

## The complaint

Mrs K complains that a car she obtained through a fixed sum loan agreement with Hitachi Capital (UK) Plc was not of satisfactory quality and was misrepresented to her. The complaint is brought on her behalf by her son, who I will call Mr S.

## What happened

The background to this complaint was set out in my provisional decision dated 3 February. I explained why I didn't think any misrepresentation that had taken place would have made a difference to Mrs K entering into the finance agreement. I said:

*The relevant law says, amongst other things, that the car should not have been misrepresented to Mrs K. If it was, and if I thought Mrs K would not have proceeded with the deal if she'd been aware of the true facts, then I would think Hitachi was responsible and I'd ask it to take some further action.*

*I can see from the advert that the car was clearly advertised as having one previous owner. And I can see from the registration certificate that there have in fact been two previous owners. But Mr S says he saw the log book before his mother obtained the car and it showed one previous owner. I think it's probably most likely that the second owner that's been recorded is the supplying garage. Even if this wasn't the case, I've thought about whether any misrepresentation would have made a difference to Mrs K. In other words, whether I think Mrs K would have gone ahead with the fixed sum loan agreement if she'd known there had been two previous owners. I've not seen anything to show that this was of particular importance to Mrs K and I think this is reflected in the fact that she didn't complain about it until she referred the complaint to this service. I would have thought she reasonably would have complained at an earlier stage – to either the supplying garage, the credit broker or Hitachi – if this was something that would have stopped her proceeding with the finance agreement. On balance, I don't think having two previous owners instead of one would have changed her decision.*

I then considered whether the car was of satisfactory quality when it was supplied. I said:

*The relevant law also says that under a contract to supply goods, there is an implied term that "the quality of goods is satisfactory". As such, in order to uphold this complaint, I would have to be persuaded that the car wasn't of satisfactory quality and so a breach of contract has taken place.*

*In deciding whether a car is of satisfactory quality, some of the factors to consider are its age when it was supplied, how much mileage the car covered since it was supplied and how long after supply the fault materialised.*

*The car was around six years old when it was supplied in March 2019 and its mileage was around 28,000 miles.*

*Neither party has provided an independent report and as the repairs to the brakes have been carried out, it won't be possible now for an expert to say, with any certainty, if the brakes failed due to a fault which was present when the car was supplied. In cases like this, where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.*

*Mrs K complained about the brakes just over a month after the car had been supplied. It seems brake fluid was leaking, and a part was corroded. The car had been driven around 2,000 miles by this point and it was second hand so it's reasonable to expect some wear and tear. But, even taking this into account, I wouldn't have expected the brakes to fail completely so soon after the car had been supplied, particularly bearing in mind its relatively high value.*

*For this reason I think, on balance, that the car wasn't of satisfactory quality when it was supplied.*

And I went onto explain what I thought Hitachi needed to do to put things right. I said:

*It follows that Hitachi is responsible for putting this right. But it doesn't automatically follow that it should accept Mrs K's rejection of the car. Like our investigator, I haven't seen evidence to show that Mrs K requested rejection within 30 days of obtaining the car. Mrs K didn't report the issue with the brakes until after 30 days. In cases like this, I would expect Hitachi to arrange and pay for repairs. But the repairs have already been carried out. Our investigator didn't think Hitachi needed to reimburse Mrs K for all the invoices Mr S has supplied because of discrepancies. So I have considered each of the invoices very carefully. In arriving at my decision, I've taken into account that the supplying garage does not seem to have been very helpful when Mrs K reported the fault, and she felt she had no option but to arrange the repairs herself. In doing so, she and her son approached different third-party garages to try to keep the costs reasonable – which is why so e of the invoices are not VAT invoices and are handwritten. I don't think this automatically means Hitachi shouldn't reimburse them, if I find they are related to repairs required to fix the reported fault.*

*Invoice dated 16 May 2019 for £17.70*

*This was for the purchase of brake fluid. There are no details of the car on the invoice and the customer name has been crossed out and is illegible. But the invoice address is Mrs K's and it seems reasonable that she purchased brake fluid because she'd reported that the car had a brake fluid leak. And whilst topping up brake fluid would usually be considered as general maintenance, it was purchased here specifically to fix the reported fault. So I think it's fair that Hitachi reimburse Mrs K for this invoice.*

*Invoice dated 24 May 2019 for £144*

*Hitachi reimbursed Mrs K for this invoice, by crediting her with £150.*

*Invoice dated 27 May 2019 for £120*

*The work listed on the invoice included fitting a new master cylinder and rear brake pipes. This was not a VAT invoice and was handwritten. But it relates to the fitting of parts purchased by Mrs K and required to fix the brake fluid leak. So I think it's fair that Hitachi reimburse Mrs K for this invoice.*

*Invoice dated 26 July 2019 for £322.27*

*This was for the purchase of a master cylinder, a bleeder valve and a brake line. The invoice is addressed to Mr S, but for Mrs K's car. And the parts were used in the repairs as detailed above. Mr S has told us that the date on the invoice reflects the date of payment, which is why it post-dates the invoices for the work carried out. I think it's fair that Hitachi reimburses Mrs K for this invoice.*

*Estimate dated 26 July 2019 for £750*

*This is a quotation for parts. I've not seen evidence to show that Mrs K bought the parts so I don't currently find she should be reimbursed. But the parts quoted for do seem to have been fitted to the car – as evidenced by the next invoice. Mrs K may wish to provide evidence that she paid £750 and I will reconsider whether this should be reimbursed.*

*Invoice dated 28 May 2018 for £45*

*This invoice pre-dates when Mrs K took ownership of the car and is to supply and fit a helicoil and calliper. These are the parts quoted for in the estimate dated 26 July 2019. So it seems, more likely than not, that this invoice has been mistakenly dated 2018 instead of 2019. This was not a VAT invoice and was handwritten. If Mrs K can provide evidence that she paid for the parts listed in the estimate, then I will reconsider whether this invoice should be reimbursed.*

*Mrs K also complained that the air conditioning and the sun roof weren't working properly. But I've not seen independent evidence of these faults, so I don't find there's anything Hitachi is obliged to do to put these reported faults right.*

I gave both parties the opportunity to provide any further evidence or comment in response to my provisional decision. In particular I invited Mrs K to provide evidence that she'd paid the invoices for £750 and £45. But neither party responded to my provisional 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.

As neither party provided any further evidence or information in response to my complaint, I find no reason to depart from my earlier conclusions.

### **Putting things right**

Hitachi should pay Mrs K £453.97 to reimburse her for the repairs (£603.97, less the £150 it has already paid).

Mrs K hasn't provided evidence that she paid the sums of £750 for the estimate dated 26 July 2019 and £45 for the invoice dated 28 May 2018. If Mrs K provides evidence to Hitachi – in the form of receipts or bank statements - that she paid this amount, Hitachi should reimburse her.

Hitachi has already paid Mrs K £50 for the distress and inconvenience caused. In the circumstances, I consider this to be fair and reasonable.

### **My final decision**

My final decision is that Hitachi Capital (UK) Plc should:

1. Pay Mrs K £453.97.
2. On receipt of sufficient evidence from Mrs K that she has paid these amounts, pay her £750 for the estimate dated 26 July 2019 and £45 for the invoice dated 28 May 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 April 2021.

Elizabeth Dawes  
**Ombudsman**