

The complaint

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

What happened

On 28 March 2022, Ms C was supplied with a new car through a conditional sale agreement with Hyundai. She paid an advance payment of £4,144.55 and the agreement was for £21,068.45 over 49 months; with 48 monthly payments of £327.97 and a final payment of £8,622.25.

In October 2022, the car lost power and Ms C took it back to the supplying dealership. The dealership kept the car for around a month but returned it to Ms C saying they were unable to find any fault. In March 2023, the car's infotainment system failed, and the dealership carried out a factory reset. However, Ms C says this didn't resolve the issue.

On 5 April 2023 the car lost power again and was recovered to the dealership. Ms C contacted Hyundai, asking to reject the car, and they asked her to provide an independent inspection showing the car was faulty. Which she did.

The car was inspected on 15 May 2023, at which point it had done 18,565 miles. The inspector said that the 12-volt battery was only running at 66% charge, and was outputting almost 15 volts, which was a cause for concern. The inspector also said that the 48-volt hybrid battery was running at 45% charge, which was also a cause for concern.

The inspector noted that the stored fault codes had been erased shortly before the inspection took place. However, the inspector said that the Gasoline Particulate Filter ('GPF') had failed to complete a regeneration during the lifetime of the car, even though the ECU showed that the parameters for a GPF regeneration had been present. What's more, the hybrid function failed to operate during a road test.

In conclusion, the inspector said the GPF had never regenerated, so it had become blocked, which can result in a dangerous loss of power when driving; and the condition of the 48-volt battery has resulted in the hybrid system not working. As such, the inspector said that *"the vehicle, in its present condition, is not of satisfactory quality and not fit for purpose and would not have been of a satisfactory quality and not fit for purpose at the point of sale ... a rejection of the vehicle should be granted."* Ms C was charged £1,500 for this inspection.

Hyundai told Ms C that they wouldn't support rejection of the car, as there was no evidence there was a fault with the car at the point of supply, nor would they reimburse her the inspection costs. Instead, they said Ms C should arrange for the car to be repaired and, once they'd received the repair costs, *"we will happily review this for authorisation."*

Ms C wasn't happy with Hyundai's response, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car that was present from the point of supply, and this made the car of an unsatisfactory quality. As the dealership had already unsuccessfully attempted repairs to the car, the investigator said that Ms C should now be allowed to reject it.

The investigator said that Hyundai should end the agreement, collect the car, and refund Ms C's deposit. He also thought that Hyundai should pay Ms C £300 for the distress and inconvenience she'd been caused. However, as Ms C had been kept mobile while the car she was supplied with was off the road, the investigator didn't think Hyundai should refund any payments. The investigator also said that an inspection report would normally cost in the region of £180 to £250 so, while Ms C had paid £1,500 for her report, Hyundai should only refund her £250 – the reasonable cost of such a report.

While Ms C was disappointed a full refund of the £1,500 she'd paid wasn't recommended, she agreed with the investigator's view. Ms C was also unhappy with the actions of the dealership, but the investigator explained this wasn't something we could consider in a complaint about the actions of Hyundai. Finally, Ms C said that Hyundai were asking her to return the hire car, as they thought the car was fit for purpose and drivable.

Hyundai said there were some discrepancies between what the independent inspector had found, and what the dealership had found. They said that, because the car didn't develop any faults until April 2023 *"it cannot be said that the vehicle was not of a satisfactory quality when supplied [and] when the vehicle was taken to the supplying dealership, they were unable to fault the vehicle after vigorous testing."* As such, they said they should be allowed the right to repair the car and didn't agree that rejection was a reasonable resolution.

Because Hyundai didn't agree, 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Ms C 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 Consumer Rights Act 2015 ('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 Ms C to show it was present when the car was supplied.

So, if I thought the car was faulty when Ms C 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.

I've seen a copy of the independent engineer's report, dated 15 May 2023. In this report, the engineer said the GPF hadn't worked correctly since 0 miles, and the hybrid system wasn't working due to a failure in the battery system. The engineer confirmed that *"the vehicle, in its present condition, is not of satisfactory quality and not fit for purpose and would not have been of a satisfactory quality and not fit for purpose at the point of sale."*

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

Hyundai have said that any fault with the car couldn't have been present when it was supplied, as the car didn't break down until April 2023, at which point the dealership couldn't find any fault after 'vigorous testing'.

I've seen a report from a breakdown company, dated 22 October 2022, which confirms they were called out because the car lost power and shut down completely. The report says this isn't the first time Ms C has suffered this fault, and the attending mechanic said the car *"has an intermittent major issue and is not safe to drive, garage attention required."* The car was recovered to the dealership following this breakdown. So, I would point out that the car first broke down in October 2022, and it was at that stage the dealership couldn't find any fault.

The independent engineer also stated that the historic fault codes had been deleted shortly before the inspection, and I've noted the car was with the dealership for around a month before the inspection took place. As it would require specialist equipment to delete the fault codes, I think it's more likely than not that these were deleted by the dealership, and not by Ms C. Which gives me concern that, after a month of 'vigorous testing' in October 2022, the dealership couldn't identify that the GPF wasn't regenerating.

When looking at the GPF, this is something that would take time to block with soot, so it wouldn't be immediately obvious to Ms C. And I don't think it's unreasonable that it would take around seven months before the blocked GPF caused the engine to lose power. What's more, despite the car being with the dealership for an extended period of time, and therefore there was ample opportunity to do so, neither the dealership nor Hyundai have provided an independent report that contradicts the findings of the report of 15 May 2023.

As such, I'm satisfied there was a fault with the car that was present or developing at the point of supply. And this made the car of an unsatisfactory quality.

Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."* This is known as the single chance of repair, and this is what Hyundai are now asking for.

However, this right to repair applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Hyundai – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is also clear that, if the single chance at repair fails, Ms C has the right of rejection.

There's no evidence of what work, if any, the dealership did on the car in October 2022. The independent report mentions this, and that the dealership explained that, due to a change of owner, all records had been deleted. However, the dealership didn't deny having had the car in October 2022 for repair following a breakdown.

In an email dated 25 April 2023, after the second breakdown, the dealership confirmed they'd recovered the car, charged the battery, and run a software upgrade. This email also says *"we will continue to check the vehicle to see if we are able to fault while in with us."*

Taking the above into consideration, even if this didn't happen in October 2022, I'm satisfied that the single chance at repair has been taken in April 2023. The independent report shows that a fault remained with the car in May 2023, and Ms C has made it clear she doesn't want a further repair to be attempted on the car. As such, I'm satisfied she should now be allowed to reject the car.

Putting things right

The car was off the road between the breakdown in April 2023 and when it was returned to Ms C, unrepaired, on 25 November 2023. During this period, Ms C was supplied with a courtesy car. Ms C has also provided evidence that the current mileage on the car is 23,143 miles, which means she's done around 4,500 miles since the car was returned to her. As such, as Ms C has remained mobile during the entire period, even though she's still had issues with the car breaking down, I'm satisfied Hyundai don't need to refund the payments Ms C made during this period.

Ms C also paid £1,500 for the inspection on the car in May 2023. The investigator has said that this is substantially more than a reasonable report should cost, and I'm in agreement this is substantially more than Hyundai would likely have paid had they arranged for the report themselves. As such, I'm in agreement that Hyundai should only be required to refund the reasonable costs of such a report. As Ms C has accepted this recommendation, I'll be adopting this as part of my final decision.

Finally, it's clear that Ms C has been inconvenienced by what's happened, by having to arrange for the car to be inspected, and by having to drive an unrepaired car that could possibly breakdown again at any time. So, I think Hyundai should compensate her for this. The investigator had recommended Hyundai pay her £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Hyundai should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms C;
- remove any adverse entries relating to this agreement from Ms C's credit file;
- refund the deposit Ms C paid (if any part of this deposit is made up of funds paid through a dealer contribution, Hyundai is entitled to retain that proportion of the deposit);
- upon receipt of proof of payment, refund Ms C £250 of the cost she paid for the inspection of the car in May 2023 (if the proof of payment shows that Ms C paid less than £250, Hyundai should refund the full costs she paid instead),

- apply 8% simple yearly interest on the refunds, calculated from the date Ms C made the payments to the date of the refund[†]; and
- pay Ms C an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Hyundai to take off tax from this interest, Hyundai must give Ms C a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms C'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 Ms C to accept or reject my decision before 20 March 2024.

Andrew Burford
Ombudsman