DRN-4870013

The complaint

Mr H believes Hyundai Capital UK Limited trading as Hyundai Finance ("Hyundai") wrongfully applied their own terms and conditions when they thought he had breached an agreement he held with them.

What happened

In May 2021, Mr H acquired a used car using a conditional sale agreement with Hyundai. The car was around three years old, the cash price of the car recorded on the agreement was £13,315, the agreement was for 37 months, made up of 36 regular, monthly repayments of £152.46, followed by a final payment of £6,855.57. The advance payment recorded on the agreement was £3,000. The mileage recorded on the sales agency agreement for the car was 19,416 miles.

In June 2023, a bankruptcy order was made against Mr H. In July 2023, the insolvency service contacted Hyundai and asked for more details about the agreement they held with Mr H, which Hyundai responded to.

In July 2023, Hyundai sent a Default Notice to Mr H, where they said he had breached a term of the agreement; specifically, one where it stated that he will not either permit a petition for a bankruptcy order to be presented against him or call a meeting with his creditors or reach any agreement with them. The letter went on to explain that the breach wasn't capable of being remedied and that once the deadline in the letter had passed, they would look to terminate the agreement, repossess the car and require immediate payment for the balance on the agreement, among other things.

The letter also said that Mr H had paid £6,811.50 under the agreement up to that point. And if Mr H had paid at least one third of the total amount payable (£15,344.13) under the agreement, then they will not repossess the car without a court order. The letter also said the remaining amount payable by Mr H at the time was £8,164.87.

Mr H believed that he had paid at least one third of the amount payable under the agreement when the Default Notice arrived, and so thought the car shouldn't be repossessed without a court order.

In August 2023, Mr H's official receiver informed Hyundai that they disclaim any interest in the conditional sale agreement they hold with Mr H. Later in the month, Hyundai sent Mr H a notice of termination letter, informing him they had terminated the agreement.

Mr H said he complained to Hyundai in October 2023, and they responded with their final response later in the month. In summary, Hyundai said that as Mr H was declared bankrupt, this had broken the terms and conditions of the agreement. They went on to say that as the car was a secured debt, the car must be returned to them via repossession. And so, Mr H's bankruptcy overruled other terms in the agreement which allowed him to retain the car.

During October 2023, Mr H said a recovery company acting on behalf of Hyundai repossessed the car from him.

Mr H said he was informed by Hyundai that the car was sold in November 2023 for £11,894 and he received £3,327.37 in settlement for the agreement once the car was sold and the account settled.

In April 2024, Mr H referred his complaint to our service.

Our investigator upheld the complaint, and said Hyundai needed to do more in this instance. The investigator thought that Mr H should be refunded a further £3,484.13 and paid £300 for the distress and inconvenience this complaint had caused. In summary, she said that while Hyundai believed Mr H breached the terms of the agreement, the provisions under the Consumer Credit Act 1974 ("CCA") protected Mr H and required Hyundai to obtain a court order if they wished to repossess the car. And so, as the car was repossessed and sold without a court order, Mr H was owed all the sums paid under the agreement.

Hyundai in part didn't agree with the investigator's findings. They said they accepted they needed to pay £300 to Mr H for the distress and inconvenience caused in relation to this complaint but didn't think they needed to give a further payment of £3,484.13. Hyundai said they believed the notice of disclaimer they received from the insolvency services stated that all interest in the finance agreement was disclaimed, meaning that any benefits assigned to Mr H in the agreement were no longer applicable or legally enforceable.

Hyundai also said that Mr H had use of the car up until the bankruptcy order was made, so they didn't think it was fair for them to refund payments made for that period.

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

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'm upholding this complaint and I'll explain why below.

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

What I need to consider in this instance is whether Hyundai acted fairly and reasonably when they repossessed the car from Mr H.

In order to do this, I have considered both the agreement that Mr H signed with Hyundai as well as relevant law.

Under section 5 of the agreement signed by both parties, it says:

"*You will not permit a petition for a bankruptcy order to be presented against you… or call a meeting of creditors, or reach an agreement with them.*"

Under section 7 of the agreement called, "*Our rights if you break any term of this agreement*" it says in section 7.2:

"*If this clause applies we will have the right to treat this agreement as repudiated and terminate this agreement and subject to the rights given to you by law, take back the goods.*"

Hyundai have relied on these terms and others within the agreement and so believe they fairly repossessed the car. They say that as Mr H breached section 5 of the agreement, it overruled others which would have allowed Mr H to retain the car if he had paid at least a third of the total amount payable.

I don't think Hyundai have interpreted and applied their own terms correctly in this instance. I say this because, the term which relates to Hyundai needing a court order to take back the car, if Mr H has paid at least a third of the total amount payable, is a right Mr H holds as a consumer under the CCA. So, I don't think it can be ignored and overruled. Furthermore, the agreement itself says "*… and subject to the rights given to [Mr H] by law…*". So, the agreement also says that relevant law must be considered alongside the agreement.

Section 90 of the CCA says:

(1) At any time when-
- *a) the debtor is in breach of… a regulated conditional sale agreement relating to goods, and*
- *b) the debtor has paid to the creditor one-third or more of the total price of the goods, and*
- *c) the property in the goods remains in the creditor,*

the creditor is not entitled to recover possession of the goods from the debtor except on an order of the court.

In this instance, I'm satisfied Mr H is in breach of the agreement – in this case section 5 relating to bankruptcy. So, section 90(1)(a) has been satisfied.

I'm also satisfied section 90(1)(b) has been met, as Mr H at the time had paid £6,811.50 towards the agreement, which is more than a third of the total amount payable under the agreement (£15,344.13).

And finally, I'm satisfied section 90(1)(c) has also been met as Hyundai still retained ownership of the car as the agreement at the time was ongoing.

So, it follows that Hyundai was not entitled to recover possession of the car from Mr H except on order of the court. And in this instance, Hyundai did not receive a court order before repossessing the car. So, I don't think Hyundai fairly applied their own terms and relied on relevant law when they repossessed the car from Mr H.

I've now gone on to consider what Hyundai needs to do to put things right. Section 91 of the CCA called, "*Consequences of breach of s. 90*" says:

"*If goods are recovered by the creditor in contravention of section 90-*

- *(a) the regulated agreement, if not previous terminated, shall terminate, and*
- *(b) the debtor shall be released from all liability under the agreement, and shall be entitled to recover from the creditor all sums paid by the debtor under the agreement.*"

In this instance, I have seen a letter sent to Mr H which explains the agreement has been terminated. So, I'm satisfied section 91(a) has been met.

Turning my attention now to section 91(b). I consider this part of the section to mean that Mr H is entitled to be reimbursed all payments he has made under the agreement, if Hyundai breached section 90 of the CCA. So, I think Mr H is entitled to all payments he has made,

which is £6,811.50. As Hyundai has already reimbursed Mr H £3,327.37, it follows that Mr H is still owed £3,484.13.

I have also considered the impact Hyundai's mistake has had on Mr H. It must have been distressing to receive contact from a third-party recovery agency acting on behalf of Hyundai. Especially as Mr H strongly believed from the outset he had paid more than a third towards the agreement. Mr H has also shown on occasions that he attempted to contact Hyundai to resolve the matter. Considering the circumstances, I think Hyundai should pay Mr H £300 for the distress and inconvenience caused in relation to this complaint.

Any funds received in relation to this complaint may need to be declared to the insolvency service and official receiver in view of Mr H's bankruptcy.

My final decision

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

- Reimburse Mr H a further £3,484.13, in addition to the £3,327.37 they have already reimbursed, so that Mr H receives all sums paid under the agreement (£6,811.50). *
- Pay Mr H £300 to reflect the distress and inconvenience caused.

* This amount should have 8% simple yearly interest added from the date the car was sold 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 Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 April 2025.

Ronesh Amin
Ombudsman