

The complaint

Mrs D complains that Hyundai Capital UK Limited trading as Kia Finance (“Hyundai”) provided her with a car that wasn’t of satisfactory quality at the point of supply.

What happened

Mrs D referred a complaint to us along with a representative. As the complainant is Mrs D, for ease, I have addressed my decision to her only throughout, when referring to what she and her representative have told us.

Mrs D acquired a new car in November 2021 using a conditional sale agreement with Hyundai. The cash price of the car was £24,610. An advance payment of £7,200 was made and the duration of the agreement was 37 months which consisted of 36 consecutive monthly payments of £211.11, followed by a final payment of £11,988.24.

In March 2022, around 4 months from the point of supply, the car had to be repaired. The mileage of the car at the time was around 3,600 miles. Among other things, the car was repaired for an issue with its tensioner being stuck, according to an invoice for the repair.

Mrs D said that in April 2023, when the car had travelled 12,400 miles, the hybrid tensioner failed in the car. Mrs D said that a third-party recovery company diagnosed the problem and she was advised not to drive it. The car was arranged to be repaired in June 2023.

Mrs D, unhappy with the issues she had with the car, complained to Hyundai and requested to reject it. Mrs D received a courtesy car for the majority of the time she was unable to drive her car.

Hyundai upheld Mrs D’s complaint. They said that the car had been arranged to be repaired for a known issue. And as Mrs D would be without her car, they agreed to refund her 20% of her normal monthly instalment amount for the time she was using a courtesy car.

The car was later repaired and returned to Mrs D in early June 2023. The invoice for the repair showed a new “*tensioner assy*” and “*ribbed belt-V*” were fitted.

Mrs D, unhappy with Hyundai’s response, referred her complaint to our service.

Our investigator upheld the complaint. In summary, she said it was likely there was a fault with the car having reviewed the invoices supplied. She said an issue with the tensioner system occurred in both March 2022 and April 2023. And she said it wasn’t in dispute that there was a fault with the car as Hyundai had said there was a known issue in their final response. The investigator then went on to consider whether the car was of satisfactory quality when it was supplied and concluded it wasn’t. As a remedy, the investigator thought it was fair for Mrs D to reject the car as Hyundai already had an opportunity to repair it in March 2022, but the repair failed. The investigator went on to summarise what she directed Hyundai to do to put things right.

Hyundai disagreed with the investigator's outcome. They said, among other things, that the car had been repaired and was running fault free. They said that an independent inspection should be completed on the car to confirm whether it is performing as it should.

Our investigator didn't agree that an independent inspection was needed, as she didn't think the car was of satisfactory quality at the point of supply. And she believed Hyundai gave Mrs D incorrect information when she enquired about rejecting the car in April 2023. She went on to say, had Mrs D known she didn't have to have the car repaired a second time and could reject it at that point, then she likely would have done so.

As Hyundai disagreed with the investigator's findings, the complaint was passed to me to decide.

Mrs D later told our service that she recently purchased new tyres for the car, paid for the Vehicle Excise Duty ("VED") and was due to take the car to be serviced.

I issued a provisional decision on 7 December 2023 where I explained why I intended to uphold Mrs D's complaint. In that decision I said:

"Mrs D complains about a car, supplied to her under a conditional sale agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mrs D's complaint about Hyundai.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Hyundai here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are satisfactory quality or not.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Mrs D acquired was brand-new and cost almost £25,000. So, I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.

What I need to decide in this case is whether the car was of satisfactory quality or not. The first thing to consider is whether the car developed a fault.

I don't think it is in dispute the car developed a fault. I say this because, I have seen two invoices; one from March 2022 and the other from April 2023, which show works carried out to the tensioner system. And, Hyundai has said in their final response to Mrs D that repairs were being carried out for a known issue. So, I'm satisfied that there was a fault with the car, specifically an issue with the tensioner system.

The car was first repaired in March 2022 – around four months after the point of supply. The car's mileage was less than 4,000 miles at this point. After the repair, the car then developed a further fault with the tensioner system in April 2023 and it was subsequently repaired in June 2023. So, I'm satisfied that the initial repair in March 2022 likely failed, or the car had an underlying fault that was never put right.

Considering everything here, I don't think a brand-new car, costing almost £25,000, should develop a fault to its tensioner system and require major repairs when it had covered, initially less than 4,000 miles, and then later, again at less than 12,500 miles.

It follows that I'm satisfied the car wasn't durable. And so, I'm satisfied a reasonable person would not consider it to have been of satisfactory quality when it was supplied to Mrs D.

Hyundai, to put things right, offered to refund 20% of monthly instalments made by Mrs D while she had to use a courtesy car. But I don't think this remedy is fair in this instance.

From internal contact notes Hyundai have supplied, I can see Mrs D first made them aware she wished to reject the car in April 2023, when the car was due to be repaired for a second time. Hyundai appears to have told Mrs D that she couldn't reject the car before it was repaired.

There are three remedies available to Mrs D if a car is found to be of unsatisfactory quality under the CRA.

One of her options would be a repair. But in April 2023, the tensioner system had already attempted to be repaired a year or so prior. So, I don't think it was fair for the car to be repaired a second time, considering Mrs D expressed her wish to reject the car at this point.

Another option for Mrs D would be a replacement of the car. However, in this instance, I don't think this remedy would be fair to Hyundai. The car is now around two years old and is used. I don't think it would be reasonable and practical for Hyundai to be able to source a like for like replacement.

This means the available option for Mrs D in this instance was rejection. I'm satisfied Mrs D has the right to reject the car, given the car was of unsatisfactory quality. And I think this is fair because Hyundai had already had the chance to repair the car and I don't think it is practical for Hyundai to find a replacement. If Hyundai had been forthcoming with Mrs D about her options in April 2023, I think it is likely she would have pursued rejection.

Mrs D has said she has recently paid money towards the maintenance and upkeep of the car. In particular, she says she purchased replacement tyres, paid for the car's VED, and it's likely she has now had the car serviced. I accept that it is Mrs D's obligation under the agreement to keep the car in good condition and it regularly serviced. But, as I've already said, I think Mrs D should have had the option to reject the car as early as April 2023. And had she had that option, then she wouldn't have had to incur these costs she says she has recently made. I'm also mindful that Mrs D will not have use of the new tyres she has paid for, alongside the benefit of it being serviced recently. So, I think it is fair for Hyundai to reimburse Mrs D for these costs upon production of a valid receipt. However, I don't think Hyundai should pay for the cost of the car's VED. I say this because, she has had use of the car and she can request a rebate of any tax paid for the time the car was unused.

Hyundai offered to refund 20% of monthly instalments made by Mrs D while she had to use a courtesy car. I've carefully thought about this and having done so, I don't think Hyundai need to refund a portion of monthly instalments made while Mrs D hasn't been able to use her car. I say this because, for the majority of the time Mrs D was without her car, she received a like-for-like courtesy car. So, I can't fairly say Hyundai should part-refund some payments here as Mrs D was kept mobile.

However, I'm mindful of the inconvenience to Mrs D due to the fault with the car, and the impact this has likely had on her having to return her car back to be repaired. With that in mind, I think Hyundai should pay Mrs D £100 for the inconvenience caused to her.

I've also noted that Mrs D has told our service that she has cancelled her direct debit for payments to Hyundai. If her account is in arrears, then Mrs D should be aware that Hyundai are within their right to request any arrears accrued on her agreement to be cleared."

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to the provisional decision

Mrs D responded and made several further points. Among other things, she said she intended to make the final payment on the agreement near the end of 2024 to purchase the car, and by rejecting it, she felt she would be left "with nothing" after making the monthly repayments for around two years.

Mrs D then went on to summarise some of the costs she's had in maintaining the car and the additional items she has bought for it. She said she took steps to protect the car when she acquired it by purchasing additional maintenance packages, such as paint and interior protection, as well as mats and a boot protector. She said she also purchased roof rails second-hand and would like the cost of them refunded.

Mrs D also said she placed a cherished number plate on the car, and she wanted the cost of having it removed and new plates fitted to the car reimbursed.

Mrs D also provided copies of receipts of tyres fitted to the car in January 2023 and a service completed to it in late 2022, among receipts for a recent service and tyre fitting.

Mrs D also confirmed that she did initially cancel her direct debit for payments, but later reinstated it, and that there are no arrears on her account.

Hyundai didn't respond to my provisional decision before the deadline I set.

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.

Mrs D believes that if she rejects the car, then the payments she has made so far, would be for nothing. I appreciate Mrs D's comments here, but over the months and years she has made repayments to the agreement, she has also had use of the car. So, I can't fairly say repayments have been made for nothing.

Turning my attention now to the various additional items and packages Mrs D has paid for.

Mrs D has had the opportunity to benefit from the paint protection and interior packages since she acquired the car. And it wasn't a requirement to purchase these products to take out the agreement as Mrs D chose to purchase them. Mrs D will also be able to remove and sell independently any items she has purchased for the car which wasn't part of the agreement, so I don't think it is fair Hyundai reimburse these costs.

Mrs D says there will be a cost to removing the cherished number plate from the car. I don't think Hyundai should reimburse this cost as it is something Mrs D would have always had to pay for.

Mrs D has also provided copies of receipts of tyres fitted to the car in January 2023 and a service completed to it in late 2022. I don't think these costs should be refunded to Mrs D. It was a requirement of the agreement Mrs D signed that she maintained and serviced the car in line with the manufacturer's guidelines. So, Mrs D would always have needed to service the car and replace its tyres if worn. Mrs D has also had use of those tyres fitted in January 2023 for almost one year and had the benefit of using the car since it was serviced in late 2022. To be clear, I will only be asking Hyundai to reimburse Mrs D the cost of a recent service completed and of any tyre changes completed in late 2023. This is because I don't think it is fair Mrs D should pay for these, considering she will not have the benefit of using the car since making these payments. And, also, Hyundai will benefit from them when the car is returned to them.

In summary, I think Hyundai needs to do more in this instance to put things right. I'm satisfied the outcome reached is fair and reasonable given the circumstances.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Hyundai Capital UK Limited trading as Kia Finance to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mrs D at a time and date suitable for her.
- Reimburse Mrs D the advance payment made of £7,200. *
- Reimburse Mrs D the costs she's incurred to recently service the car in November 2023 and to replace new tyres in October 2023. * **
- Pay Mrs D £100 to reflect the inconvenience caused.

* This amount should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Hyundai considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

** Upon production to Hyundai of valid receipts.

If Hyundai has already given compensation in relation to this complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 19 January 2024.

Ronesh Amin
Ombudsman