

complaint

Mrs R is unhappy with a second hand car she financed under a conditional sale agreement with Hyundai Capital UK Limited.

background

In summary, Mrs R says the car has started to rust and it shouldn't be doing this considering its age. She would like to give it back and get a full refund of what she has paid.

Our adjudicator looked at the evidence and thought that the car had a paint fault. She didn't think a repair would be the best option, so said Mrs R should have the choice to return the car, get back her deposit (plus interest) and £600 compensation.

Mrs R doesn't agree with this and has asked for an ombudsman to review her case.

my findings

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

Both parties agree that the car has a paintwork fault so I will not consider this matter in detail. However, from what I have seen, including the persuasive expert report, I also think that the car has defective paintwork which has caused it to rust much earlier than expected.

The issue for me to decide is what would be a fair way to put things right. Both parties have agreed that the car should be returned. But it appears that Mrs R wants a full refund of her payments.

I don't think a full refund of her monthly payments would be fair as she has been using the car. And although the rust has been frustrating for Mrs R, I don't think it has prevented her from having full use of the car. I can see that when she bought the car around July 2013 it had travelled around 13,000 miles, and by the time of the expert report in November 2015 it had covered around 48,000 miles. This shows that Mrs R has used the car a lot during the time she has been making her monthly payments.

I do think it is fair that Mrs R gets her deposit back plus interest and some compensation for the inconvenience and frustration caused by the fault. Hyundai Capital has agreed to do this with an agreed figure of £600 compensation - which seems fair.

I appreciate that Mrs R isn't happy with this because of what she has paid into the finance so far. But I think the only other practical alternative is a repair, which was initially offered to her by Hyundai Capital and the dealership. While there is no guarantee that a repair would be satisfactory (the expert said the rust could return) it would allow her to keep the car.

It is now up to Mrs R to choose if she wants to return the car in line with my final decision, with the refund of her deposit and some compensation. I remind Mrs R that she doesn't have to accept my decision, and can decide to take other action if she wishes.

my final decision

If Mrs R chooses to accept Hyundai Capital UK Limited should:

- take back the car and cancel the finance agreement at no further cost to her;
- refund her advance payment of £2,200 plus simple interest at 8% a year from the date of payment to the date of settlement; and
- pay her £600 compensation

If Hyundai Capital considers it is legally obliged to deduct tax from the interest award it should provide Mrs R with a certificate of tax deduction so she may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 18 February 2016.

Mark Lancod
ombudsman