

complaint

Miss F complains about the quality of a car she acquired under a conditional sale agreement with Hyundai Capital UK Limited.

background

I set out the background to Mr G's complaint in my provisional decision. I'll repeat it here, in summary, so all the relevant information is in one place.

Miss F entered into a conditional sale agreement with Hyundai on 7 March 2016 to acquire a car. It was 18 months old and had a mileage of 3,811. Five weeks later, the brakes failed which caused a collision with two other cars. The car was inspected by an independent inspector. The report did not find brake failure, but said thermal readings provided a spongy effect from the brake. This needed further investigation. The imbalance could have caused brake failure.

The inspector considered there had been no replacement brake fluid change in the car's last service before it was supplied to Miss F. The brake fluid testing provided uneven readings, although the readings were within specification. Replacement brake fluid is required.

The inspector considered that the brake master cylinder and brake servo should be replaced. The car should not be driven until further tests are carried out on the car.

A defective steering component was also present. The inspector considered this was present at the point of sale.

Miss F complained to Hyundai. It did not uphold her complaint. Hyundai said the thermal readings of the braking system show they are operating within the manufacturer's guidelines. The supplying dealership carried out tests on the thermal readings of the braking system of a demonstration car. The readings were passed to the manufacturer. It said the readings were very close and within manufacturer's guidelines.

Miss F was not happy with this response and brought a complaint to us to consider. She would like to be able to reject the car as it was not fit for purpose at the point of sale.

The investigator considered that the independent report did not identify a mechanical fault that would lead to brake failure. All the components of the brake are satisfactory.

However the investigator noted that the brakes feel spongy when the car is driven. As such, further investigation is required.

The investigator noted that brake fluid is changed after 24 months. The report said the brake fluid was within guideline. As the fluid was within acceptable levels, and also within the period before it was due a change, it is reasonable that it wasn't changed.

The investigator considered the steering wheel fault needs to be addressed by Hyundai. Miss F should not be allowed to reject the car until Hyundai has had a chance to repair the faults with the car.

The investigator considered that Hyundai should carry out an independent investigation into the brakes. If this finds there to be a fault, it should carry out the repairs. Hyundai should also carry out repairs on the steering wheel component.

Miss F was not happy to accept the investigator's recommendation. She says, in summary, that the expert report says the brakes were not working properly. The imbalance is likely to have caused the crash. A court accepted that Miss F was driving with due care and attention. The accident was caused by faulty brakes.

Miss F said there is a fault with the car. She has not driven it for over a year since the crash but has been paying for it. Miss F cannot sell it on due to the faults.

I said Hyundai has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances, which for cars include age and mileage travelled. But there are limits to Hyundai's responsibilities. In particular, faults must be present or developing at the point of sale.

There are clearly issues identified in the expert's report regarding the steering on the car. The inspector considered it was faulty, and this fault was present at the point of sale. The report also says further investigation is needed on the car's brakes.

As the investigator has pointed out, we would first expect Hyundai to be given the opportunity to inspect the car and make any necessary repairs. If those do not succeed I might then consider it fair to allow the car to be rejected.

The independent inspector considered that the accident may have been caused by faulty brakes. I note a criminal court accepted this possibility, and it did not proceed with a charge against Miss F of driving without due care and attention. Although Hyundai says its tests on a similar car show there was no problem with the brakes, the inspector clearly thought they needed further investigation. I consider it fair that Hyundai carries out an inspection of the car's brakes, and carries out any repairs that are required. This should be at no cost to Miss F.

The report also identifies a fault with the car's steering. This should be repaired by Hyundai at no cost to Miss F.

The report advised Miss F not to drive the car until further investigation and repairs to the car were carried out. Miss F has continued to pay the finance due under the agreement despite the fact she has not been able to use the car. I find it is reasonable that Hyundai

repays the sums Miss F has paid under the finance agreement from 17 May 2016 (the date of the accident) until the repairs are carried out.

I have not seen evidence of Miss F's costs of road tax and insurance for the period since 17 May 2016. If Miss F provides evidence of this, these costs should be refunded from 17 May 2016 until the date the repairs are carried out.

Miss F has been caused inconvenience through this process, and she and she has been unable to use her vehicle for number of months. I find Hyundai should pay her £200 compensation for the trouble and upset this has caused.

I asked Miss F and Hyundai to respond to me should they want to do that before I issued my next decision.

Miss F responded to say she accepted my provisional decision. She would like Hyundai to make a statement that the car is fit for purpose.

I've not been told that we got any response from Hyundai.

my findings

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

I've not received any new information in response to my provisional decision. It follows that I've reached the same conclusion for the same reasons that I set out in my provisional decision and above.

I do not consider it would be appropriate for me to ask Hyundai to confirm the car is fit for purpose. I would however hope it would take notice of my findings and ensure the car is repaired accordingly.

my final decision

My final decision is that I uphold this complaint in part. Hyundai Capital UK Limited should:

1. collect the vehicle at no cost to Miss F;
2. repair the fault to the car's steering at no cost to Miss F
3. investigate and repair any fault with the car's braking system at no cost to Miss F;
4. refund the cost of road tax and insurance from 17 May 2016 until the repairs are carried out on proof of payment of such costs from Miss F;
5. refund Miss F's payments under the finance agreement from 17 May 2016 until the repairs are carried out;
6. pay Miss F £200 for the trouble and upset she has been caused.

Items 4 and 5 are subject to 8% simple interest from the date of payment to the date of settlement.

If Hyundai considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss F how much it's taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 30 October 2017.

Rosemary Lloyd
ombudsman