

complaint

Mr W complains that Hyundai Capital UK Limited trading as Hyundai Finance (HF) failed to set up a direct debit for his payments towards a conditional sale agreement.

background

The background to this complaint was set out in my provisional decision dated 28 February 2020. My provisional decision is attached below and forms part of my final decision.

HF didn't respond to my provisional decision.

Mr W responded to say he thought my provisional decision was biased and he didn't accept it. He said that HF hadn't kept accurate records of phone calls and I'd ignored this. He also thought I'd ignored the fact that HF uses an auto dialler meaning it could potentially call a customer hundreds of times a day without leaving any record.

my findings

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 still think the complaint should be upheld as set out in my provisional decision.

I agree HF should have handled things differently. If it had taken the appropriate action upon receipt of Mr W's amended direct debit form then there wouldn't have been any issue with the payments being collected. I think the complaint should be upheld and Mr W paid reasonable compensation for the distress and inconvenience he incurred as a result.

If HF hadn't made a mistake, then all Mr W's payments towards the account would have been collected and this would have been reflected on his credit file. So, HF needs to amend his credit file accordingly, to ensure he's not been adversely impacted by its mistake. But, I also think it's reasonable for HF to ask Mr W to make up the payment that was missed.

HF has an obligation to record accurate information on Mr W's credit report. If he doesn't make the payment or agree a repayment arrangement with HF then I think it's fair for this to be recorded as an arrears on the account. I think three months is a reasonable time period to allow Mr W to bring the account up to date. If Mr W brings the account up to date within this period, then I think any reference to the account being in arrears should be removed from Mr W's credit file.

As I explained in my provisional decision, HF does use an auto-dialler and it has confirmed that it only makes a note of calls if there has been some contact with the customer. I.e. the call has been answered or a voicemail left. I haven't seen anything to suggest HF called Mr W hundreds of times a day and he hasn't previously said this was the case.

HF has confirmed that the maximum calls per day made by the system could be ten but, in most instances, no more than three attempts would be made per day - and this would only happen if the call wasn't answered or directed to voicemail. I think it would be better if HF could show exactly when it called Mr W, but from what I've seen I don't agree with Mr W that the number of attempts were unreasonable.

I think it was reasonable for HF to make attempts to get in contact with Mr W – there was an issue on his account which meant the payments hadn't been collected and this needed to be rectified. I fully appreciate Mr W's point that the issue was caused by HF's mistake. But I don't think that should mean Mr W isn't required to make-up the missed payment. And I don't think HF treated Mr W unfairly in attempting to contact him to make this payment.

I do think that by not setting the direct debit up correctly when it should have HF caused Mr W some inconvenience and he was understandably concerned about the impact of the mistake on his credit file. But I think £100 compensation is enough to put this right. So, I'm not asking HF to pay any more compensation.

my final decision

I uphold this complaint. To put things right Hyundai Capital UK Limited trading as Hyundai Finance should:

- refund the late payment fee Mr W has paid + interest at 8% simple per year from the date of payment to the date of settlement
- amend his credit file so no adverse information is registered for the three months detailed above
- remove any reference to the account being in arrears from Mr W's credit file if the account is brought up to date within three months of my final decision
- pay £100 compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to Mr W to accept or reject my decision before 3 May 2020.

Christopher Bick
ombudsman

My provisional decision

complaint

Mr W complains that Hyundai Capital UK Limited t/as Hyundai Finance (HF) failed to set up a direct debit for his payments towards a conditional sale agreement.

background

Mr W has a conditional sale agreement with HF. Under the agreement he's required to pay £149.95 per month. Mr W contacted HF on 13 August 2018 to explain that he would like to change the account his payments were taken from. The advisor explained

Mr W would need to submit a new direct debit form and confirmed the email address he would need to send it to. Mr W couldn't note this down at the time of the call, but the advisor also explained that the email address could be found on HF's website.

Mr W sent a copy of the form to HF on 17 August 2018. But he sent it to a different email address than he'd been advised to. The address was used by another department of HF.

Mr W received an acknowledgement on 21 August 2018 asking him to confirm some details so the new direct debit could be set up. He responded the same day.

On 29 August 2018 HF wrote to Mr W to explain his old direct debit had been cancelled and he would need to get in touch to ensure payments were made towards the account. Mr W got in contact with HF and explained that he'd already sent a new direct debit mandate. After confirming the email address he'd used, Mr W was told that it wasn't the correct address and he would need to resend it. Mr W said he sent the direct debit mandate to the email address he'd been advised to in the previous phone call. He said HF should retrieve the form, it had breached his data by losing it and he wasn't willing to provide another form until HF could explain what had happened.

A complaint was logged and HF attempted to call Mr W back on 30 August 2018. The manager couldn't get through and left Mr W a voicemail. Later, because the direct debit wasn't set up correctly, Mr W's September and October payments towards the agreement weren't collected.

HF issued a final response on 8 October 2018. It explained that HF could have retrieved the direct debit mandate from the email address Mr W sent the form to. It confirmed the direct debit was now set up and the late fee applied in September 2018 would be refunded.

HF's final response letter was sent around the same time that month's payment should have been collected and another late payment fee was applied in October 2018. This fee wasn't refunded and Mr W paid it when he made a payment of £334.90 (two monthly payments and the late fee) on 5 November 2018.

Although HF had confirmed that the direct debit would be set up, the November 2018 payment wasn't collected by direct debit either. HF continued to contact Mr W to chase the payment, but couldn't reach him.

Unhappy with how HF had dealt with the matter Mr W referred his complaint to this service. The investigator who looked at the complaint concluded that HF had done enough to put things right so didn't recommend it do anything else. HF accepted this, but Mr W didn't, so the case has been referred to me to decide.

After my initial review of the complaint I let both sides know that I thought HF had done something wrong and needed to do more to put things right, I explained:

"I don't think the adviser in the original call provided Mr W incorrect information about what email address to use. But the email address he used was for the arrears management department. Mr W received acknowledgement from that department and a request to confirm the vehicle registration on 21 August 2018 which he responded to the same day."

So I thought HF could have set up the direct debit in time to take the payments in September, October and November - but didn't. This was acknowledged in the final response when HF agreed that the late payment fee applied to the account would be refunded.

I could see one late payment fee had been refunded but the final response was issued on 8 October 2018. The 6 October 2018 direct debit had also not been collected, so another payment had been missed - meaning a further late payment was applied. This has been paid by Mr W but I thought it should also be refunded with interest. And his credit file should be updated to show no late payments for the three missed payments. I also recommended HF pay Mr W £100 compensation for the trouble and upset caused.

HF accepted this but Mr W didn't. Mr W has provided a number of points in response, in summary he said:

- HF deliberately didn't set the direct debit up when it should have. And then acted fraudulently in applying the direct debit mandate and taking payment in December and hasn't explained why there was a delay in it being set up.*
- HF hadn't made him aware that a late payment fee had been applied in October.*
- HF hadn't made him aware that the November payment had been missed and that a late payment fee had been applied as a result.*
- he shouldn't be required to make the November 2018 payment that was missed*
- his credit file is still showing in arrears*
- £100 wasn't sufficient compensation for the hassle and aggravation this has caused*
- making the payment in November caused him financial hardship – the direct debits were due to be paid from his wife's bank account and he had to make a credit card payment to cover the missed payments from September and October.*
- HF had harassed him chasing for payments which hadn't been made and called him 5 or 6 times a day.*

Because Mr W didn't accept HF's offer I'm required to issue a decision on the complaint.

my provisional findings

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 satisfied that the complaint should be upheld and I've explained why in more detail below.

HF had sufficient information to set the direct debit up in time to take all of Mr W's payments that were missed but it didn't. It acknowledged that part of the reason for the delay was human error, because the adviser Mr W spoke to in August hadn't retrieved the form from the collections department. Mr W has said the adviser told him this would be set up in October 2018 and so it should have been in place to collect his November 2018 payment but wasn't. The direct debit was set up so HF could successfully collect the direct debit in December 2018.

I don't agree with Mr W's assertion that HF shouldn't have collected the payment in December 2018 or that to do so was fraudulent. Mr W hadn't told HF not to accept the direct debit mandate or to not collect payments and to not to do so would have caused further arrears on Mr W's account. So, I think it acted reasonably in taking the December 2018 payment.

Mr W also paid a late payment fee which was applied to the account in October. This should be refunded with interest at 8% simple per annum.

But the November payment that Mr W missed was something he was also always required to pay and I don't think HF should be required to waive it because of the mistake it made. HF should allow Mr W a reasonable period to make up the missed payment, I think three months would be fair.

I don't think it would be fair for any missed payments to be recorded on Mr W's credit file when HF had the necessary information to set up the direct debit but didn't. So it should amend his credit file to show no missed payments in September and October 2018. And if the November payment is made within 3 months HF should also amend Mr W's credit file to show this payment wasn't missed.

Because Mr W hasn't yet made the payment HF is currently recording his account as being in arrears. This is an accurate reflection of the account status so I don't think HF has made a mistake in doing this. But because this stems from HF's original mistake I think that it should amend Mr W's credit file to remove any reference to this arrears once the account has been brought up to date as per my finding above. But if Mr W doesn't bring the account up to date then HF would be entitled to continue to record the account as being in arrears and take action to recover the outstanding amount as per the terms and conditions of the agreement.

I've also thought about the reasons Mr W has provided to justify HF paying him more compensation.

was it reasonable for HF to contact Mr W as regularly as it did?

Mr W has said he received at least two or three calls most days with five or six on others. I've asked him to provide evidence of this such as a phone bill but this hasn't been submitted. HF has said that it does use an auto-dialler and these calls aren't noted on its systems as notes are only left when contact is made ie the call has been answered or a voicemail left.

HF has provided its contact notes which show there were a number of calls made to Mr W to chase him for the outstanding payments in November and December. The notes show there were six calls in November and another nine in December and a voicemail left for each.

I haven't seen anything which suggests Mr W had got in contact with HF following these calls or made any attempt to address the arrears on the account. And he has explained he chose not to call HF back.

While I appreciate the November payment should have been collected by direct debit, it wasn't. I think it was reasonable for HF to try and collect this payment and I don't think its attempts to contact Mr W should be considered harassment. Had Mr W got in touch with HF to make the payment which was due, or to explain why he couldn't make the payment, then I think HF wouldn't have called him as much as it did. And I haven't seen anything to suggest it called him at unreasonable times or HF continued to call Mr W after he asked it not to. So, I don't think it was unreasonable for HF to try and contact Mr W as much as it did.

did HF let Mr W know a late fee had been applied in October and that the November payment hadn't been made?

A late payment fee was applied in October which HF has agreed to refund. I can see from the account notes that a letter was sent to Mr W on 13 October 2018 to advise him of this.

Mr W has said HF hasn't met its regulatory obligations because it didn't let him know November's payment had been missed. He's referred to the Consumer Credit Sourcebook (CONC) 7.19.4 which says:

"Where a default sum becomes payable under a P2P agreement by the borrower, the firm must give notice to the borrower

The rule Mr W has referred to relates to peer-to-peer lending which is a different type of lending to Mr W's conditional sale agreement. But I've considered all relevant legislation which applies to Mr W's agreement with HF including CONC, when deciding what a fair outcome to the complaint is.

When default sums were applied the system notes provided by HF suggest letters were sent and it's also provided copies of those letters. As detailed above, HF made a number of attempts to contact Mr W to collect November's payment and left him a number of voicemails. But its system notes also suggest it sent him a letter on 25 November 2018 as well as text messages on 5 and 15 December 2018 advising him of the arrears on the account.

Mr W has said these letters and text messages were not received. And has referred to CONC 7.9.7 R which requires:

"a firm to ensure that:

- 1. (1) post sent by the firm is properly addressed to the customer and marked "private and confidential" or an expression to the same effect;"*

I can see HF's notes say they were sent and the letters were correctly addressed with the same address we hold for Mr W. I can't say for sure the letters were sent and I'm not disputing that Mr W didn't receive them. But based on the evidence I have seen, I'm satisfied HF did enough to make Mr W aware the payment hadn't been collected and still needed to be paid.

In response to the adjudicator HF said it could have applied a late payment fee in November 2018 as the payment wasn't made on time. But it hadn't actually applied a late payment fee in November 2018 and it has agreed to refund the late payment that was applied in October 2018. Meaning Mr W will not incur any late payment fees as a result of this issue. I think this is fair.

did HF cause Mr W's financial hardship?

Mr W has said making the payment in November caused him financial hardship. He's also referred to CONC 7.3.10 which says:

A firm must not pressurise a customer:

- 1.(1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;*

Mr W's said that he was threatened with his car being repossessed if he didn't clear the arrears in full. He also explained that because the direct debit payments were due to be debited from his wife's bank account he had already transferred the funds from his account to cover those payments. I haven't seen account statements to confirm this happened. But it doesn't change my mind about what fair compensation is in any event.

Mr W has said that having to make a double payment in November 2018 was sudden and unexpected and put him in financial difficulty because he'd just paid for a holiday. But Mr W was aware that the direct debit hadn't been set up before the September or October payments were due to be collected. He could have taken steps to ensure the payments were made on time but didn't. So, I think he could have mitigated any loss here and I don't think the payments being required was sudden or unexpected.

The funds hadn't been taken from his wife's account and were still available for Mr W to use - whether that be to pay HF or to pay towards his credit card once he'd paid HF. So, I don't think he was financially worse off as a result of HF's error.

The only additional fee Mr W incurred was the late payment fee of £35. The November 2018 payment of £149.95 wasn't taken and the payment was made on 5 November 2018. So, Mr W had actually paid less at that point than he would have had the direct debit been set up correctly from the outset. So I don't think HF is responsible for any financial hardship Mr W was caused.

I've also reviewed the letters Mr W was sent regarding the arrears. I don't think that HF put any undue pressure on Mr W to make the payment and clear the arrears but rather explained the consequences of being in arrears. So I don't think HF treated Mr W unfairly in this regard.

If Mr W would like the compensation I've awarded to be paid towards the account arrears he can request HF does this. And if Mr W feels he can't afford to clear the arrears he should contact HF to discuss directly to discuss this and how any payment arrangement will be recorded on his credit file.

Mr W has recently explained he thinks his wife was hospitalised a result of the stress caused by HF. I'm very sorry to hear that Mrs W wasn't well but I haven't seen anything to suggest HF should be held responsible for her ill health. So I'm not asking HF to do anything in this regard.

how much compensation should HF pay Mr W?

I think Mr W should receive compensation for the trouble and upset he was caused by HF not setting the direct debit up when it should have and applying a late payment fee unfairly. But I think £100 is sufficient compensation to make up for the upset caused by its mistakes. So I'm not asking it to pay any more.

Mr W has also raised concerns about more recent telephone calls he's received from HF. I've not considered those telephone calls as part of my review. If Mr W is unhappy with the response he receives from HF regarding these calls in case ask this service to investigate the issue as a new complaint.

my provisional decision

Subject to any further evidence I receive I'm minded to uphold this complaint. To put things right Hyundai Capital UK Limited t/as Hyundai Finance should:

- refund the late payment fee Mr W has paid + interest at 8% simple per year from the date of payment to the date of settlement*
- amend his credit file so no adverse information is registered for the three months detailed above*
- remove any reference to the account being in arrears from Mr W's credit file if the account is brought up to date within three months of my final decision*
- pay £100 compensation for the trouble and upset caused.*