

The complaint

Mr D complains about car finance that he took out with Hyundai Capital UK Limited trading as Kia Finance. He says Kia Finance acted fraudulently in creating the loan.

Correspondence on this case has been handled on behalf of Kia Finance by a third party, S. For ease of reading, I'll refer to all respondent correspondence as being from Kia Finance.

What happened

Mr D entered into a conditional sale agreement in November 2018 to enable him to acquire a car. The finance agreement shows Kia Finance provided him with credit of £14,569, with a total amount payable of £27,197.60 over a four-year term. Mr D paid an advance payment of £8,000, settling the finance balance around six weeks after taking it out. Because Mr D repaid the balance early Kia Finance applied a rebate to the interest payable.

In September 2023 Mr D wrote to Kia Finance to the effect that he considered the lender had lost what he described as the 'security instrument' (being the finance agreement) and that, through a series of arguments and reasoning, he should be entitled to restitution. Mr D's subsequent correspondence indicates he has calculated this sum as a little over £520,000.

Kia Finance has declined to meet Mr D's claim. It disputes the validity of the documents he has served on it. Mr D has referred matters to us. In support of his position he has provided – among other things – a statement of truth, a Bank of England Quarterly Bulletin from 2014 containing information on money creation within the economy, and a YouTube link to a feature on *"the true legal basis for the banking system"*.

Our investigator noted the position advanced by Mr D but considered there was no legal basis to support the arguments he was making. She didn't think Kia Finance needed to take any action to resolve Mr D's complaint.

Mr D didn't accept the investigator's conclusions and the matter has been passed to me for review.

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 don't doubt that Mr D genuinely believes he has put forward a compelling argument in support of his claim. Unfortunately, it isn't one I find in any way persuasive. Whatever the whys and wherefores of the monetary system in operation, there is no proper basis in any of the arguments Mr D has put forward that would support his claim that Kia Finance owes him any restitution.

For me to find in favour of Mr D, as a minimum I would expect to see some persuasive, ideally fact-based, evidence that:

- Kia Finance did something wrong;

- That this wrong caused Mr D material loss or harm; and
- That the amount required to put things right is founded in the actual loss or harm Mr D has suffered

Although I have read Mr D's submissions and his statement of truth, I find that he has by no little distance failed to meet any of these requirements. I don't propose to comment on each individual point Mr D has sought to make but, given the basis on which he initially made his claim, I think it's worth making the following observation.

Mr D's opinion of what constitutes a security instrument as set out in his September 2023 letter to Kia Finance is, I'm afraid, rather misguided, being based on his reading of the interpretation of "*security*" in section 189 of the Consumer Credit Act 1974 ("CCA"), rather than "*security instrument*" defined later in that section.

A finance agreement setting out the terms on which a lender advances credit to a borrower doesn't amount to a security instrument. It isn't something Mr D offered to Kia Finance to secure the carrying out of his obligations as the debtor under the agreement; rather, it *was* the agreement. The fact that the finance agreement bears none of the form or content of a security instrument as specified under The Consumer Credit (Guarantees and Indemnities) Regulations 1983 is also a good indication that it is not, and was never intended to be, a security instrument.

I would also add a note of caution, which I hope Mr D will take in the spirit in which it's intended. Should Mr D decide to pursue his claim through the courts, I'd encourage him to take advice from a qualified legal representative, rather than relying on information obtained on the internet before attempting to raise in court the arguments he has put forward here.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 March 2024.

Niall Taylor
Ombudsman