

The complaint

Mrs M complains that Hyundai Capital UK Limited applied additional charges after she had confirmed what the cost of settling her agreement early would be.

Mrs M is represented by another party but for ease of reference I have referred to Mrs M throughout this decision.

What happened

Mrs M says that before entering into the finance agreement with Hyundai she asked on several occasions about the cost involved in settling the agreement early. She says she was told that she must continue with the agreement for at least a month, or the contribution made towards the cost of the car would be clawed back. She was then told that she would just need to pay the principal amount owing and the daily interest to that point and the agreement would be ended.

Hyundai issued a final response letter dated 14 August 2023. It said that Mrs M had 14 days from signing the agreement to withdraw if she had wished and had she done this she would have needed to repay the principal amount borrowed plus daily interest. After the 14-day period she was required to pay the settlement amount. It said this was charged in accordance with the Consumer Credit Act, which states that the settlement date can be deferred by 28 days. In addition to this, if the term of the loan is greater than 12 months, the settlement date can be deferred for a further 30 days. Hyundai didn't uphold Mrs M's complaint as she had been charged the correct settlement in line with the Early Settlement Regulations 2004.

Mrs M wasn't satisfied with the response from Hyundai and referred her complaint to this service. She said she had asked on several occasions about the amount owed if she settled early and no mention was made of any statutory or other provision that would or may entitle Hyundai to impose any charge for early settlement.

Our investigator didn't uphold this complaint. She said that she had nothing to suggest the calculation of the settlement value made by Hyundai was incorrect and noted it had been made in line with the regulations. She thought about whether Mrs M would have acted differently had the early settlement provisions been explained. She noted that Mrs M didn't need finance to acquire the car but that she received a financial benefit by doing so. She noted that the benefit Mrs M received by acquiring the car on finance was much larger than the additional costs arising from the early settlement regulations and thought that Mrs M wouldn't have done anything differently had she been provided the information about the early settlement rules. As she didn't think that Mrs M had been disadvantaged in this case, she didn't require Hyundai to do anything further.

Mrs M didn't accept our investigator's view. She said that Hyundai and the sales agent provided representations before the agreement was entered into that she had relied on. She said the information provided about the settlement costs were contractual representations and it was confirmed she would not pay anything extra after the first payment.

My provisional conclusions

I issued a provisional decision on this complaint. My conclusions are set out below.

I understand why Mrs M is upset by the experience she has had when acquiring a car through a finance agreement and then settling this early. For me to uphold this complaint I would need to be satisfied that Hyundai had done something wrong or treated Mrs M unfairly. When making my decision I take all relevant laws, rules and regulations into account, but my decision is based on what I consider to be fair and reasonable given the unique circumstances of the complaint.

Mrs M's finance agreement was provided by Hyundai and most of the discussions before the agreement was entered into were with the car dealer. Under section 56 of the Consumer Credit Act it explains that finance providers are, in certain circumstances, not only liable for what they say but also for what is said by a credit broker or a supplier before the consumer takes out the credit agreement. In this case I find that section 56 is relevant and so Hyundai is liable for its representations as well as those made by the car dealer in the run up to the agreement being signed.

Mrs M visited a car dealer and while she didn't need external finance to buy a car, she was offered a £1,000 dealer contribution towards the car if she bought it using a finance agreement. I have looked at the correspondence with the dealer before the agreement was signed. These set out the costs involved including the £1,000 dealer contribution. Mrs M sought confirmation that if she paid off the agreement immediately after making the first payment due, the £1,000 contribution wouldn't need to be returned and the car would then be free of any credit and interest. The dealer confirmed that Mrs M would not be charged anything extra once the agreement is settled after the first payment. It noted she will need to pay the interest for the first payment but that this will be minimal.

Further emails were exchanged and Mrs M set out her understanding of the agreement that she is entering including that if she settles the agreement soon after its inception that there are no extra charges for fees and that on repayment of the finance and interest accrued to the date of repayment the car will be free from any encumbrance and that the interest will not be charged after the repayment of the finance. It is confirmed to Mrs M that she can settle at any time. Hyundai then provide an example of the costs involved if she were to withdraw from the agreement.

I have considered the correspondence between Mrs M and the dealer and Hyundai to assess whether the cost of the early settlement was misrepresented to her. For there to be a misrepresentation I have to be able to say that there was a false statement of fact and that this was relied on by Mrs M.

In this case, Mrs M didn't withdraw from the agreement and so I cannot say the example provided about that was a misstatement. But I think given the information provided by Mrs M about the timing of when she intended to settle, it wasn't helpful to provide an example of withdrawal costs (as this wasn't relevant) but instead it would have been appropriate to provide an example of the costs involved in the early settlement. This may have identified the costs that are applied as part of the early settlement rules at that time and prevented this complaint arising.

I have considered the other correspondence provided and it is confirmed that no additional charges and fees will be applied. This isn't a misrepresentation as the cost that is being challenged in this case is the additional days of interest.

That said, in other correspondence it is said that there would be no extra charge after the first payment is made and Mrs M will just need to pay the interest for the first payment. I think this suggests that there is only interest charged up to that date. Also, Mrs M made it clear how she understood the settlement cost would be calculated and this was never disputed. In Mrs M's understanding she made it clear she was only expecting interest to be charged for the days she was in the agreement. By not disputing this it could be said there was misrepresentation by omission.

However, even if I accept that there was a misrepresentation of the settlement costs, this doesn't mean that Hyundai would be required to act as if the misrepresentation were true. Instead, I need to consider what would have happened had the misrepresentation not been made. I note that Mrs M could have acquired the car in cash rather than using a finance agreement. But as she was benefitting from a £1,000 dealer contribution by agreeing to the finance and the additional cost incurred due to the early settlement rules was less than £90, I find it more likely than not that had the full information been provided to Mrs M then she would have still gone ahead with the finance agreement.

Because, I have nothing to suggest that Hyundai calculated the early settlement amount incorrectly and it appears to have been calculated in line with the rules, I do not find I can say it did anything wrong by charging the settlement amount it did.

That said, I do not find that Mrs M was provided with the service she should have been. I think the information about the settlement costs was misleading and while I do not find it likely she would have acted differently had the full information been provided, I find that incurring a cost above what she understood to have been agreed would have been upsetting. This has also caused her inconvenience because she has spent time understanding the reason for the additional cost.

So, while I do not find I can uphold this complaint in regard to the settlement amount charged, I do uphold this complaint in regard to the service provided in response to Mrs M's questions about the settlement costs. Because of this I think it reasonable that Hyundai pays Mrs M £100.

Hyundai accepted my provisional decision. Mrs M reiterated that she had repeatedly asked specific questions about the settlement amount and was told there would be no charge for early settlement but then the additional interest was applied. She said that all that needed to happen was for her to be referred to the rules in response to her questions. She didn't accept that Hyundai had done nothing wrong by charging the amount it did and challenged whether all the information had been read.

As both parties have responded to my provisional decision I am now able to issue my final decision.

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 understand that Mrs M isn't happy with my decision, but I can assure her that I have read and considered all of the information provided as part of this complaint. There are regulations which set out the interest calculations for early settlement and based on the information provided I cannot say that Hyundai did anything wrong in its calculations of these or by applying the early settlement rules to Mrs M's agreement.

But, as I set out in my provisional decision, I do not think that Mrs M was provided with the

service she should have when she asked the costs involved with the early settlement. As I have explained given the information provided by Mrs M about the timing of when she intended to settle, it wasn't helpful to provide an example of withdrawal costs (as this wasn't relevant) but instead it would have been appropriate to provide an example of the costs involved in the early settlement and I agree referring to the rules at this point would have been helpful. I also explained that given the information Mrs M set out about her understanding of the settlement costs, by not providing her with the details of how the interest would be charged, it could be said there was misrepresentation by omission.

However, as I have already explained even if I accept that there was a misrepresentation of the settlement costs, this doesn't mean that Hyundai would be required to act as if the misrepresentation were true. And as Mrs M was benefitting from a £1,000 dealer contribution by agreeing to the finance and the additional cost incurred due to the early settlement rules was less than £90, I find it more likely than not that had the full information been provided to Mrs M then she would have still gone ahead with the finance agreement.

So, in this case, I do not find I can say that the early settlement amount was calculated incorrectly but I do find that Mrs M wasn't provided with the service she should have been when she asked questions about the early settlement. Therefore, I am upholding this complaint and require Hyundai to pay Mrs M £100 compensation for the distress and inconvenience this has caused.

Putting things right

Hyundai Capital UK Limited should pay Mrs M £100 for the distress and inconvenience she has been caused.

My final decision

My final decision is that Hyundai Capital UK Limited should take the action set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 February 2024.

Jane Archer
Ombudsman