

The complaint

Mr A complains that a hire agreement he had for a car with Hitachi Capital (UK) Plc was unfairly terminated, with the car being repossessed.

This complaint has been brought by a relative on behalf of Mr A but, for ease of reference, I will only refer to Mr A as it's his name on the agreement.

What happened

In August 2020, Mr A entered into a three-year hire agreement for a new car. Under the terms and conditions of the agreement there was an initial payment of around £2,450 followed by 35 monthly payments of around £270. There were also terms and conditions that Mr A would keep the car in good repair and condition, keep the car in his possession and control and comprehensively insure the car for the duration of the agreement. The agreement set out that if any of the terms and conditions were breached then this could lead to Hitachi terminating the agreement.

In early October 2020, the police service in another county from the one in which Mr A lived, contacted Hitachi and said the car had been reported to it as abandoned and damaged. Hitachi tried unsuccessfully to contact Mr A by phone and so it emailed him and asked him to confirm the car was at his registered address, and to provide a copy of the insurance and a contact number within seven days.

As Hitachi didn't receive a response from Mr A it sent him a default notice in November 2020, setting out that he was considered to be in breach of his agreement by failing to keep the car in his possession and control, and by failing to comprehensively insure it. The notice said that to remedy this breach Mr A must provide proof the car was insured in his name and that the car was in his possession. If he failed to do so, then the lease would be terminated. The deadline was set for this information to be provided in 14 days.

Hitachi didn't receive a reply from Mr A and so terminated the hire agreement and passed the vehicle details to a third-party company to be collected. A few days later Mr A contacted Hitachi to discuss the account and explained he had been abroad. He emailed a copy of a proposal form for insurance, which wasn't accepted by Hitachi as proof the car was insured. Hitachi confirmed that the agreement was being terminated.

Mr A then emailed a copy of an insurance certificate that had expired to Hitachi, and Hitachi emailed Mr A and said the insurance wasn't valid, and that arrangements were being put in place to repossess the car. Mr A was advised by Hitachi that he should not drive the car and should keep it at his home address.

A relative of Mr A's sent in a copy of an insurance schedule covering the period November 2020 to November 2021. Hitachi explained that it didn't have authority to deal with anyone else but Mr A, and that the document provided wasn't the required insurance certificate. A complaint was then made to Hitachi on Mr A's behalf by a relative, and Hitachi sent Mr A an email setting out its concerns about the insurance certificate it had received, that the bank account where payments were coming from wasn't in his name and that the repossession

agents hadn't been able to trace the car. It said it had concerns about the security of the car and the breach of the contract. However, Hitachi offered a final opportunity to Mr A to provide a copy of the valid insurance certificate, a signed confirmation the car was in his possession, new bank details in his name for a DD to be set up and photos to show the car wasn't damaged or, if it was damaged, proof it had been booked in for repairs. Hitachi asked Mr A to respond within two days from the date of the email. Hitachi says Mr A did not respond.

Hitachi sent Mr A an email when this deadline had passed and asked him to make urgent contact. It then repossessed the car as it said Mr A was in breach of the agreement. Mr A complained to Hitachi about the way the situation had been handled, the repossessing of the car and the end of contract charges imposed for early termination of the agreement and damage to the car.

Hitachi didn't uphold Mr A's complaint. It said it hadn't taken the decision to repossess the car lightly, but Mr A hadn't provided the information that had been requested. Hitachi said the car had been inspected on collection and found to have damage to its wheels and tyres and a dent on the door. It said these items of damage were all beyond fair wear and tear and the charges of £637.23 were correct. Hitachi said there was also an early termination fee of £4,232 and a repossession charge of £300. It said the end of contract charges were correct.

Mr A disagreed with the view of Hitachi and complained to this service. He said the car had been properly insured, the documents asked for by Hitachi had been provided and it had unfairly re-possessed the car. He requested the return of the initial payment and for the outstanding early termination fee to be cancelled. He also wanted any adverse information recorded on his credit file about this account to be removed.

Our investigator didn't recommend that Mr A's complaint should be upheld. She said, under the hire agreement, it was Mr A's responsibility to keep the car in good condition and repair, to keep the car in his possession and under his control and keep the car fully insured. She said the agreement set out that, if any of the terms were breached, then Hitachi had the right to terminate.

When the police reported the car had been found abandoned with damage, our investigator said it was reasonable that Hitachi would be concerned about the car as it belonged to them. It had attempted to make contact but received no response from Mr A, resulting in the issuing of the default notice. There then followed various contact from Mr A and a relative of his, but Hitachi continued to have concerns about Mr A having breached the terms of the agreement. She said she didn't think Hitachi acted unreasonably when it re-possessed the car.

Our investigator says that the agreement's terms and conditions also set out what would be payable if it was terminated early, and if there was damage found to the car outside fair wear and tear. She said she didn't think Hitachi had acted unfairly in the end of contract charges it had applied.

Mr A disagreed with our investigator's view. He disagreed the car had been abandoned or damaged and said that may have been a malicious report and that he had provided the proof the car was insured as requested. He said the agreement had been unfairly terminated on the grounds the car was uninsured when it had been, and that the insurer had also confirmed this with Hitachi.

As an agreement couldn't be reached the complaint has been passed to me.

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.

Mr A says that Hitachi has unfairly terminated the hire agreement as it says the car was uninsured. However, I've seen that Hitachi raised a number of potential breaches of the agreement with Mr A, not just the insurance.

I appreciate Mr A says the car wasn't abandoned but I think it's fair to say the police had taken a report about the car seriously and contacted Hitachi who was the owner of the vehicle. In these circumstances I can't reasonably say that Hitachi didn't have cause to be concerned that the car wasn't in Mr A's possession or under his control as per the terms of the hire agreement. Hitachi attempted to contact Mr A but was unable to do so. It appears to have tried both calling and emailing without success and, although I appreciate Mr A was abroad at the time, Hitachi wouldn't have known that. Hitachi asked Mr A to provide confirmation that car was with him at the registered address and to provide a certificate for insurance and a contact number. It asked for a response within seven days. No response was received, and default notice was duly served in November 2020.

In these circumstances, I think Hitachi acted reasonably in issuing the default notice. This notice set out that it was believed the contract had been breached because the car was not insured, and it was not under Mr A's possession and control. The notice said that the lease would be terminated unless proof was provided of both the insurance and that the car was in Mr A's possession, within the next 14 days.

A few days after the date to produce the proof required expired contact was made on Mr A's behalf by a relative who said Mr A had the required insurance certificate. However, what was provided was an insurance proposal which appeared to have been made after the default notice had been sent. I think Hitachi acted reasonably in informing Mr A that the repossession of the vehicle would be enforced as the proof requested by it hadn't been produced.

Mr A then provided a certificate of insurance that covered a three-month period that had expired. Hitachi told Mr A that, again, this wasn't the required certificate and that the car was being repossessed. It also raised concerns with Mr A that, despite him being informed he no longer had authority to use the car and that it must be kept at his address, the collecting agents had reported the car wasn't there. It asked Mr A to contact the collecting agents.

Mr A then provided Hitachi with a copy of a schedule of an insurance policy that covered the vehicle from the date the three-month certificate had ended. Hitachi pointed out that this document was not the requested insurance certificate. I can't reasonably say that Hitachi acted unreasonably when it declined to accept the insurance schedule in place of the insurance certificate, as these are two different documents. It is the certificate which proves there is valid insurance in place, not the schedule, and I think Hitachi had been clear as to what it required. Looking at the Road Traffic Act 1988 this sets out that a "*policy of insurance shall have no effect*" until a certificate is delivered. So, I think Hitachi was entitled to reject the schedule and I've seen that it did tell Mr A he hadn't produced the insurance certificate as required.

Looking at the communications between Hitachi and Mr A, I think Hitachi was very clear as to the concerns it had in respect of the car, and the breaches it suspected had taken place. These concerns were more than just the car being uninsured, but also about how the car had been found by the police, that payments for the agreement were coming from a bank account that wasn't in Mr A's name, and a suspicion that Mr A wasn't the person using the car. I've seen that Mr A didn't provide the required certificate insurance within the time limit provided, nor does he appear to have provided it when that time limit was extended.

The email sent to Mr A in December 2020, set out one final opportunity to provide the valid certificate, signed confirmation as the car being in his possession, bank details for a new DD to be set up and photos of the car. Mr A did not respond to this.

I think there was enough evidence for Hitachi to reasonably find that it was more likely than not that the agreement's terms had been breached, and these breaches were more than the car not being comprehensively insured. I think Hitachi was entitled to take the action that it did by repossessing the car and ending the agreement.

Mr A has raised the "deposit" of £2,450 that he paid and has asked that it is reimbursed. However, this payment wasn't a deposit but was an initial payment which is actually the first rental payment. As the agreement was terminated early then I don't think it's fair or reasonable for that amount to be repaid to Mr A. This amount can be retained by Hitachi under the agreement's terms and conditions.

Mr A has not raised a complaint regarding the invoice from Hitachi for the damage found on the car. I did provide Mr A with more time to correspond with me about that, but he hasn't replied, so I haven't therefore looked at that issue and have presumed that he accepts the damage was found as described and the charges were fair.

Mr A has asked that any adverse information about this agreement is removed from his credit file. As I don't think Hitachi has done anything wrong in repossessing the car and applying the charges in line with agreement's terms and conditions, I'm not going to ask it to do that. I think it's fair and reasonable for information as to how Mr A has managed this credit account to be recorded on his credit file. Hitachi are under an obligation to provide this factual information to the credit reference agencies.

So, for the reasons set out above, I'm not upholding Mr A's complaint.

My final decision

As set out above, I'm not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 November 2021.

Jocelyn Griffith
Ombudsman