

The complaint

Miss B complains that Hyundai Capital UK Limited trading as Kia Finance (“Kia”) supplied her with a car that wasn’t of satisfactory quality.

What happened

Miss B acquired a new car using a conditional sale agreement with Kia in October 2022. The agreement said the cash price of the car was £34,843; an advance payment of £8,000 was made; the duration of the agreement was for 37 months, which consisted of 36 regular monthly payments of £336.82, followed by one payment of £18,044.50.

Shortly after acquiring the car, Miss B said the car’s dashboard completely turned off. Miss B said the car then went in for repairs, but the following month, the same issue occurred.

The car was diagnosed in March 2023 and found to require a new cluster assembly. The component was ordered as it wasn’t readily available.

Miss B said she was initially given a like-for-like courtesy car while waiting for repairs, but was later given a second hand, manual car, which she said made it difficult for her to drive as she had a health condition.

After a few months, Miss B complained to Kia in August 2023 due to the length of time it was taking for repairs to be carried out. On 11 August 2023, Miss B contacted the supplying dealership and asked to reject the car and also told Kia the same a few days later.

The car was then repaired on 24 August 2023, and Miss B was asked to collect the car from the supplying dealership.

Kia sent Miss B their final response where they upheld her complaint and offered her £365 as compensation. In summary, they said that the car had been repaired and returned back to Miss B, and they explained they calculated the £365 compensation they offered Miss B by agreeing to refund 20% of Miss B’s normal monthly instalments for the time she was without her car, and had to use a courtesy car. Kia also said the amount would be refunded to the account they had on file for Miss B.

Miss B didn’t feel this was enough as the whole situation caused her a lot of upset and stress. So, she referred her complaint to our service. Miss B said she was left without a car for over a day and at one point was told she was not insured to drive the courtesy car given to her. Miss B said she wanted to reject the car as she has lost faith in it working correctly. Miss B also explained that she continued to pay insurance for the acquired car while she didn’t have use of it.

During our involvement, Miss B explained that the clock on the dashboard began to show an incorrect time and that the car was being sent to the dealership to be investigated in December 2023. In January 2024, Miss B told our service that the car was collected but needed to go back to the dealership later in the month, due to a possible issue with its GPS,

which was why the time was displaying incorrectly on the dashboard. The job sheet for the investigation carried out by the dealership recorded the car's mileage as 3,137.

Our investigator found that Kia needed to do more in this instance to put things right. In summary, he concluded that there was a fault with the car, which was likely present or developing at the point of sale. Our investigator believed the Consumer Rights Act 2015 ("CRA") was relevant to this complaint. He believed the supplying dealership breached the requirement for them to repair the car within a reasonable time without significant inconvenience to Miss B. And as they hadn't repaired the car within a reasonable amount of time, Miss B had the right to reject the car.

In addition to reimbursing 20% of monthly repayments Miss B made without having use of the car, our investigator also directed Kia to pay £300 for the distress and inconvenience caused due to this complaint, and also to:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Miss B.
- Refund Miss B the advance payment made towards the agreement.

Kia disagreed with the investigator's findings. Among other things, they said they believed they had the right to repair the car and offered Miss B a courtesy car for the duration the car needed to be repaired. They also said that Miss B paid a deposit of £7,500 under the agreement, as £500 was a manufacturer contribution.

Miss B believed she paid an advance payment of £8,000 from a part-exchange and wasn't aware £500 of the advance payment was made up from a contribution. Miss B also said in August 2024 that the issue with the clock showing an incorrect time persisted.

As Kia disagreed with the investigator's findings, the complaint was passed to me 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.

Having done so, I'm upholding this complaint and I'll explain why below.

Miss B complains about a car (and the subsequent offer made in relation to it), supplied to her under a conditional sale agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss B's complaint about Kia.

When considering what's fair and reasonable, I take into account relevant law and regulations. The CRA is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Kia here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Miss B acquired was brand new. So, I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.

I firstly need to consider whether there was a fault with the car.

I have seen an email between Miss B and the supplying dealership which explained that the car was diagnosed in March 2023 to have an issue which required it to have a new cluster assembly. So, I'm satisfied there was a fault with the car. I now need to determine whether this fault means the car wasn't of satisfactory quality when it was supplied.

Miss B said the fault first appeared shortly after acquiring the car and within a matter of months. I don't think a reasonable person would expect the issues Miss B's car to have had, in particular to the car's dashboard. So, I'm satisfied the car wasn't of satisfactory quality when it was supplied.

Kia offered and has paid Miss B 20% of monthly instalments she had made towards the agreement during the time she didn't have use of the car. Kia calculated this amount to be £365. So, what I need to consider here is whether the offer Kia made to Miss B was fair and reasonable to put things right, or if it needs to do anything further.

Miss B believes she asked to reject the car while she was waiting for it to be repaired, and before the repairs were carried out. Kia, on the other hand, believe they had the right to repair the car, and now that it has been repaired, they don't believe the car should be rejected.

Section 24(5) of the CRA says:

"A consumer who has... the final right to reject... may only do so in one of these situations..."

(c) the consumer has required the trader to repair... the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer."

I have seen correspondence which shows Miss B did express her right to reject the car in early August 2023, having grown frustrated with how long it was taking for repairs to be completed. I can also see Miss B later expressed her right to reject the car before repairs were carried out to the car on 24 August 2023.

Miss B has explained that the car had been waiting for around five months for the repairs to be carried out, during which she didn't have use of her car. Considering things here, I don't think the car was repaired within a reasonable amount of time. I also think, given Miss B has explained the courtesy car caused issues with her health, the situation caused significant inconvenience. So, it follows that I think Miss B should have been allowed to reject the car when she requested, and I still think it is fair and reasonable that Miss B should be able to do this.

I appreciate Kia's comments here that the car has now been repaired. However, had they acted on Miss B's expression to reject the car when she informed them, then I don't think it would have led to this situation in the first place.

I've also considered the earlier repairs Miss B complained about. We've asked to see job sheets for this, but neither party has been able to provide them. So, I don't know what happened here. But, whether these repairs took place or not wouldn't change my opinion that Miss B had a right to reject the car when she asked. So, I don't need to make any further findings here.

Miss B said that an issue with the dashboard in January 2024 meant that the car needed to go back to the dealership. There's limited information here, but I don't need to make a finding on this matter, as I'm satisfied Miss B can reject the car either way.

Kia paid Miss B 20% of monthly instalments she had made towards the agreement when she didn't have use of the car, which was for around five and a half months.

Miss B was rather given a replacement, second-hand car, which was a manual, and not an automatic as the car she acquired. This caused Miss B issues due to her health. So, I think it is fair to say that the car Miss B was given for most of the time she was waiting for repairs was not a like-for-like replacement for the one she had acquired.

Kia offered Miss B £365 for these issues. I think this is a fair amount, considering the car was brand-new and Miss B didn't have use of it, but was also kept mobile most of the time with a courtesy car.

Miss B has explained that she had to continue paying for insurance towards the car when she didn't have use of it. I don't think it would be fair to Kia to ask them to reimburse Miss B for the insurance costs she's made here. I say this because it is a legal obligation for Miss B to insure the car. And Miss B has benefitted from the protection her insurance policy has brought her from damage or theft of the car while it hadn't been in use. I've also noted that Miss B didn't have to take out any additional insurance for the courtesy car she was given.

I think it must have been frustrating for Miss B to have to deal with the issues the car had. The fault with the car's dashboard meant that Miss B couldn't view any information that would normally appear on the panel during driving. I can see how this might have been distressing and worrying for Miss B. And as the car had to be repaired and there was a lengthy wait for repairs to take place, Miss B didn't have use of her new car she was making payments towards.

Thinking about all of this, I think it would be fair and reasonable for Kia to pay Miss B £300 to reflect the distress and inconvenience she suffered in relation to this complaint.

In summary, I think Kia needs to do more in this instance to put things right.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct Hyundai Capital UK Limited trading as Kia Finance to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Miss B.
- Refund Miss B's advance payment towards the agreement. If any part of this advance payment was made up of funds through a dealer or manufacturer contribution, then Kia is entitled to retain that amount. *
- Reimburse Miss B 20% of repayments made towards the agreement for the five and a half months Miss B didn't have use of her car from March 2023 to August 2023. Kia has calculated this amount to be £365. *
- Pay Miss B £300 to reflect the distress and inconvenience caused.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Kia considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss B how much it's taken off. It should also give Miss B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If Kia has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 31 October 2024.

Ronesh Amin
Ombudsman