

The complaint

Miss M complains that Hyundai Capital UK Limited trading as Hyundai Finance (HCUK) supplied her with a faulty car.

What happened

Miss M entered into a conditional sale agreement with HCUK in October 2023. Miss M was supplied with a new car with a cash price of £35,247.50. Miss M made an advance payment of £10,000 and took credit for £25,247.50, the cost for the credit was £5,026.58. The term of the agreement was 48 months and Miss M was due to make 48 monthly repayments of £630.71.

Within days of collecting the car, Miss M contacted the dealer to raise issues about the traction of the car and the car surging back and forth while in cruise control. Miss M also raised concerns about the collision warning light turning on. Further, when Miss M took the car in for the first service, she also raised concerns about the seat belt alarm going off despite the seat belt being fastened.

There's an email Miss M sent to the dealer on 2 November 2023 that references the car being taken into the workshop and a test drive being carried out. Following the test drive of the car, Miss M continued to experience the same problems with the car.

Miss M made other visits to the dealer, and I can see she was sending emails to the dealer regularly about the issues she was having with the car. After several visits and inspections by the dealer it said it couldn't find a fault with the car. However, Miss M says she continued experiencing the same problems.

Miss M complained to HCUK, and it arranged for an independent report to be carried out on the car. The independent report reached a few conclusions, one of which was that the faults with the car weren't present or developing at the time of sale. HCUK based its response to Miss M's complaint on this report and didn't uphold her complaint.

Unhappy with HCUK's response, Miss M referred her complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator acknowledged the independent report but was concerned about the fact that some of the independent inspection's findings agreed with the faults Miss M had been reporting. As the issues were reported within days of the car being collected, she thought it was more likely than not that the fault was present at the time of sale. Our investigator thought HCUK had an opportunity to repair the car but as the repair failed to resolve the issue, she recommended that Miss M should be able to reject the car and for her to be paid some compensation for the trouble and upset caused.

Miss M agreed with the investigator's recommendation, but HCUK didn't. It said the independent report found that the issues weren't present at the time of sale, Miss M had the car for ten months and the garage had been unable to replicate her concerns. HCUK suggests that the faults Miss M is experiencing is due to her driving style.

As the complaint hasn't been resolved, it has been passed to me an ombudsman 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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss M was supplied with a car under a regulated consumer credit agreement which means we're able to look into complaints about it.

I've made my decision having fully considered the information provided by both parties. I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it, it is because I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

Miss M's complaint is that the car is faulty and wasn't of satisfactory quality when it was supplied.

So, what I need to decide here is whether the car supplied to Miss M was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right. The Consumer Rights Act 2015 ("CRA") covers the agreement in this case and under this agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Miss M acquired was brand new. Bearing this in mind, I don't think a reasonable person would expect the car to have any problems for a reasonable amount of time and I think they would have high expectations for the quality of the car.

Was the car supplied to Miss M faulty?

There's information from the inspections carried out at the garage that shows there are concerns raised about the car by Miss M. The car appeared to have been test driven in October 2023 and I can see a job sheet from November 2023 where the garage inspected the car and concluded it was unable to replicate Miss M's concerns and having carried out diagnostics on the car, it says there were no faults found. Miss M did raise concerns with the seat belt alarm, and I can see this was investigated and the job sheet shows it was working as expected following tests. I'm mindful Miss M has said she suspects this hasn't been properly inspected and she explains the alarm goes off under specific conditions – when there's a passenger sat in the seat.

There's also an independent report in this case, I've also considered what that report says and from what I can see, the report notes there was an issue with the collision sensor warning turning on and that the car surged back and forth while on cruise control. This independent report concludes that the car wasn't fault free and there were issues that needed to be addressed. Miss M has continued to report that she's still experiencing issues with the car.

Based on this independent report which I think has more weight, I'm satisfied there's a fault with the car.

I now need to think about whether the faults make the car of unsatisfactory quality.

Do the faults with the car make it of unsatisfactory quality?

Miss M first reported concerns to the garage within days of collecting the car. I can see there was communication with the dealer around 30 October 2023 about the issues she was experiencing and her need for these to be investigated, there was ongoing communication with the dealer about the issues. I appreciate she raised a formal complaint with HCUK in August 2024, but she'd had been reporting problems with the car for several months before that. So, she wasn't using the car for the until August 2024 without concerns.

While the job sheets from the garage shows they were unable to replicate the faults and there were no fault codes stored. The independent report concluded that the faults it found weren't present at the time of supply. Miss M has said the fault is intermittent and that may explain why it hasn't been possible to replicate it by the dealer garage.

Overall, I'm not persuaded by HCUK's argument. Miss M has reported problems with the traction several times and has described in detail how the traction affects the drive of the car including how the issues are heightened in wet conditions. Miss M also raised concerns about the car surging back and forth while on cruise control and the issue of the collision warning.

I've listed three concerns Miss M raised but I'm also mindful she raised issues with the seat belt as well. Of the three issues I've mentioned above, the independent report found two of those to be present during its inspection, which took place around ten months after Miss M first raised concerns. In my opinion, as Miss M has been consistent about her concerns and some of the faults, she has been reporting were present at the time of an independent report, I think these faults have been present or developing from the time of supply.

Miss M was supplied a new car, and she should reasonably have expected a car that had no issues for a reasonable amount of time but that hasn't been the case here. The issues arose very quickly after supply, and I think HCUK has the onus to demonstrate that the faults weren't present or developing at the point of sale. I don't think it has done that sufficiently here, especially as the independent report found some of the faults Miss M has been complaining about.

HCUK has said the faults Miss M is experiencing is as a result of her driving style, but it doesn't explain why it thinks this is the case. Miss M had the chance to drive a courtesy car which is similar to the one under the agreement and has described how that car drives differently to the one supplied under the agreement. I think if it was an issue with Miss M's driving style, she'd likely have experienced similar issues with the courtesy car but that hasn't been the case.

Since the complaint has been with this service, Miss M has confirmed she is still experiencing similar issues even though the car was recently taken to the garage for further inspection. She has also sent recent screenshots of the dashboard of the car which shows there was an engine management system malfunction.

To summarise, the car is a new car, Miss M started reporting issues with the car within days, the independent report confirms some of the faults Miss M reported are still present and those need to be addressed.

Taking all these into account, I'm satisfied there is a fault with the car which was present or developing at the point of sale. I'm also satisfied that the fault makes the car of unsatisfactory quality and HCUK needs to put things right for Miss M.

What do HCUK need to do to put things right?

HCUK has had an opportunity to repair the faults with the car, but these repairs have failed to free the car from concerns and as it has one opportunity under CRA to repair the car, I think Miss M is within her right to reject the car and end the agreement with nothing further to pay.

The issues with the car have caused Miss M stress and concern, including being concerned for her safety and that of passengers in the car. Miss M has spent a lot of time visiting the garage and sending emails to try to resolve the issues. I'm mindful that these have had an impact on Miss M, and she should be compensated for the trouble and upset caused her and I think £300 is a fair amount here.

Putting things right – what HCUK needs to do.

- End the agreement with nothing further to pay.
- Collect the car without further costs to Miss M.
- Refund the deposit of £10,000 paid by Miss M towards the agreement*.
- Add 8% simple interest† on any refunds from the date the payments were made to the date of settlement.
- Pay Miss M compensation of £300 for the trouble and upset caused.
- Remove any adverse information it has recorded about the agreement from Miss M's credit file.

† HM Revenue & Customs requires HCUK to take off tax from this interest. HCUK must give Miss M a certificate showing how much tax it has taken off if she asks for one.

* If any of this deposit includes a contribution from the dealership, manufacturer or HCUK, this amount can be deducted from the amount refunded to Miss M.

My final decision

For the reasons given above, I uphold Miss M's complaint and direct Hyundai Capital UK Limited trading as Hyundai Finance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 March 2025.

Oyetola Oduola
Ombudsman