

The complaint

Mr P complains that a car acquired with finance from Hyundai Capital UK Limited trading as Kia Finance wasn't of satisfactory quality.

What happened

In November 2021 Mr P was supplied with a car and entered into a conditional sale agreement with Kia. At the point of supply the car was around 4 years old and had covered around 41,345 miles. The price of the car was £18,915.55 repayable over a term of 49 months.

In December 2022 Mr P experienced a loss of power whilst driving in France. The car was recovered to a main dealer in France and eventually it was agreed by Kia that repairs would be carried out in France under warranty. The engine was replaced and the car was returned to the UK in March 2023.

On getting the car back, Mr P noticed a strong smell of fuel under the bonnet whilst driving. He contacted a motor rescue organisation who found a loose fuel return pipe and some other issues. Following this, Mr P took the car to a Kia main dealer. The dealer replaced the pipes and clips.

Mr P refused to take the car back and drive it. He complained to Kia and said he had concerns that the engine hadn't been repaired properly.

Kia didn't uphold the complaint. It said there was no evidence to suggest that the car was of unsatisfactory quality at the point of supply. It paid £100 compensation to Mr P for some incorrect information it had included in its letter dated 13 June 2023 when it had said that there was a known issue with this model of car.

Mr P remained unhappy and brought his complaint to this service.

Our investigator upheld the complaint. They said they didn't think a reasonable person would expect an engine to fail after 5 years and having covered less than 55,000 miles. The investigator said that under the relevant legislation, the business was allowed one opportunity to repair the car, and that this had taken place when the engine was replaced. The investigator said that because further repairs had been required once the car was back in the UK, Mr P should be allowed to reject the car.

Kia didn't agree. It said the fact that the repair carried out by the French dealership hadn't been done correctly didn't mean that the car wasn't sufficiently durable. It also said that the complaint had been raised outside of the first 6 months and that there was no evidence to suggest that the car wasn't of satisfactory quality when it was supplied.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr P was around 4 years old and had covered around 41,345 miles. So, it's reasonable to expect that the car would already have a degree of wear and tear and that it would require repairs sooner than, say, a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The legislation says that the business is allowed one opportunity to repair the car. If the repair isn't successful, the consumer can reject the car.

Where a fault occurs outside of the first 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

I've reviewed the available evidence about the issues which Mr P experienced with the car. Based on what I've seen, I'm satisfied that there was a fault with the car. I say this because the evidence shows that the engine failed and had to be replaced.

Because the fault occurred outside of the first 6 months after the car was supplied to Mr P, it's up to Mr P to show that the car wasn't of satisfactory quality when it was supplied. I've thought about this from a durability perspective. Considering the fact that the car was only around 5 years old and had covered less than 55,000 miles when the engine failed and having regard to the purchase price of the car and the length of time Mr P was able to drive it before the engine failed, I don't think it's likely that the car was sufficiently durable.

Durability is an aspect of satisfactory quality. Whilst – as I've said – it's reasonable to expect that a second hand car will require repairs sooner than a brand new car, there's also an expectation that a car will remain free from defects for a reasonable period of time, having regard to relevant factors such as the age and mileage of the car and the price paid. In this case, I don't think it's reasonable to expect that a major component part such as the engine would fail in a car of this age and mileage.

Taking everything into consideration, I don't think the car was sufficiently durable. It follows that the car wasn't of satisfactory quality when supplied.

Under the relevant legislation, the business is allowed one opportunity to repair the car. The repair was carried out when the engine was replaced. The legislation also says that if the repairs aren't successful, the consumer can reject the car. In this case, the repairs weren't successful because further issues arose when the car was recovered to the UK and further repairs were required.

In its final response dated 4 July 2023, Kia stated that "the supplying dealership have now rectified the vehicle issues and the ineffective repair carried out at the French dealership". I'm satisfied that this is an acknowledgment by Kia that the first attempt at repair was unsuccessful.

Based on what I've seen, I'm persuaded that the attempt at repair was unsuccessful and under the relevant legislation, Mr P should be allowed to reject the car.

Putting things right

Mr P has told this service that he was without the use of his car for around 4 months from December 2022 until March 2023. During this time, he was provided with a courtesy car but this wasn't made available to him until 13 January 2023, which meant that he was left without a means of transport for 16 days. Because Mr P was without the use of a vehicle for this time, I would expect Kia to refund a proportion of Mr P's monthly instalment to reflect this.

It's clear that Mr P has suffered significant distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. He had to make alternative travel arrangements, arrange emergency accommodation when the engine seized and arrange to have the car brought back to the UK. Taking the impact of all of this into consideration, I think it's fair to ask Kia to pay compensation for this.

My final decision

My final decision is that I uphold this complaint. Hyundai Capital UK Limited trading as Kia Finance must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr P

Refund Mr P's monthly instalments from 22 May 2023 to the date the agreement is ended

Refund a proportion of Mr P's monthly instalment for December 2022/January 2023 to reflect the 16 days he was without the use of a vehicle

Pay 8% simple interest per annum on all amounts refunded calculated from the date of payment to the date of settlement

Pay further compensation of £150 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 January 2024.

Emma Davy
Ombudsman