

## **The complaint**

Mr N is unhappy that a car supplied to him under a conditional sale agreement with Hyundai Capital UK Limited trading as Kia Finance (Hyundai) was of an unsatisfactory quality.

## **What happened**

In April 2024 Mr N was supplied with a used car through a conditional sale agreement with Hyundai. He paid an advance payment of £1,000 and the agreement was for £28,128 over 60 months; with 60 monthly payments of £452. At the time of supply, the car was around three years old, and had done 25,748 miles.

Mr N complains that within two days of acquiring the car he found it had significant faults. He said that the dealer inspected the car but found no faults. He said he complained to Hyundai who arranged for an independent inspection. He said the engineer, wrongly, found no faults.

He said he continued to have problems with the car, and took it back to the supplying dealer in July 2024. He said that after having the car for two weeks, the dealer acknowledged the car had two major faults: a gearbox problem and the engine was losing power. He said the dealer told him it would repair the car.

Mr N provided a report he was given by the supplying dealer. It had inspected the car in July 2024 (mileage 27,333). It confirmed the oil light was on and said it found sand in the sump, and wire wool in the timing chain, when stripping the engine.

He said he wants to reject the car as he reported the faults within the first 30 days of acquiring it. He said his concerns have been dismissed causing him stress and financial strain.

Hyundai said that Mr N had reported a fault with the gearbox in May 2024. They said they didn't uphold the complaint because an independent inspection in June 2024 had been unable to replicate the fault.

Mr N was unhappy with this response, so he referred his complaint to our for investigation.

Our investigator said she was satisfied there was a fault with the car. She was also satisfied the fault was caused by the wire wool and the sand in the sump, and she felt it extremely likely the fault was present or developing at the point of sale.

Hyundai didn't agree with the investigator. They said the dealer suggested Mr N had sabotaged the car so that he could return it as he didn't like it. Our investigator replied stating her view it wasn't fair or reasonable to assume that Mr N had put the sand and wire wool in the engine.

Because Hyundai didn't agree, this matter has been passed to me to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete, as it is in this case, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Mr N was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr N entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr N took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Hyundai to put this right.

It's not disputed there is a fault with the car. The supplying dealer has confirmed that the engine has been contaminated with sand and wire wool. It appears that this is the cause of the faults Mr N complained about.

Mr N has complained about these faults since he acquired the car. He said he took the car back to the dealer within the first two days to complain about the noises from the engine. He has been consistent in his testimony since then, and has provided video recordings of the noise from the engine.

Hyundai rely on the supplying dealer's testimony that Mr N intentionally sabotaged the car. It said he did this after it told him it would only accept the return of the car if there was something wrong with it.

This a serious allegation, and one I have carefully considered. I have no way of knowing who would have put the wire wool and sand into the engine. I asked Hyundai for a copy of the call in which it's claimed Mr N said he didn't like the car, but this has not been provided. And I have seen no evidence that the alleged sabotage was done by Mr N.

I'm more persuaded by Mr N's testimony. He's complained about the noise consistently since he acquired the car. His first complaint was raised within the first two days – and this observation is supported by a statement from a friend of his who was with him at the time. He's given the same explanation of the fault consistently. I don't think a reasonable person would take such drastic steps just because he'd changed his mind and didn't like the car.

I accept that the independent inspection failed to replicate the fault. But we know that the noise wasn't constant, so it's not unusual to find that the fault couldn't be replicated. We now know there is a fault and its cause was the wire wool and sand in the engine. I agree with our investigator that it's likely that the debris was being pushed around the engine, and so wasn't restricting the oil flow at the time of the inspection. This is supported by the comments from the independent engineer who states that "*an extended road test may confirm the issues*".

I'm satisfied there is a fault with the car – that is the wire wool and sand in the engine that causes the unusual noise. I'm not persuaded that this fault occurred due to any action taken by Mr N. So I'm satisfied based on the limited evidence available that this fault was more likely than not to have been present or developing at the time of sale.

As I'm persuaded that Mr N reported the fault within the first 30 days, he does have a right to reject the car. So Hyundai should allow him to do that.

### **Putting things right**

The car has been off the road and undrivable since July 2024, and Mr N wasn't supplied with a courtesy car during this period. As such, he was paying for goods he was unable to use, and had to pay for other means of transportation. Given the nature of the fault, I think it was reasonable that he stopped using the car to prevent further damage. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Hyundai failed to keep Mr N mobile; I'm satisfied they should refund the payments he made since July 2024.

Mr N was initially able to use the car. However, given the issues he had with the car losing power I'm also satisfied that his usage and enjoyment of the car was impaired. Because of this, I also think it's fair that Hyundai refund some of the payments Mr N made. And I think 25% of the payments made from April 2024 to June 2024 fairly reflects the impaired use caused by the car not being of a satisfactory quality.

It's clear that Mr N has been inconvenienced by having to arrange for other means of transportation whilst he was unable to use the car. Mr N would not have to do this had Hyundai supplied him with a car that was of a satisfactory quality. He's also described the stress he's suffered during this period. So, I think Hyundai should pay him £300 in compensation to reflect the distress and inconvenience caused.

Therefore, Hyundai should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr N (if they have not already done so);
- remove any adverse entries relating to this agreement from customer's credit file;
- refund the £1,000 deposit Mr N paid (if any part of this deposit is made up of funds paid through a dealer contribution, Hyundai is entitled to retain that proportion of the deposit);
- refund the monthly payments made from July 2024;
- refund 25% of the monthly payments for April 2024 to June 2024 to reflect the impaired usage;

- apply 8% simple yearly interest on all the refunds described above, calculated from the date Mr N made the payment to the date of the refund<sup>†</sup>; and
- pay Mr N an additional £300 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If Hyundai considers that tax should be deducted from the interest element of my award, they should provide Mr N with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

### **My final decision**

For the reasons explained, I uphold Mr N's complaint about Hyundai Capital UK Limited trading as Kia Finance and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 June 2025.

Gordon Ramsay  
**Ombudsman**