

## **complaint**

Miss D complains that the car she acquired via a personal contract purchase (“PCP”) with Hyundai Capital UK Limited wasn’t of satisfactory quality.

## **background**

In November 2018 Miss D acquired a new car via a PCP agreement with Hyundai. She says that within a short time the car developed an intermittent fault where the engine would stop when the auto-stop-start was engaged, an error message would display on the dashboard and to re-start the engine the “start” button had to be pressed.

Miss D says this issue began to happen more frequently and in January 2019 she raised the problem with the dealership who had supplied the car. The dealership investigated the car on two occasions but was unable to replicate the fault. However, it replaced a faulty seatbelt sensor and re-charged the battery in efforts to fix the issue.

Miss D complained to Hyundai and also provided video evidence of the fault occurring. Hyundai requested the car be independently inspected which was agreed by Miss D. In the meantime the dealership made a third attempt to fix the problem but again couldn’t replicate the fault.

The independent engineer cancelled the appointment to inspect the car. Miss D told Hyundai that she had reservations about the quality of the company who was to carry out the independent inspection. Hyundai agreed it would look at the video evidence and the job cards from the dealership to review her complaint.

However, in April 2019 Hyundai said there was insufficient evidence that the fault had either been present or developing from the point of sale. It said it would pay for the car to be inspected by another independent engineer. Miss D was unhappy at Hyundai’s response and complained to this service.

During this service’s investigation the dealership arranged for the car to be inspected by a lead technician for the manufacturer. They were unable to replicate the fault through test driving for several hours but the car’s engine did cut out in the workshop and they were unable to crank the engine to re-start it. The technician swapped the Engine Control Module (“ECM”) with that from another car and this appeared to fix the fault. They concluded the car had a defective ECM and recommended its replacement. This work was undertaken by the dealership and the car returned to Miss D.

Unfortunately, Miss D reported that the following day the fault had re-occurred with the same error message being displayed on the dash.

Our investigator recommended that Miss D’s complaint should be upheld. She said as the car had been new a reasonable person would expect it to be free from defects for a considerable period of time. And looking at the evidence it was likely there was a fault with the car as Miss D had provided video footage and photos of the error message being displayed. She said the lead technician had experienced the same thing when they’d investigated the fault. Our investigator said she was satisfied the fault with the car had been present from the point of sale and that the car wasn’t of satisfactory quality.

Our investigator recommended that as the fault was intermittent, and there had been several attempts to repair it already, it would be fair for Miss D to reject the car and for the agreement to be cancelled with nothing further to pay and her deposit reimbursed.

Our investigator also said that although Miss D had been able to use it hadn't been performing as it should have been due to the intermittent fault and looking at the impact of that she thought £200 compensation was fair and reasonable. She also said there had been a period of 48 days when Miss D had been unable to use the car as it had been under investigation either at the dealership or with the lead technician. Our investigator said that reimbursing Miss D with two months payments would be fair to reflect this.

Miss D agreed with the overall recommendation of our investigator though she disagreed with the suggested monetary settlement. She said she should either be reimbursed all the payments she had made under the agreement or receive the majority of her payments back. This was because the monthly payments included interest accruing under the agreement and payments contributing to the eventual ownership of the car.

Hyundai disagreed with our investigator's view. It said it had now been established with the manufacturer that the car didn't have a fault and it was part of the workings of the car. The error message didn't mean there was a fault. It also said the car should be the subject of an independent engineer's inspection.

As the parties didn't agree the complaint has been passed to me.

### **my findings**

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

The finance agreement (the PCP) in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Hyundai is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that the quality of the goods supplied "*is satisfactory*". And the relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances to be taken into account would include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can all be aspects of the quality of the goods. Here the car was new and so a reasonable person would expect it to be fault free and not to require maintenance and repair for some time. However, Miss D says that the problem with auto-stop-start arose within a very short time of her acquiring the car and despite attempts at fixing it has remained an issue with the car.

Hyundai says that the car is fault free and that this has been confirmed by the manufacturer who has also looked at the car. It says it "*is part of the workings of the car – which exists*

*because of what they do when the car auto stops".* It also says the error message doesn't mean there is an existing fault with the car.

I've seen that the car has been subjected to a number of different investigations including by a lead technician. Although the dealership was unable to replicate the fault the lead Technician did experience the car cutting out and recommended the ECM was replaced. I've not seen any evidence from these inspections that show the message didn't indicate a fault, or that it was due to driving style.

I think intermittent faults are often hard to replicate and Miss D has provided evidence of what happens with the car including video evidence. I think she has been consistent about the issues she has had with the car. I'm satisfied on the evidence I've seen that the car had a fault with the auto-stop-start system.

I appreciate Miss D didn't raise the problem she was having with the car until January 2019, but that was still only a few weeks after acquiring the car. I don't think a reasonable person would expect issues of wear and tear to arise within such a short period for a brand new car. I also accept what Miss D has said about the car having the problem within the first month, but not reporting it straight away as it was an intermittent fault and she at first thought it was something she was doing until it became more frequent. So, I think it's more likely than not that this is a fault that was present from the point of sale and that the car wasn't of satisfactory quality.

I've seen that there have been attempts to fix it that have failed. Hyundai says there isn't any evidence the fault re-occurred after the ECM was replaced. Miss D says the problem resurfaced the following day and I have no reason to disbelieve her on this point.

Hyundai say that it would now be fair for the car to be independently inspected as Miss D cancelled the last inspection. But I've seen it was the independent engineer who had cancelled and that Miss D then expressed concerns about the reliability of this firm of engineers. However, I accept she didn't decline having the car inspected despite her reservations as she has been keen to get the issue resolved.

I don't think an independent inspection of the car would now be fair to Miss D. I think a further delay will only cause more inconvenience to her and the car has already been investigated by one of the manufacturer's lead technicians.

So, I'm satisfied on the evidence that I have seen that the car was faulty from the point of sale and that there has been an opportunity to remedy the fault that has not been successful. I think Miss D is entitled to now reject the car and cancel the agreement and her deposit is to be reimbursed with interest.

Miss D says she disagrees with the monetary settlement proposed by our investigator. She says she should only cover the actual usage of the car but I disagree with her approach. I don't think it's fair that she either uses the car for free or only pays a small proportion towards the use of the car.

Miss D says that under the Consumer Rights Act 2015 any deduction for usage must be reasonable. And while I must take account of the law I'm also able to consider other things when reaching a fair and reasonable decision.

Here the aim of any compensation is to put Miss D in the position she would have been had the car been fault free. I've seen she has been able to use the car, despite the fault, save for the period when the car was away being investigated and repaired. So I think it's reasonable she should pay for that usage. While I accept the payments will include a number of factors such as added interest I think it's fair that I take account of the cost that would have been incurred by Miss D had she either rented another car or taken out a new agreement. If she were reimbursed all or a large part of the monthly payments under the agreement then Miss D would be placed in better position as she would be able to enjoy considerably cheaper travel than would have been the case if the car had actually been fault free. I think that would be an unfair outcome.

Miss D says she was also paying towards owning the car but as this was a conditional sale PCP at the end of the agreement she would be required to pay a lump sum payment to own the car. This lump sum is based on the estimated value of the car at that point so I don't think she would be in a detrimental financial position by not receiving a reimbursement of the payments.

Miss D has raised the cost of an upcoming service, however under the agreement it is her responsibility to keep the car in good condition by having it serviced and maintained. I also think that maintenance and service costs are an expected part of car ownership and as Miss D has been able to use that car then I'm satisfied that such costs should be covered by Miss D until the car is handed back to Hyundai.

So in conclusion, I'm satisfied it would be unreasonable to require Hyundai to reimburse Miss D any more than the two months payments when she was unable to use the car.

Miss D has said that she thought the £200 compensation for the distress and inconvenience of taking the car back and forth to the dealership was unfair. She says her family incurred other expenses. As the agreement is only between Miss D and Hyundai I can't take account of the impact on other family members. So I think the amount recommended by our investigator is fair and reasonable in the circumstances.

So for the reasons given above I'm upholding Miss D's complaint and I'm asking Hyundai to do the following:

- Cancel the agreement with nothing further to pay
- Collect the car at no cost to Miss D.
- Reimburse Miss D her deposit together with interest at the rate of 8% per year from the date of payment until the date of settlement
- Reimburse Miss D two months of her payment to cover the period when she was without the car
- Pay Miss D £200 for the distress and inconvenience caused by having to take the car repeatedly to the dealership.

### **my final decision**

For the reasons set out above I'm upholding Miss D's complaint and I'm asking Hyundai Capital UK Limited to do the following:

- Cancel the agreement with nothing further to pay
- Collect the car at no cost to Miss D.
- Reimburse Miss D her deposit together with interest at the rate of 8% per year from the date of payment until the date of settlement
- Reimburse Miss D two months of her payment to cover the period when she was without the car
- Pay Miss D £200 for the distress and inconvenience caused by having to take the car repeatedly to the dealership.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 14 May 2020.

Jocelyn Griffith  
**ombudsman**