

The complaint

Mrs M is unhappy with a conditional sale agreement provided by Hyundai Capital UK Limited trading as Hyundai Finance. She says the interest rate and repayments were raised part way through the agreement.

What happened

Please note Mrs M has been represented on this complaint, but for ease of reading I will only refer to Mrs M here.

In March 2019, Mrs M acquired a used car under a conditional sale agreement provided by Hyundai. The cash price of the car was £19,770. Mrs M made an advance payment of £3,500. She was due to make repayments of £210 a month for 48 months, followed by a final repayment of £8,111.31 if she wanted to keep the car.

The rates on the agreement are listed as an APR of 3.9%, with an interest rate ('IR') of 2%.

Mrs M says she later noticed her monthly payments and interest rate had gone up. She provided a statement of account from February 2021 which lists the IR as 2%. She also provided a statement of account from April 2022, which lists the IR as 2.88%. The repayments can also be seen here as £220.73 a month

Mrs M complained to Hyundai around August 2023. She didn't receive a final response, so she referred the complaint to our service in November 2023.

Mrs M told us she thought Hyundai had breached the contract. She said it should take the car back and return all the money she paid, or it should cancel any further payments and return any payments she made since she complained.

Hyundai explained that due to an error it had not investigated the complaint. It then sent a final response to Mrs M in March 2024. This said, in summary, that the APR had remained the same at 3.9% throughout the agreement. Hyundai didn't send our service any further information at this point.

Our investigator then issued an opinion. He said, in summary, that from the statement of accounts it appeared Mrs M had been overpaying towards the agreement. He said Hyundai should refund any amounts she'd overpaid, ensure she isn't making overpayments going forward and pay her £150 to reflect the distress and inconvenience caused.

Mrs M was unhappy with this. She said Hyundai had 'stolen' thousands of pounds from her and the compensation offered didn't reflect this. She said the contract should be treated as null and void and everything she'd paid should be given back.

Hyundai responded and also disagreed. It explained that Mrs M had taken two payment deferrals due to COVID-19. Hyundai explained a second credit agreement had been put in place as the account had been in arrears for £840 and Mrs M had taken up an offer to reschedule the borrowing.

It provided a copy of a letter that was sent to Mrs M along with a signed modified agreement from April 2021. It said the reschedule “*did not extend the term*”. It said the arrears were added to the balance and divided over the remaining term of the agreement.

Our investigator forwarded this to Mrs M. Mrs M, in summary, pointed out various things she disagreed with in the letter and agreement. And she said she'd never seen these documents before.

Our investigator then issued a second view. He explained he now didn't think the complaint should be upheld. He explained he was satisfied the agreement had been modified to allow the payments due from the COVID-19 payment deferrals to be repaid. He explained that Hyundai were entitled to charge interest on the amount outstanding from the deferral.

Our investigator also explained he thought it was likely Mrs M had signed and agreed to the terms of the refinance.

Mrs M disagreed. In summary, she said the evidence Hyundai provided had been falsified.

As Mrs M disagreed, the complaint was passed to me to decide.

I sent Mrs M a provisional decision on 27 June 2024. My findings from this decision were as follows:

I should start by saying to both parties that I might not address every individual point raised. Where I haven't commented on something, this doesn't mean I haven't thought about it nor that I consider it unimportant. I want to reassure everyone that I've carefully considered all of the information on the case and everything Mrs M has said. But, I'm going to focus on what I think are the key facts and the crux of the complaint. This approach reflects the informal nature of our service.

Mrs M complains about a conditional sale agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider her complaint against Hyundai.

I think the key thing I need to consider in this case is whether the terms and/or interest rate of the agreement changed without Mrs M being made aware.

I've firstly looked at the second agreement that Hyundai said started in May 2021. This stated the APR was 3.9%, and the IR was 2.88%. It explained Mrs M was due to pay 43 repayments of £220.73, followed by a balloon payment of £6,693.75 if she wanted to keep the car.

Hyundai also provided a letter titled “Variation to your agreement” from the time. This said:

“You have advised that you would like to now vary the term of your Agreement, in order that you can meet your commitments and the future payments.”

This letter also set out the monthly repayments and new term. It asks Mrs M to carefully read the agreement and to sign and send it back if she was happy. It also explains:

“Rescheduling your agreement will not have a negative impact on your credit file but will incur additional interest”.

Thinking about all of this, I think it was made clear to Mrs M what the terms of the second agreement were. I think she'd have understood the interest being charged and the

repayments that were due. And I'm satisfied this explains the change of repayments and interest rate in the statement of accounts that Mrs M provided.

From what's been said, I think there may be some confusion on Mrs M's part about the APR and the IR. It might be helpful to explain, briefly, that these are two different things.

The APR can generally be seen as the overall cost of borrowing, and contains any associated fees and charges for the lending and is affected by, amongst other things, the term of the agreement. In general terms, taking borrowing over a longer period will increase the APR, while a shorter period will lower it.

Hyundai have explained that the APR didn't change between the agreements – which I'm satisfied is correct. I say this as it is listed both on the first and second agreements as 3.9%.

But, the IR does change slightly on the agreements from 2% to 2.88%. This could also be seen on the statement of accounts that Mrs M provided us with. But, these statements don't show the APR – and if they did I'm satisfied this would have shown this stayed the same across the period.

It's important to note here that while Hyundai said the term of the borrowing didn't change between the first and second agreements, I can't see this was the case. The original agreement was for 49 months, from March 2019. The second agreement was for 44 months, from May 2021. So, both the length of time the borrowing was repaid over and the point at which it would've been repaid changed when Mrs M took the second agreement.

While I haven't been provided with a specific explanation here, given the term of the second agreement is different to that of the first, along with other changes made to the amount, balloon payment size etc., I'm not surprised to see the IR change slightly to keep the APR at the same rate between the two agreements.

Whatever the reasoning here, the key points are that I'm satisfied the APR didn't change between the two agreements. And setting this aside, either way, I'm satisfied as I explained above that Mrs M would've been aware of the specific rates of interest and the amounts charged on both agreements.

I have considered that Mrs M said she never saw the second agreement nor letter. But I can see the agreement contains an electronic signature and is dated. I've very carefully thought about this. But I haven't seen enough to persuade me Mrs M didn't have sight of these documents.

I've very carefully thought about all of the other points Mrs M made here. But, I still think it's likely she saw and agreed to the terms of the second agreement and that the key information would've been clear to her.

Finally, I will say that I can understand Mrs M's frustration with Hyundai's explanation of what happened here, and with the time it took to get an answer from it. But I can't make any award based solely on how Hyundai handled the complaint.

I gave both parties two weeks to come back with any further information or evidence.

Hyundai didn't respond.

Mrs M responded and said, in summary, that the contract said no further interest could be applied, that Hyundai had said no further interest would be added due to the payment deferrals, that the interest was very high, and that she didn't see nor sign the second

agreement and it was “*full of errors*” and contained illegal clauses.

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’ve carefully considered what Mrs M said in response to my provisional decision. But, it’s important to note that there were two agreements here – the terms of the second agreement were different to the first. And I’m satisfied Mrs M would’ve understood from the second agreement what these terms and the interest applied was.

I’ve also thought again about the fact Mrs M said she didn’t see the second agreement. While I understand the difficulty of providing evidence here, on the balance of probabilities I still think it’s most likely she saw and electronically signed this document at the time and so agreed to the new terms.

Having thought about everything again, along with everything else Mrs M said in response to my provisional decision, I still think this complaint should not be upheld.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 20 August 2024.

John Bower
Ombudsman