

complaint

Mrs Q complains that the car she got from Hyundai Capital UK Limited (trading as Kia Motors Finance) on a conditional sale agreement was not of satisfactory quality.

background

Mrs Q got the new car in April 2015. In October 2015 she wrote to Kia Motors Finance asking for a replacement. She said the car had been experiencing intermittent and repetitive (mainly electrical) faults since shortly after she got it. It had previously been seen twice by the dealer, 30 miles away, with no success. Kia offered to arrange a third attempted repair but Mrs Q does not think that is fair. She said she had been unable to drive the car partly because of a new fault found when Kia Motors Finance had it inspected by an independent consultant engineer.

Our adjudicator recommended that the complaint was upheld. She said that she didn't think it was reasonable for a new car to have developed the faults Mrs Q described, and that those were consistent with the conclusion of the independent inspection. Attempts to repair the car had been unsuccessful and she didn't think it was appropriate for Mrs Q to have to have it repaired again. Ultimately she recommended that the finance agreement was cancelled and the car returned, 5% of the monthly payments from August to December were refunded, along with all the subsequent payments - as Mrs Q had not had been using the car. She also recommended that any deposit and part exchange value Mrs Q had paid was refunded together with 8% simple interest on that from date of payment to date of settlement, together with the cost of a tow-bar and the pro-rata cost of a service package.

Mrs Q largely agreed with the decision. But she sent mileage details which showed that between October 2015 and April 2016 she had travelled less than 1,500 miles in the car, whereas she had travelled about 10,000 in the previous six months. Although the car had mainly been bought to tow a caravan, it had not done so since it failed in October. She also said that when she had tried to start the car in April 2016 to take it for a service, she had had to call out the RAC as it would not start. She said the RAC had been unable to maintain a charge in the battery, and suggested the problem could be electronic.

Kia Motors Finance disagreed with the adjudicator. It sent comments from the dealer which it said it agreed with. Those said that on neither of the two occasions it had inspected the car had any faults been found or stored within the cars onboard computer. In that situation it was not right to say that there had been unsuccessful attempts to repair the car, because they could not repair something which had not been found faulty. The only work carried out which could be considered a repair was that to a headrest. It referred to the independent inspection, saying that of eight faults mentioned by Mrs Q only three minor issues had been confirmed. One of those, a knocking noise, had not previously been reported to it. It was likely that that had developed because of wear and tear. The manufacturer had confirmed that the fuel gauge problem was a widespread one, and a fix had been released which it had offered to implement. And the inspection had said the car was responsive and handled well. It had ISG (idle stop and go) technology which could result in the car cutting out and restarting at junctions. That was not a fault. It said it had offered to collect the car from Mrs Q and lend her a courtesy car, if possible one with a towbar, while hers was repaired. It argued that under the Sale of Goods Act she should accept repair of the goods when that was available, before a secondary remedy such as returning the goods was used. Repair was the proportionate remedy, and should be allowed, rather than rescinding the agreement.

my provisional decision

After considering all the evidence I issued a provisional decision to both parties on 26 June 2016. I shall summarise my views.

Mrs Q had described a series of intermittent, possibly mainly electrical, issues with the car. She said she had problems such as with console lights from the start. Then at the end of August the engine cut out while she was driving, and initially would not restart. The RAC could find no fault. Slightly contrary to what the dealer says, she said that the first time she took the car back (after that problem) she was told that an "old code" had come up on the diagnostics and been erased. She said that there were then problems with the ISG, the reversing camera coming on when going forward, and intermittent issues with the satnav and the radio. She said that after the second visit to the garage when no faults could be reproduced, the ISG was still unpredictable. Then in October the fuel gauge started behaving strangely, and later the car lost power before picking up again.

From Mrs Q's account the problems were intermittent so would not necessarily show up on a test drive. It was more surprising that they did not seem to show up on diagnostics: but that was not proof that they did not exist. I saw no grounds to think that Mrs Q was being untruthful or that the issues she described were down to her misinterpreting the car's normal behaviour. She seemed to be an experienced driver used to towing a caravan, and covering reasonably high mileage. I thought it was quite likely that, aside from the issues found at the independent inspection, there was some other underlying inherent fault or faults which had not yet been diagnosed. The independent inspection confirmed that there was a significant issue with the fuel gauge, which was probably inherent, and the dealer said that was a widespread problem. Particularly with a new car, Mrs Q was entitled to expect that, amongst other things, it would be free from even minor defects and durable. I wouldn't have expected a knocking noise to arise from wear and tear in a six months old car, even if 10,000 miles have been driven. Overall, I thought that this car was not of satisfactory quality when sold.

I saw the bigger issue as what was a reasonable remedy, and whether Mrs Q should have accepted the offer of a third inspection and possible repair by the dealer. I didn't see the same distinction as the dealer seemed to between diagnosis and repair: diagnosis of the underlying cause of a problem is often the initial phase of a repair. Intermittent problems of this sort can be difficult to diagnose and remedy. But I thought it was reasonable to regard the first two visits to the dealer as attempted repairs, even though the dealer did not identify the cause of the problems. I could understand why, when she had problems again, Mrs Q was reluctant to return to the dealer again (some distance away).

The dealer sought to distinguish between initial rights under the Sale of Goods Act to repair or replacement of faulty goods, and secondary remedies such as price reduction or rescinding the contract. In fact initially what Mrs Q sought was not such a secondary remedy but a replacement of the car: however that request was declined and she was asked to accept another attempt at repair. It was only when that request was declined that she complained to us.

I thought it would have been reasonable to expect Mrs Q to go back to the dealer if the only issue of concern to her was the fuel gauge (and she was given a suitable courtesy car while it was fixed). That problem did not seem to have been reported before, and it seemed likely that a permanent repair could easily be achieved. She would then have had a satisfactory car she could rely on.

But that was not the situation. I could understand why when problems continued after two inspections by the dealer, Mrs Q could not be confident that similar problems would not continue to occur intermittently even if she accepted a further inspection and possible repair by the dealer. By the time she had a response from Kia Motors Finance it was December, and matters were dragging on. In all the circumstances I thought it would be fair and reasonable for Mrs Q to be allowed to return the car and have the contract rescinded.

Like the adjudicator I thought Mrs Q should also have a refund of some of her monthly payments. The mileage figures I had seen confirmed her account of hardly using the car since late 2015 because of the problems. The mileage was 10,121 in October 2015 and 11,336 in April 2016. Even allowing for the fact that she might have travelled less in winter in any event, I thought she should have 80% of her payments from November onwards refunded. I thought she should also have back pro-rata the cost of Kia-care service package which was unused.

Mrs Q also gave the dealer a £500 deposit, £484 for a tow bar and £954.67 (the £1,143 final cash payment, less payments for fuel and road tax from which Mrs Q has already benefited). I thought all of these should be refunded with 8% interest from payment to date of settlement.

That left the issue of the trade in value of Mrs Q's previous vehicle. That was shown as £6,000 on the invoice. But Mrs Q says that she was told it was £7,500, and that she was told at the time that the other £1,500 was shown on the invoice as a pre-VAT allowance of £1,250. However Kia Motors Finance said that the £1,250 was simply a promotional offer for buying a new car. I looked to see what various guides said the value of Mrs Q's old car would have been: one gave values between £7,218 and £6,687 (depending on the state of the car) and another a trade value of £7,170. Based on that I thought that, on balance, it would be fair for Mrs Q to be refunded £7,000 (plus 8% interest) for the trade in value.

So subject to any further comments or evidence received from Mrs Q or Kia, my provisional decision was to uphold the complaint. I intended to order Kia to provide the redress described above.

Mrs Q said that overall she agreed with my decision and would like to settle on that basis. But she said she disagreed with most statements made by Kia and the dealer, particularly about the promotional offer. They had enquired and been told none was available. She was anxious to see matters settled so she could get another tow car, as they had not been able to enjoy their caravan as they normally would this year.

Kia disagreed. It said it thought it was inappropriate to accept Mrs Q's account of intermittent problems without her supplying evidence. Since Mrs Q was still using the car, it didn't feel that any issues were a huge concern and the dealership still felt the car had been of satisfactory quality. When inspected by the dealer the car had been found to be fault free, which it felt we had disregarded. And no evidence had been provided of any repairs carried out.

It also felt the redress was unfair and unjust. Mrs Q had had use of the car and no appropriate charge for usage or for any unfair wear and tear had been included. It asked us to confirm who would be liable for any unfair wear and tear damage and usage costs whilst Mrs Q had the car.

my findings

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

While the dealer didn't find faults when it inspected the car and there is no evidence of repairs being done, there is evidence of Mrs Q reporting problems: I have seen an RAC breakdown report from August 2015 and a garage report from September. The cause of intermittent electrical problems could be difficult to diagnose. While independent inspection did not identify problems of the sort Mrs Q describes either - again I don't think that necessarily means they were not happening intermittently. However it did identify a knocking sound - and said that required attention - as well as the issue with the fuel gauge. It said that those two faults would have been developing and compromised when the finance was purchased.

I can't see why Mrs Q would have pretended to have problems with the car if she didn't and, as I explained before, I don't think she would have been misinterpreting normal behaviour for the car. While she continued to use the car a little, the mileage figures show that her use dropped very dramatically after the reported problems began: I think that is consistent with her only using it when it was absolutely essential, because of previous intermittent problems.

So overall my view remains that this new car was not of satisfactory quality when supplied and that Mrs Q should be allowed to return the car and have the contract rescinded.

Kia said that my proposed redress included no appropriate charge for use of the car. But my proposal would leave Mrs Q still making full monthly payments on the agreement from April to October 2015 while she was using the car, and then 20% of the payments from November after her usage fell dramatically. I still think that, and the rest of my proposed redress, is fair.

Obviously I would expect Mrs Q to return the car with only fair levels of wear and tear: but if other damage was found after proper inspection and notification arrangements then it would probably be appropriate for her to have to fund remedial work in line with the original agreement. But that scenario doesn't seem very likely when she has been using the car for significantly less than the 20,000 miles a year allowed for in the agreement. She might wish to check the BVRLA fair wear and tear guidelines before returning the car.

my final decision

My decision is that I uphold this complaint. In full and final settlement, I order Hyundai Capital UK Limited to:

- a. Cancel the conditional sale agreement, and remove any record of it from Mrs Q's credit file;
- b. Arrange to collect the car from Mrs Q (at no cost to her);
- c. Refund 80% of the payments Mrs Q made from November 2015 onwards;
- d. Refund a £500 deposit, £484 for a tow bar and £954.67 paid in cash;
- e. Refund £7,000 towards the trade in value of the previous car;

f. Pay 8% interest from date of payment to date of settlement on items c to e.

g. Give a pro-rata refund on any unused part of the Kia-Care service package.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Q to accept or reject my decision before 5 September 2016.

Hilary Bainbridge
ombudsman