

The complaint

Mr A complains about the quality of a car he acquired using a fixed sum loan agreement with Hyundai Capital UK Ltd T/A Hyundai Finance (Hyundai Finance). Mr A brings the claim under Section 75 of the Consumer Credit Act 1974 (S75).

When I refer to what Mr A has said and what Hyundai Finance have said, it should also be taken to include things said on their behalf.

What happened

In June 2022, Mr A entered into a fixed sum loan agreement with Hyundai Finance to acquire a used car first registered in April 2021. At the time Mr A acquired the car it had travelled approximately 3,662 miles. The total cash price of the car was approximately £26,032. The total amount payable under the finance agreement was approximately £32,459. The agreement consisted of 48 consecutive monthly payments each of around £293 starting one month after the date of the agreement, followed by one payment of around £11,107 payable 49 months after the date of the agreement.

In November 2022, Mr A contacted the supplying dealership to let them know that the Gasoline Particulate Filter (GPF) light appeared on the car's dashboard. Mr A said that the supplying dealership couldn't look at the car for a couple of weeks, so they told him to take it to one of the other car manufacturer's dealerships. There it was diagnosed as having an issue with the GPF, and the GPF regeneration was done at that time.

Mr A said that this problem reoccurred in December 2022, so he took the car back to his local dealership and they carried out a second GPF regeneration on the car. At that time the car had travelled a total of around 8,033 miles. The invoice from this visit indicated that a software update was to follow. Mr A said that this second GPF regeneration didn't fix the fault as six weeks later, in January 2023, he again had to take the car to a local dealership. The invoice from that time states that there is a GPF fault as a light was still on the dashboard and that they were waiting on the manufacturer to release more information. Mr A was unhappy with this, so he contacted Hyundai Finance to raise a complaint. In this letter he explained he understood that this fault was a known issue with the car and that the manufacturer has acknowledged it as a software issue that cannot be fixed. So, Mr A asked to reject the car.

Hyundai Finance wrote to Mr A in March 2023. In this correspondence they said that, following the independent inspection they commissioned, they wouldn't uphold Mr A's complaint. They said the reason for this is that the inspector stated they would not consider the reported fault to have been present or developing at the point of finance inception and the fault is not considered to be the selling agents' responsibility.

Mr A was unhappy with this response, so he referred his complaint to our service.

An investigator at our service was of the opinion that the car was not of satisfactory quality when supplied. The investigator thought Mr A should be able to reject the car and that Hyundai Finance should refund him 10% of the payments he made from November 2022 to

the date of settlement to reflect the impaired use caused by the car not being of satisfactory quality. The investigator also thought that it was fair that Hyundai Finance pay Mr A £150 for the distress and inconvenience caused.

Hyundai Finance disagreed with the investigator. So, the complaint has been passed to me to decide.

Recently, Mr A wrote to our service to indicate that the car went back to one of the other car manufacturer's dealerships on two more occasions. Mr A has told our service that since the last occasion the fault has not reoccurred. He has provided our service with a warranty invoice that indicates that they carried out a GPF wire rework and an upgrade. Mr A has also told us, that at times he is altering the way he drives so that the GPF regenerates itself as suggested by one of the service managers. And he told our service that the fault has not reoccurred for about six weeks, but that he is not holding his breath.

After reviewing the case, I issued a provisional decision on 27 November 2023. In the provisional decision I said:

“What I’ve provisionally decided – and why

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

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr A acquired the car using a fixed sum loan agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. S75 sets out that in certain circumstances, as the finance provider, Hyundai Finance is jointly liable for any breach of contract or misrepresentation by the supplier. I’m satisfied those circumstances apply here.

The Consumer Rights Act 2015 (CRA) implied a term into the purchase contract with the supplier that the goods supplied will be of satisfactory quality. As the finance provider, under the principles of S75, Hyundai Finance can be held jointly responsible for the quality of the car Mr A bought.

The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says 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.

In Mr A’s case the car was used, with a total cash price of the car being approximately £26,032. It had covered around 3,662 miles and was approximately 14 months old when he acquired it. So, it’s reasonable to expect presence of some wear to it as a result of its age, and I’d have different expectations of it compared to a brand-new car. As with any car, there’s an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it’s reasonable to expect that these may need to be replaced. And with second-hand cars, it’s more likely that parts will need to be replaced

sooner or be worn faster than with a brand-new car. So, the supplier (and here Hyundai Finance jointly) would not generally be held responsible for anything that was due to normal wear and tear whilst the car was in Mr A's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

While the complaint was at our service, Mr A has mentioned that on a couple of occasions he has noticed another fault with the car to do with the satnav, but this issue has not been raised previously by him to Hyundai Finance. Also, I've not seen enough evidence to show that most likely there is a fault with the satnav. So, I will now go on and focus on the fault to do with the GPF light staying on.

From the work sheets and the invoices provided which were done between November 2022 and January 2023, there seems to have been a problem with the GPF light staying on, even after the GPF regeneration was completed. Some of these also indicated that a software update was required. This fault is also supported by the independent report that was carried out in March 2023. In that report, the engineer reported that the GPF warning was illuminated on the dashboard and that the car will need further checks under workshop conditions to find the root cause of the fault. So, there seems to have been a fault with the car in question.

Mr A thinks that he should be entitled to reject the car. The CRA sets out that Mr A has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality. However, he would need to ask for the rejection within that time. Mr A would not be able to retrospectively exercise his short term right of rejection at a later date.

Mr A acquired the car in June 2022. Shortly after, in November 2022, he started to experience problems with the car. But, even if I accept there were faults which made the car of unsatisfactory quality, Mr A only had a short term to reject the car within the first 30 days, and only if he expressed his wish to do so. I've not seen any evidence which shows that he expressed his wish to reject the car within that time and later, he did exercise his right to a repair.

The CRA says that if the car acquired wasn't of satisfactory quality or not as described, then Mr A would be entitled to still return it after the first 30 days, but he wouldn't have the right to reject the car until he has exercised his right to a repair – this is called his final right to reject. So, Mr A doesn't have an automatic right to return the car if there's a fault. For me to conclude that Mr A can now exercise his right to reject the car, I would need to see that the car wasn't of satisfactory quality, and that an attempt at the repair has failed.

Hyundai Finance believes that the fault the car is experiencing was not developing at the point of sale or finance inception, as concluded by the independent report they commissioned.

The independent report said that the car has been in service for approximately seven months and covered 6,000 miles and, as such, they wouldn't consider the reported fault to have been present or developing at the point of sale. So, I've considered this, but I've also taken into consideration that the first time Mr A raised this issued with the supplying dealership was in November 2022 – approximately only five months after the car was supplied. And the second time the car went into one of the manufacturer's dealerships for the same fault was in December 2022, when the car had travelled a total of around 8,033 miles.

It seems the fault on the car appeared after Mr A had the car for only about five months and had travelled less than about 4,500 miles. I've also taken into consideration that the independent report, commissioned by Hyundai Finance, was inconclusive, as it indicated the

fault would need further checks under workshop conditions to find the root cause of the warning light on the dashboard. Plus, the report stated that the car would need to go back to the manufacturer for further investigation and for their consideration of a warranty claim. And, at that time the fault first occurred in November 2022, the car had travelled less than about 8,033 miles in total and was approximately just over a year and a half old. So, I think it's also reasonable to take into account the nature of the problem, and whether it's fair to say the car was reasonably durable.

Taking the above into consideration, combined with the price, age, and mileage of the car when it was supplied and when the fault first occurred, I don't think the car was of satisfactory quality when supplied. I think that a reasonable person wouldn't expect for the car to have such problems so soon. Given the mileage of the car and the price paid, I don't think this is a fault a reasonable person would expect to arise when it did. So, I don't think the car, including its GPF, was sufficiently durable. For this reason, I don't think the car was of satisfactory quality.

But I can see from the latest warranty invoice that in October 2023 a GPF wire rework and upgrade has been carried out and Mr A has also told us that the fault has not reoccurred since the last fix. So, it seems that, most likely, the faults have now been fixed and I've not seen enough to say that most likely the fault in question has reoccurred. Considering that the repair appears to have been successful, I don't think it would be fair and reasonable for Mr A to be able to now exercise his right to reject the car. I have considered that Mr A thinks that the fault will reoccur but, based on what I've been given, I can't say that most likely this fault is still present. Overall, I don't think Mr A has demonstrated that the repairs previously completed have now failed, therefore giving him the right to reject the car. So, while I sympathise with the situation Mr A finds herself in, I don't think he has a right to reject the car.

I understand that this matter caused Mr A distress and inconvenience when trying to resolve it, but I think that Hyundai Finance doesn't need to pay any compensation or take any further action as they have handled his S75 claim fairly.

While I sympathise with Mr A for the difficulties that he is experiencing, based on all the available evidence, I don't think it would be fair or reasonable to ask Hyundai Finance to do anything further regarding Mr A's complaint.

My provisional decision

For the reasons given above I intend not to uphold this complaint."

I asked both parties to provide me with any additional comments or information they would like me to consider by 11 December 2023.

Hyundai Finance didn't respond.

Mr A responded and I will address his comments below.

What I've decided – and why

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

Following my provisional decision, Mr A said that he has been driving with the fault for a long time until it was fixed and that he still has no faith that the issue has been resolved. He believes that the car issue has not been properly fixed. Instead, he believes that the fix

maybe just temporary. He also told our service that he was hoping that he would at least get some sort of compensation or release from his finance agreement, as he still believes that the car is faulty, or at the very least he believes that he should've received a goodwill gesture from Hyundai Finance.

Mr A also said that many of the cars had this fault from the start, so the car should've been recalled or fixed. And he said that recently he has received a letter about the dealership, from which he bought the car, saying that the dealership are going to close. As such, he said this is ironic and he questioned how many more cars from them were faulty.

Mr A has told us that the fault has not reoccurred since the last fix. And I've not been given anything to suggest that this was just a temporary fix. So, it seems that, most likely, the faults have now been fixed and I've not seen enough to say that most likely the fault in question has reoccurred. As the repair, most likely, was successful I don't think it would be fair and reasonable for Mr A to be able to return the goods for a full refund.

While I sympathise with Mr A for the difficulties that he is experiencing, I don't think it's reasonable for me to ask Hyundai Finance to pay any compensation to Mr A or take any further action as they have handled his S75 claim fairly. And I need to think about what a court would award in thinking about Hyundai Finance's liability under S75, and courts don't make awards for distress and inconvenience. I know that Mr A thinks that Hyundai Finance should consider giving him compensation on a goodwill basis. This option is of course always open to Hyundai Finance. But that's a decision for Hyundai Finance and not our service. There's no law, rules, or guidance requiring Hyundai Finance to do this.

In addition, in this decision I can't consider whether the manufacturer should or shouldn't have recalled the car and I can't comment on why or why not the dealership that sold the car is closing or whether more cars from them were faulty. All complaints, at our service, are considered on their individual facts and merits. Here, I make my decision based on what I think is fair and reasonable considering all the circumstances of this complaint and, more specifically, by looking at things that Hyundai Finance is responsible for.

Considered everything again, I see no reason to reach a different conclusion to what I reached in my provisional decision copied above.

My final decision

For the reasons given above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 January 2024.

Mike Kozbial
Ombudsman