

The complaint

Mr G complains that Hitachi Capital (UK) Plc refused to cover the costs to repair a faulty car.

What happened

In December 2018 Mr G acquired a second-hand car costing £10,190 funded by a fixed loan agreement. The car was some three years old and had covered 34,829 miles.

He says that in late August 2019 he noticed a light grinding noise intermittently. He contacted the dealer as he believed the car was still in warranty, but he was told that this only covered the first three months. He was due a service and hoped this might deal with the issue but two weeks later the car wouldn't go into reverse gear. He took it to a local garage and was told he needed a new gearbox. The car was repaired in early March 2020 at a cost of £1,416.

He complained to Hitachi which advised him to obtain an independent report. It told this service that although the dealer had ceased trading it had confirmed it had not heard from Mr G after the sale.

The complaint was considered by one of our investigators who recommended it be upheld. She noted Mr G had been unable to drive the car from October 2019, some 10 months after the point of sale and after it had covered some 40,000 miles. She said that she had to consider the durability of the car and if parts fail prematurely, this might indicate there was already a problem when the car was supplied.

Mr G had only covered some 5,000 miles before first encountering issues with the gearbox and our investigator didn't believe this was a significant amount for the 10 months he had the car.

After taking into account the price, age and mileage of the car, she believed that, on balance of probabilities, the car was not of satisfactory quality when it was supplied. The car had been satisfactorily repaired and she considered Hitachi should cover the cost of the repair. She also thought it should refund three months payments when the car was out of action.

Hitachi didn't agree and said the burden was on Mr G to prove it had been faulty at the point of sale. It added that the car had passed its MOT in January 2020. It noted he had been able to drive the car to the garage to have it tested. Mr G provided a copy of the diagnostic carried out on 3 December which showed that neither first nor reverse gears could be engaged.

Mr G told this service that he had contacted the dealer but was told the car was out of warranty. Our investigator explained that the MOT doesn't cover the gearbox.

Hitachi said that the diagnostic report could not be taken as independent as the garage stood to gain from the repairs and it didn't establish the fault was present at the point of sale. It noted the report didn't carry any registration number on it. It said that as the car had been repaired it was now impossible to determine the cause of the fault. It repeated its concern

that the car passed its MOT in January 2020.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the fixed loan agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Hitachi is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

While I have some sympathy with the arguments put forward by Hitachi, I consider I should uphold this complaint. I will explain why.

I appreciate that we do not have an independent report into the fault and its likely cause, but I do believe we have sufficient circumstantial evidence to conclude the car had an inherent fault. It was only some three years old when it was sold and less than a year later a problem with the gearbox developed. Mr G has made little use of the car and while I acknowledge that driving style can contribute to gearbox issues, I think it unlikely that in his relatively short period of use that he can be held responsible for the fault.

I don't believe it is disputed that there was a fault which Mr G had repaired. The dealer has ceased to trade and Hitachi says it has been told that Mr G made no contact after the sale. Mr G says otherwise. He has told this service he did contact the dealer but was told that as the car was out of warranty it had no responsibility for the fault. Hitachi asked for an independent report, but Mr G has explained he already had a diagnostic and he had limited funds to pay for one.

He has explained the repair took several months due to parts being sourced and was completed in March 2020. The MOT was due and so he had this done while the car was waiting to be repaired. The MOT does not cover the gearbox and so the car having passed the test doesn't mean that the gearbox was working.

I consider the key issue to be one of durability. A gearbox should last for at least 100,000 miles and usually much longer than that. So this failure was exceptional. Mr G made little

use of the car before the fault developed and on the balance of probabilities, I think it reasonable to conclude there was either some inherent fault or the previous owner had driven it inappropriately or it had been poorly maintained.

The only alternative explanation is that Mr G's driving style caused the fault, but as I have said the relatively low mileage covered by him does not support that conclusion. This leads me to consider that the car was of unsatisfactory quality at the point of sale.

Putting things right

Hitachi should cover the cost of the repair and refund three months payments.

My final decision

My final decision is that I uphold this complaint and I direct Hitachi Capital (UK) Plc to:

- Refund the repair cost of £1,416.
- Refund three months monthly payment as Mr G didn't have use of the car and no alternative was provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 March 2021.

Ivor Graham
Ombudsman