

The complaint

Mr Y complains about the quality of a car he acquired through a hire agreement financed by Hitachi Capital (UK) Plc (Hitachi).

What happened

In September 2020 Mr Y acquired a new car through a hire purchase agreement.

In October 2020 Mr Y reported issues with a noise from the vehicle and with the multimedia interface (MMI) freezing. The vehicle was inspected by a manufacturer garage. The garage said that the rattle Mr Y experienced when driving and changing gears was a characteristic of the vehicle and came from the gear linkage. They said they'd checked Mr Y's concerns about the MMI being unresponsive and found no fault.

In December 2020 Mr Y complained of the wing mirror squeaking, condensation in the vehicle, a water leak and the brakes grinding.

In February 2020 the manufacturer garage repaired the water leak and lubricated the wing mirrors, they said the brakes were functioning although showing signs of rust.

Mr Y complained about the brakes, and this complaint was reviewed by our service in May 2021. Hitachi agreed to pay for the repairs to the brakes following our review, and Mr Y had this work completed in August 2021. Mr Y said he didn't complete it sooner because he had to pay for it before Hitachi refunded him, and August was the soonest he could do this.

Mr Y complained to Hitachi in June 2021 about the door trims coming away. Hitachi sent Mr Y their final response to his complaint in July 2021. They said the door trims weren't replaced under any previous repair, and there was no evidence they'd been a recurring problem, so Mr Y should book the car in to be repaired under warranty.

In August 2021 the manufacturer garage completed repairs to the brakes and door trims. They said there was no fault with the gears.

Mr Y remained unhappy with the quality of the vehicle and brought his complaint to this service for investigation. He said he was still experiencing a fault with the software which the manufacturer garage had told him in August couldn't be repaired, he remained unhappy with the noise from the gears and wished to reject the vehicle, or for Hitachi to provide a new vehicle until the end of the agreement.

Our investigator gave her view that the ongoing software fault made the vehicle of unsatisfactory quality at the time it was supplied to Mr Y, and that he was able to reject it. She recommended that the vehicle be collected at no cost to Mr Y, his initial rental be refunded on a pro rata basis plus interest, that 5% of Mr Y's payments be refunded plus interest as Mr Y had to use the car with a fault, and that Hitachi pay Mr Y £250 compensation.

Hitachi accepted our investigators recommendation.

Mr Y didn't agree. He said if Hitachi had allowed him to reject the vehicle when he asked, he would've accepted it. But, prices in the market had gone up so much he'd now have to pay 50-60% more per month to hire a car of the same specification. Mr Y didn't think this was a fair resolution as he wasn't at fault for the unsatisfactory quality of the car.

Mr Y said he'd like Hitachi to supply a new vehicle for the remainder of the agreement. Or, he'd accept a 15% refund on his past payments and a 15% discount on his future payments along with free maintenance for the remainder of the agreement and he'd keep the car.

Our investigator put these proposals to Hitachi, but they didn't agree.

As an agreement can't be reached, the case has been passed to me for a 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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire agreement – so we can consider a complaint relating to it. Hitachi as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory".

To be considered "satisfactory" the goods would need to meet the standard that a person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired brand new. With this in mind, I think it's fair to say that a reasonable person would expect the vehicle to be free from even minor defects for a considerable period of time.

Mr Y has experienced a number of faults in the vehicle, and the majority of these have been repaired, but I've seen evidence that there's an ongoing fault with the MMI. It freezes intermittently, and Mr Y has experienced error codes on the dashboard.

Mr Y said the fault most often occurs when he's driving, so it's hard to capture, but he has provided recent evidence of the dashboard fault.

I'm satisfied, based on the evidence, that there's an ongoing fault with the MMI of the vehicle. All things considered; I don't think a reasonable person would expect a fault of this nature on a brand-new vehicle.

So, I'm satisfied that the car was of unsatisfactory quality at the time it was supplied to Mr Y.

Having made that finding, I need to decide what, if anything, Hitachi should do to put things right.

Our investigator recommended that Mr Y be allowed his final right to reject the vehicle.

Mr Y has said he doesn't wish to reject the car, because this will leave him in a worse financial position than before.

I accept that the market for new and used vehicles has changed since Mr Y originally entered his agreement, and that if he accepts rejection of the vehicle, he might now have to pay more for the same kind of vehicle.

The CRA sets out the remedies available where goods are considered not to be of satisfactory quality. One of the remedies is to allow an opportunity to repair the goods. Hitachi have made a number of repairs to the vehicle, but it hasn't been returned to a satisfactory condition. It's also not clear whether a solution for the MMI is available, so it's not clear how long a repair might take. So, I'm satisfied that repair is not the appropriate remedy here.

Another remedy is replacement. Hitachi have confirmed that they're unable to replace the vehicle under the agreement. I don't think this is unreasonable. In order to replace the vehicle any replacement would need to match the make, model, age, and mileage of Mr Y's vehicle, and I accept this would be difficult.

The CRA allows for a price reduction where goods are not of satisfactory quality, but I don't think this would be suitable here. Whilst a percentage of the payments Mr Y has already made could be refunded to him to compensate for the fault, I can't fairly recommend that any future payments be reduced in the same way. This is because the fault might be one that can be repaired in the future, or it might get worse and the reduction would no longer be suitable, but Mr Y would have no recourse.

So, all things considered, I'm satisfied that Mr Y is entitled to his final right to reject the vehicle, and that this is the appropriate remedy under the CRA in the circumstances.

This means that the car is collected from Mr Y, the finance agreement is brought to an end, and Mr Y has his initial rental refunded on a pro rata basis, plus interest.

Our investigator recommended that Hitachi refund 5% of Mr Y's monthly payments plus interest. Mr Y has been able to continue to use the vehicle, so I think it's fair that he pays for this use. But his use has been impaired by the intermittent fault with the MMI, so I'm satisfied that Hitachi should refund 5% of Mr Y's monthly payments to reflect this impaired use.

Our investigator recommended that Hitachi pay Mr Y £250 compensation. Mr Y has been put to distress and inconvenience in taking the vehicle for multiple repairs and has had to use a vehicle which is not performing as expected whilst it has been in his possession. All things considered, I think £250 fairly reflects the distress and inconvenience caused.

My final decision

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

- End the finance agreement and collect the car at no further cost to Mr Y
- Refund Mr Y's initial rental on a pro rata basis, plus 8% simple yearly interest calculated from the date of payment to the date of settlement.

- Refund 5% of Mr Y's monthly rental payments from October 2020 to the date of rejection, plus 8% simple yearly interest calculated from the date of payment to the date of settlement.
- Pay Mr Y £250 compensation to reflect the distress and inconvenience caused
- Remove any adverse information from Mr Y's credit file.

If Hitachi considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr Y how much it's taken off. It should also give Mr Y a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 14 July 2022.

Zoe Merriman
Ombudsman