

Complaint

Mr S complains that Hyundai Capital UK Limited (trading as “Hyundai Finance”) unfairly entered into a conditional sale agreement with him. He’s said the monthly payments were unaffordable and he struggled to meet the repayments.

Background

In August 2018, Hyundai Finance provided Mr S with finance for a brand-new car. The cash price of the vehicle was £26,143.00. As I understand it, the manufacturer paid Mr S’ deposit of £2,500.00 and he applied for finance to cover the remaining £23,643.00 he needed to complete the purchase. Hyundai Finance accepted his application and entered into a conditional sale agreement with him.

The conditional sale agreement had a term of 49 months, interest, fees and total charges of £3,803.04 and the total amount to be repaid of £27,446.04 (not including Mr S’ deposit) was due to be repaid in 48 monthly instalments of £400.23 followed by a final payment of £8,235.00 which Mr S had to pay if he wished to take ownership of the car at the end. As I understand it, Mr S voluntarily terminated the agreement in November 2020.

In August 2023, Mr S complained that the payments to this conditional sale agreement were unaffordable and so the finance should never have been provided to him. Hyundai Finance looked at the complaint and didn’t uphold it. Hyundai Finance said that the checks it completed before it entered into the agreement confirmed that the finance was affordable and so it was reasonable to lend.

Mr S’ complaint was considered by one of our investigators. She thought that reasonable and proportionate checks ought to have led Hyundai Finance to realise that it shouldn’t have lent to Mr S. So she recommended that Mr S’ complaint should be upheld.

Despite being chased on a number of occasions, Hyundai Finance didn’t respond to our investigator’s assessment. So the complaint was passed to an ombudsman for review as per the next stage of our dispute handling process.

My findings

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr S’ complaint.

Having carefully thought about everything I’ve been provided with, I’m upholding Mr S’ complaint and directing Hyundai Finance to pay him compensation. I’ll explain why in a little more detail.

Hyundai Finance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Hyundai Finance needed to carry out proportionate checks to be able to

understand whether Mr S could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Hyundai Finance carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Were the checks that Hyundai Finance carried out before lending to Mr S reasonable and proportionate?

Hyundai Finance says it agreed to Mr S' application after it completed a number of identity and credit checks in accordance with the regulatory requirements. It says that its credit checks confirmed that Mr S had a good credit score and that he met the threshold for its in-house scoring system.

I've thought about what Hyundai Finance has said. But, in truth, despite having been asked for this information on a number of occasions, Hyundai Finance hasn't been able to provide the specifics of what it learnt about Mr S or the actual data it relied upon to determine that the payments to this agreement were affordable for him. It hasn't even provided us with a copy of the credit check which it carried out on Mr S either. Indeed, it's almost as if it accepts me to accept it as fact that Mr S' agreement was affordable because it says that it was.

But the reality is that I don't actually know what it was that Hyundai Finance relied upon to reach the conclusion that this agreement was affordable for Mr S. In these circumstances, I'm not prepared to accept that the checks carried out were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Hyundai Finance that Mr S was unable to sustainably make the monthly repayments to his conditional sale agreement?

As proportionate checks weren't carried out before Hyundai Finance entered into this agreement with Mr S, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Hyundai Finance that it was unfair to enter into this agreement with Mr S.

Mr S has provided us with evidence of his financial circumstances at the time he applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mr S has provided, it doesn't mean it would've shown up in any checks Hyundai Finance might've carried out.

But in the absence of anything else from Hyundai Finance showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr S' financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Mr S' bank statements and the other information he's provided because I think that Hyundai Finance ought to have obtained this before lending to him.

I've consulted this information because Hyundai Finance hasn't provided anything at all to back up its assertions that the agreement was affordable for Mr S and the bank statements

are not only readily available at this stage, they contain the information I now need to reconstruct the proportionate check Hyundai Finance should have carried out but has not evidenced doing so.

Mr S' bank statements show that he was receiving around £1,300.00 each month from the employer listed on his application. However, it's clear that his normal monthly living costs and existing credit commitments took up pretty much all of his salary. I know that Hyundai Finance has said that it considered Mr S had a good credit history.

However, the evidence I've seen, and in the absence of any information on what Hyundai Finance's credit checks showed, clearly suggests otherwise. Indeed, I can see that Mr S was regularly borrowing from payday and other high-cost lenders in an attempt to try and keep up with his payments.

Given what I've been provided with indicates Mr S was already struggling to meet his existing commitments, I'm satisfied that Mr S simply wasn't in a position to make the monthly payments to this agreement. This especially as he would also incur other reasonable associated running costs for the vehicle such as petrol, tax and insurance.

Hyundai Finance may question why Mr S sought to purchase a brand-new vehicle at the time he did given what he's said about his circumstances and what the information he's provided to support this shows. I'm not wholly unsympathetic to this argument especially as Mr S was already making payments to an existing car finance agreement at this stage.

However, the fact remains that irrespective of the wisdom of Mr S' decision to enter this conditional sale agreement he entered into on the terms that he did and at the time that he did, Hyundai Finance nonetheless needed to take reasonable steps to ascertain his ability to make the monthly payments over the agreement.

I'm satisfied that the available evidence indicates that it is more likely than not that Mr S simply didn't have the funds necessary to make the monthly payments to this agreement, without him borrowing further or it having a significant adverse impact on his financial position. So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted Hyundai Finance to the fact that Mr S wasn't in a position to sustainably make the payments to this agreement.

It therefore follows that I find that Mr S wasn't in a position to take on this commitment, Hyundai Finance shouldn't have lent to him and that it now ought to put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Hyundai Finance and Mr S might have been unfair to Mr S under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Hyundai Finance to do below results in fair compensation for Mr S given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Finally, and for the sake of completeness, I should explain that I've noted that Mr S has also complained about the commission Hyundai Finance paid to his motor dealer. He says that this was not disclosed to him and in breach of the rules and regulations as well as Hyundai Finance's obligations.

However, what I'm directing Hyundai Finance to do to put things right for Mr S effectively places him in the position he would now be in had his conditional sale agreement never

existed. I'm therefore satisfied that this unwinds the impact of any commission that Hyundai Finance might have paid to the motor dealer for introducing Mr S.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't, in any event, make a difference to the overall outcome.

Fair compensation – what Hyundai Finance needs to do to put things right for Mr S

The information I've been provided with indicates that Mr S' finance agreement has already been settled. As this is the case, I'm satisfied that it would be fair and reasonable in all the circumstances of the case for Hyundai Finance to put things right for Mr S by:

- refunding any and all interest, fees and charges he paid as a result of this agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr S to the date of settlement†
- removing any and all adverse information it may have recorded on Mr S' credit file as a result of this agreement.

† HM Revenue & Customs requires Hyundai Finance to take off tax from this interest. Hyundai Finance must give Mr S a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr S' complaint. Hyundai Capital UK Limited should put things right for Mr S in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 November 2024.

Jeshen Narayanan
Ombudsman