

## **The complaint**

Mr K complains that the incorrect amount of interest has been applied to a settlement quotation, in relation to a car that was supplied through a conditional sale agreement with Hyundai Capital UK Limited trading as Kia Finance (Hyundai).

Mr K has been represented on this complaint. But to keep things simple I'll only refer to Mr K in my decision.

## **What happened**

In March 2022, Mr K acquired a new car using a conditional sale agreement from Hyundai. The cash price of the car was £33,522. Mr K made an advanced payment of £8,500 so the total amount financed on the agreement was £25,022 payable over 36 monthly repayments of £356.49 followed by a payment of £15,171.12.

Mr K says that within two weeks of entering into the finance agreement he asked to withdraw from it but didn't receive the settlement quotation until 10 November 2022. Mr K said the interest on the settlement was calculated at 4.9% rather than the 2.52% stated on the finance agreement. Mr K feels he shouldn't be charged any interest as he initially intended to settle the finance within the first 14 days. However, Mr K said if interest must be applied it should be at the lower rate. Mr K would also like to receive compensation for the stress and anxiety this situation has caused him.

In February 2023, Hyundai issued their final response to Mr K's complaint. They said the rate of 2.52% is the flat rate which assumes all the repayments are the same, so as Mr K's agreement had a balloon payment, the flat rate couldn't be applied. So, they didn't uphold Mr K's complaint and advised the correct rate was the annual percentage rate of 4.9%.

Unhappy with their response, Mr K brought his complaint to our service for investigation. In an email dated February 2023, Mr K said that between April 2022 and October 2022 he made seven monthly payments towards his agreement. He said he also made a payment of £22,505.57 on 14 October 2022, and in an effort to resolve the dispute, he made a further payment of £450 in January 2023, in full and final settlement of his complaint.

Having reviewed the information on file one of our investigators recommended that Mr K's complaint should not be upheld. The investigator concluded that as Mr K signed the agreement in August 2021 the request to withdraw was made after the two week withdrawal period. And in relation to the interest applied to the settlement, the investigator concluded that they had no reason to believe Hyundai had applied the wrong amount.

Mr K didn't accept the investigator's view. He explained that the notice to withdraw was made within the 14 days and the terms of the agreement says a lower rate of interest would be applied. The investigator acknowledged the date to withdraw was within 14 days, however, as their view remained unchanged, Mr K asked that his complaint be referred to an ombudsman for a final decision.

My decision focusses on the merits of the complaint Mr K raised against Hyundai, so I won't be commenting on the investigator's handling of the case. Should Mr K have concerns about how his case has been handled, he should let the investigator know so that a service complaint can be raised.

### **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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr K complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr K's complaint about Hyundai.

My starting point is that the date of the signature on conditional sale agreement is 4 March 2022. In addition, Hyundai have confirmed the agreement start date as 4 March 2022, in correspondence dated 27 March 2023. So, although there had been some initial dispute over this, from the information provided, I'm satisfied that the agreement start date was 4 March 2022.

With that being the case, I can see that Mr K requested to withdraw from the agreement, by email, on 16 March 2022. This was within two weeks of him entering into it.

The finance explanation document says: *'after the agreement has been signed you will have the right to withdraw from the agreement without providing a reason for doing so. This right begins on the day after you receive a copy of your executed agreement from us and ends 14 days later'*. It goes on to say the instruction to withdraw could be made via email.

Mr K provided us with a copy of an email dated 16 March 2022 which he sent to Hyundai giving notice of his intent to withdraw from the agreement. So, I'm satisfied that Mr K made the request under the terms of the agreement. Having considered Mr K gave adequate notice within the first two weeks of the agreement to withdraw from it, I've considered whether Hyundai should honour the terms of the request.

Following Mr K's request to withdraw, I note that he continued to make seven monthly repayments up to October 2022 when he made a lump sum repayment of £22,505.57.

Mr K said that Hyundai didn't respond to his request to withdraw. Hyundai haven't disputed this but have provided us with a copy of correspondence they sent to Mr K, dated in November 2022, where they explained that due to data protection not being passed, and a complaint being raised by Mr K, about the quality of the vehicle, they didn't go ahead with the request.

In that correspondence Hyundai acknowledged they didn't follow the request however, they explained in that correspondence that they'd authorised a discretionary settlement figure which removed some interest from it.

Having thought about this, I'm not persuaded Hyundai necessarily acted unfairly in the circumstances. For example, I think it's reasonable to expect that Mr K would have followed up his request to withdraw after he hadn't heard anything from Hyundai in relation to it. Particularly as it appears Mr K maintained contact with Hyundai by raising a complaint with them about the quality of the car.

Mr K continued with the contractual monthly repayments for seven months. So, I'm satisfied he was aware the agreement was active during this time, and chose to continue with it without raising its active status as an issue. I think it's fair to say that Mr K's actions suggest his priority at that point wasn't to withdraw immediately from the agreement. I think it's reasonable to expect he would have chased Hyundai for a settlement quotation sooner had that been the case.

In the circumstances, as Mr K continued to make a number of monthly repayments without raising any issues to Hyundai, I'm not persuaded its reasonable to ask Hyundai to honour the terms of the two-week withdrawal period. I think Mr K should have acted sooner had he wanted to withdraw from the agreement within the first two weeks.

As I've concluded that it isn't reasonable to apply the 14-day withdrawal terms in the circumstances of this complaint, I've gone on to consider whether Hyundai have applied the correct terms to the settlement of Mr K's agreement.

#### *The settlement quotation*

The consumer credit (early settlement) regulations 2004 (ESR), is relevant in this case, it tells lenders how to calculate the settlement figure so that it's fair for borrowers. As I've concluded that Hyundai wasn't obliged to honour the 14-day withdrawal terms, I'm satisfied that Hyundai should observe the early settlement process as set out within the ESR.

Mr K confirmed to our investigator that the settlement quote provided to him in May 2023, gave a settlement figure of £1,090.47. This would have been following any discretionary amendments made to the figure (as described in Hyundai's correspondence from November 2022) along with the interest rebate calculation.

On the front page of the finance agreement the total charge for credit is recorded as £2,982.76. This is consistent with the settlement quotation Mr K said he received from Hyundai.

The settlement quotation Mr K said he received from Hyundai has the following information:

£25,022.00	Amount borrowed
£2,982.76	Total interest over 36 months (term of the agreement)
£28,004.76	Total amount due (less initial deposit)
£25,451.00	Total amount paid up to 13 October 2023
£2,553.76	Balance due
£1,463.29	Early settlement rebate
£1,090.47	Settlement figure

I'm satisfied from the information provided that Hyundai have fairly calculated the settlement and applied the interest rebate as per the ESR. However, as the statement of account, provided to us by Mr K in May 2023, shows he made an additional payment of £450 towards his agreement in January 2023, I'm satisfied that it's fair this amount should be taken from the settlement figure quoted by Hyundai.

I acknowledge Mr K believes the incorrect interest has been applied to the settlement quotation. However, having considered the information and rules within the ESR, I'm satisfied Hyundai have applied the correct interest rate to the settlement quotation. For example, the ESR uses the annual percentage rate (APR) as an illustration for calculating the early settlement rebate. I've seen no evidence that Hyundai have varied from the rules within the ESR.

All things considered, I recognise the initial request for withdrawal wasn't acted upon by Hyundai, however, for the reasons given I don't consider it to be unreasonable in the circumstances that it didn't go ahead at the time. I'm satisfied that Hyundai applied the early settlement terms to end the agreement and that the calculations have been fairly applied.

As I've concluded that Hyundai have acted fairly in providing a settlement quotation, I don't require them to take any action in respect of this complaint.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr K's complaint about Hyundai Capital UK Limited trading as Kia Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 January 2024.

Benjamin John  
**Ombudsman**