

## **The complaint**

Mr Q is unhappy that a car supplied to him under a conditional sale agreement with Hyundai Capital UK Limited trading as Hyundai Finance was of an unsatisfactory quality.

## **What happened**

In May 2022, Mr Q was supplied with a new car through a conditional sale agreement with Hyundai. He paid an advance payment of £3,500 (which included a £1,000 dealer contribution) and the agreement was for £19,324 over 49 months; with 48 monthly repayments of £276.24 and a final payment of £8,850.60.

The car broke down on 10 October 2022, after doing 5,915 miles. The recovery company said there were issues with the throttle valve and accelerator pedal, which were fixed by the supplying dealership. And the car was returned to Mr Q on 1 November 2022.

However, the car broke down again on 9 November 2022 due to an issue with the accelerator pedal position sensor. Mr Q had the car recovered to the dealership and he raised a complaint with Hyundai. Hyundai said the dealership had the right of repair, but a rejection could be considered if the fault reoccurred.

The car was returned to Mr Q on 29 November 2022, and the dealership said they'd chosen not to replace the accelerator pedal, as this had been done around a month earlier. They also explained there was a software issue and there was no manufacturer update available. So, the dealership said they couldn't do anything more.

The car broke down again on 22 February 2023, after it had done 10,107 miles. The recovery company said it was a fault with the accelerator pedal sensor that was causing the issue, so Mr Q complained to Hyundai again.

Hyundai arranged for the car to be inspected by an independent engineer. The engineer said he couldn't identify any fault, so Hyundai rejected Mr Q's complaint. The following day, the car broke down again and the recovery company advised Mr Q it wasn't safe to drive. Unhappy with this, Mr Q brought his complaint to us for investigation.

Our investigator was satisfied there was a recurring fault with the accelerator pedal, which Mr Q had evidenced from the breakdown reports and the dealership job cards. She thought it was reasonable to expect a new car to be free of such issues, so the car wasn't of a satisfactory quality when it was supplied to Mr Q.

The investigator said the dealership had already attempted to repair the car twice, and both attempts at repair had failed. Given this, she thought that Mr Q should now be allowed to reject the car. Mr Q had been provided with a courtesy car while the car was being repaired, but not after it broke down in February 2023. So, the investigator said that Mr Q should be refunded the £2,500 deposit and any payments he'd paid since this date, plus statutory interest. She also said that Hyundai should pay him an additional £300 for the inconvenience he'd been caused.

However, the investigator explained that we couldn't consider the way Hyundai had dealt with Mr Q's complaint, as complaint handling wasn't a regulated activity.

Hyundai responded to say they'd unwound the agreement and refunded the £2,500 deposit to Mr Q, less a £1,083.20 mileage charge (10,329 miles at £0.35 per mile) in April 2023. They also said they'd paid Mr Q £250 compensation.

The investigator explained that Hyundai keeping the payments Mr Q had made until 22 February 2023 covered any fair usage, and that any additional mileage charges shouldn't be applied. She also explained that Mr Q wasn't happy with the redress Hyundai had paid. In response, Hyundai said they couldn't accept the investigator's view *"because we have proactively resolved this complaint before you issued it [and] because it is outdated and can no longer be considered applicable."*

Given this, this matter has been passed to me to make a final decision.

### **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr Q was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Hyundai are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Hyundai can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr Q to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr Q took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Hyundai to put this right.

Based on what I've seen, I'm satisfied that, by already taking the car back and unwinding the agreement, Hyundai have accepted that it wasn't of a satisfactory quality when supplied to Mr Q. As such, my decision will focus on what I think Hyundai need to do to put things right.

## Putting things right

It's not disputed that Mr Q was provided with a courtesy car for the two periods the car supplied by Hyundai was being repaired. And, while this may not have been a like-for-like car, I'm satisfied that he was kept mobile. Given this, it's only fair that Mr Q pay for this. As such, Hyundai are entitled to keep all the payments Mr Q made up to 22 February 2023.

It's also not disputed that, when the car broke down in February 2023, Mr Q was advised by the breakdown company not to use it. And, as he wasn't provided with a courtesy car after this point, it's also only fair that any payments he made after 22 February 2023 should be refunded to him.

With regards to the fair usage mileage charge Hyundai have applied, I've seen a copy of the agreement Mr Q electronically signed. And this makes no reference to any mileage allowance, or that he would be charged for mileage if he terminated the agreement early and returned the car (which is the nearest circumstance to what happened that's covered in the agreement). As such, I'm not satisfied it's fair for Hyundai to charge for the mileage Mr Q did in the car. While I accept their argument about fair usage, they received payments from May 2022 to February 2023 (at £276.24 a month) which they're entitled to keep. As such, I'm satisfied this is sufficient for any fair usage of the car, and Hyundai shouldn't be allowed to apply any further fair usage charges.

I'm also satisfied that Mr Q was inconvenienced by what happened. The car supplied to him broke down on multiple occasions, with the same fault, and he needed to have it recovered on each occasion. And this would've been frustrating and annoying. The investigator has recommended that Hyundai pay Mr Q £300 to compensate him for this, which is in line with what I would've recommended. So, I see no compelling reason why I shouldn't adopt this as part of my final decision.

Finally, I want to address the monies Hyundai have already paid to Mr Q. And their view that this satisfactorily resolved Mr Q's complaint. While they have decided to make this payment, I haven't seen anything to show me that this was discussed with Mr Q beforehand, nor that he agreed to this in resolution of his complaint. Given this, I'm not satisfied that Hyundai's unilateral decision resolved Mr Q's complaint, and he is entitled to continue to pursue this through the Financial Ombudsman Service.

Therefore, if they haven't already done so, Hyundai should:

- end the agreement with nothing further to pay;
- collect the car at no cost to Mr Q;
- refund the full £2,500 deposit he paid;
- refund all payments Mr Q paid on or after 22 February 2023;
- apply 8% simple yearly interest on these refunds, calculated from the date Mr Q made the payments to the date of the refund <sup>†</sup>;
- remove any adverse entries relating to the agreement from Mr Q's credit file; and
- pay Mr Q a total of an additional £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>HM Revenue & Customs requires Hyundai to take off tax from this interest. Hyundai must give Mr Q a certificate showing how much tax they've taken off if he asks for one.

**My final decision**

For the reasons explained, I uphold Mr Q's complaint about Hyundai Capital UK Limited trading as Hyundai Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 21 August 2023.

Andrew Burford  
**Ombudsman**