer's warranty is I'm sure helpful in obtaining repairs without cost to the consumer, a consumer's statutory rights through the Consumer Rights Act 2015, or other legislation, would precede any claim under warranty from the vehicle manufacturer.*

*As Miss J's complaint relates to a regulated hire agreement with HCUL, our service is able to consider complaints about the hire agreement and the goods supplied through that agreement. As already referred to, HCUL is required to supply a car that is of satisfactory quality and the key issue I must therefore consider is whether or not the car supplied to Miss J was of satisfactory quality, and if it wasn't of satisfactory quality, what then if anything is required to put things right.*

*Satisfactory quality is defined within the Consumer Rights Act 2015 and in summary, is what a reasonable person would expect when considering the quality of the goods. In cases such as this with a car, the age and mileage of the car at the time it was supplied to Miss J and the age and mileage at the time of the faults, along with the significance of the faults, are all in my view key considerations.*

*Miss J was supplied with a brand-new car and would be required to pay over £14,000 to drive the car over the four-year agreement period. Because of that I think it's reasonable to have had high expectations around the quality of the car.*

*I can fully appreciate Miss J's disappointment as she has had a number of issues with the car and this is not, even with a manufacturer backed warranty, what one would expect from a brand-new car. Amongst other things, the car has broken down on the motorway with a suspected transmission issue, failed with power loss issues and needed the crankshaft replacing. Miss J says the car has also suffered from a manufacturer recall, which has needed further return visits to the dealership. All of these issues have occurred while the car has been relatively new and with low mileage. In some instances, these single issues are significant, such as the replacement crankshaft which is a major component within the car's engine. But collectively when considering the multiple issues, this is further evidence in my view that the car supplied to Miss J was not of satisfactory quality. These are not issues one would expect to experience with a new car, or this current age and mileage.*

*I again acknowledge the manufacturer provides a warranty and the repairs here have been completed without significant cost to Miss J. However, this does not detract from HCUL's responsibility to supply a car of satisfactory quality.*

*The Consumer Rights Act 2015 sets out a number of remedies where goods were found to not be of satisfactory quality. The supplier of the goods is typically allowed one opportunity to repair the goods, where those issues arose after 30 days of the goods being supplied. Consumers do have the right seek rejection of the goods if the supplier has already had one opportunity to repair the goods. I appreciate there may have been some problems identifying specific faults with the car here, but it is clear the car has broken down on more than one*

occasion. Repairs have also been completed, on more than one occasion, and although there may not be any current issues with the car, I can fully appreciate why Miss J has lost faith in the car. She has experienced several faults with the car, one of which resulting in the car failing on the motorway, which would have been concerning. Miss J says she has previously sought to reject the car, although this is not clear if this request was to HCUL or the dealership carrying out repairs.

Having had regard to what remedies are set out in the Consumer Rights Act 2015 and what I consider to be fair and reasonable in the circumstances of this complaint, I am satisfied that HCUL should now take back the car and end the hire agreement with Miss J. It would be unreasonable in my view to expect Miss J to continue with the agreement until the end of the original term considering the number of problems she has experienced.

HCUL should therefore now arrange to take back the car from Miss J and end the hire agreement with nothing further owed. Miss J is not responsible for any termination or recovery costs associated with ending the agreement or taking back the vehicle. HCUL should ensure that when cancelling the agreement no adverse information is recorded on Miss J's credit file.

Miss J has had use of the car and I understand a courtesy car while the car was being repaired, albeit I understand the courtesy car was not a hybrid car and therefore cost Miss J more in fuel costs. Putting aside the inconvenience which I will refer to next, Miss J has broadly had use of the car or a replacement car since taking out the agreement in November 2020. I think it is therefore reasonable for Miss J to contribute towards the cost of the use she has had. But I also accept Miss J has not had the care free motoring she was I'm sure expecting when hiring a new car. Miss J says that she did start to use the car less after she broke down on the motorway as she didn't have confidence in the car, but she was however unable to continue using the alternative vehicle from a family member, so had to use the car fully again for longer journeys.

Considering all of the circumstances of this complaint I find it reasonable for HCUL to refund 10% of Miss J's monthly rentals to compensate for the impaired use she has had of the car, plus any additional fuel costs while without her original hybrid car. Miss J paid an advanced rental of £2,278 and this has essentially reduced the cost of the remaining monthly rentals due over the remaining term of the agreement. As this has reduced the monthly rentals, I consider it unreasonable to direct HCUL to refund the full amount.

However, HCUL should calculate a pro-rated refund assuming the £2,278 was spread equally over the 48-month term of the agreement, refunding an amount equivalent to the remaining period of the rentals after the agreement is cancelled. In the same way as HCUL is required to refund 10% of the monthly rentals, HCUL should also refund 10% of the pro-rated £2,278 for the period up to the date the agreement is cancelled.

There would have been some inconvenience and distress to Miss J when the car broke down and in having to arrange the repairs. Plus, the inconvenience caused by using alternative arrangements caused by loss of faith in the car she had been supplied with. Considering this, it would be reasonable for HCUL to pay Miss J £350 in addition to what I have set out above.

### **My provisional decision**

My provisional decision is that I uphold Miss J's complaint against Hyundai Capital UK Limited and direct it to settle the complaint in accordance with what I have set out above.

Both parties responded to my provisional decision and in summary, Miss J said she is very

disappointed with the decision and will now need to arrange an alternative car without the compensation she previously calculated. She is unhappy with the £350 payment I have recommended and does not consider this is sufficient considering what she has been through. Miss J disputes that she was always provided with a courtesy car and says that every time she wanted a courtesy car, where it was not a manufacturer issue, she was required to pay. Miss J says she would be more accepting if she received a refund of the payments she has made while waiting for the complaint to be resolved.

HCUK questioned certain aspects of the proposed redress and emphasised it was not made aware of the issues until August 2022 and it believe it did everything possible to get the vehicle back on the road as quickly as possible. SCUK considers refunding a percentage of the initial rental payment as well as the monthly rentals would benefit Miss J twice. And SCUK notes Miss J would have incurred fuel costs running a hybrid vehicle, so it does not consider it fair to refund all of the fuel costs.

### **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 come to the same overall conclusions as those set out in my provisional decision, for what are substantially the same reasons. Neither party has responded to whether the car was or was not of satisfactory quality and I will not therefore comment further on that here. Both parties' responses are more focused on the redress set out in my provisional decision.

Having reconsidered my initial redress proposal, along with the comments from both parties, I am satisfied the redress in my provisional decision is fair and reasonable in all of the circumstances of this complaint. I fully appreciate the amount of redress will likely be less than that proposed originally by the investigator, but I am required to come to my own findings and what I consider to be fair and reasonable compensation.

Determining fair redress in cases such as this is not easy and, as is the case here, it is not uncommon for one party to consider the redress is not enough and the other to consider the redress to be too generous. Allowing a proportion of the amount Miss J has paid towards the hire agreement to be refunded is in my view a fair way to compensate for the problems, lack or impaired use of the car and will also contribute towards any additional miscellaneous costs. The initial or advanced rental impacts the amount of the monthly rental payments, where a higher initial rental will result in a lower monthly rental and vice versa. So applying the same proportionate rental to the prorated element of the advanced rental would compensate Miss J for the amounts she had effectively paid for the period she has had the car.

Miss J says that she would be happier if she received a full refund for the rentals paid while the complaint was waiting to be concluded but I do not consider this would be reasonable. Miss J has still had use and benefit of the car during this period and refunding all of the monthly rentals would effectively give Miss J free use of the car. Even if the complaint was concluded sooner and assuming Miss J had arranged an alternative car, she would have likely incurred monthly rental or loan costs associated with that car. So would therefore have still needed to pay for the use of a vehicle.

SCUK has referred to reimbursing Miss J's fuel costs and that she would have incurred some fuels costs while using the hybrid vehicle. When referring to the fuel costs in my provisional decision, these would be included or incorporated within the 10% refund of the rental payments. I am not proposing a separate calculation is performed or a separate

payment made exclusively to represent the fuel costs as this would not be something that could be calculated with any certainty.

I have noted what SCUK says about when it became aware of the problems Miss J was experiencing but the problems Miss J has experienced could have been avoided if SCUK had supplied a car that was of satisfactory quality. And as referred to in my provisional decision, had SCUK correctly applied the Consumer Rights Act 2015 when Miss J first complained, rather than claiming it had no responsibility, matters could have been resolved much sooner.

I again acknowledge what both parties have said in response to my provisional decision and appreciate neither party is happy with what I have concluded. But having reconsidered everything that has been submitted in this complaint my provisional conclusions remain unchanged.

### **Putting things right**

To settle Miss J's complaint SCUK should now:

- Take back the car and end the hire agreement with nothing further for Miss J to pay.
- Ensure no adverse information is recorded on Miss J's credit file.
- Calculate a prorated refund of the initial/advance rental of £2,278, assuming the payment was spread equally over the duration of the hire agreement term, refunding an amount equal to the unused period of hire after the car is taken back.
- Refund 10% of the prorated amount of the initial/advanced rental for the period Miss J had use of the car.
- Refund 10% of the monthly rentals for the payments made up to the date the car is taken back.
- Add interest at 8% simple per year to each of the refunded amounts from the date of calculation until the date of settlement.
- Pay Miss J an additional £350 in recognition of the distress and inconvenience caused.

If the settlement is not completed within 28 days of Miss J accepting this decision, HCUK should add interest, at the same rate set out above, to the £350 payment.

### **My final decision**

My final decision is that I uphold Miss J's complaint and direct Hyundai Capital UK Limited to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 15 February 2024.

Mark Hollands  
**Ombudsman**