

The complaint

Mrs P is unhappy that a car supplied to her under a hire agreement with Hitachi Capital (UK) Plc trading as Hitachi Capital Vehicle Solutions was of an unsatisfactory quality.

What happened

In December 2020, Mrs P was supplied with a new car through a hire agreement with Hitachi. She paid an initial rental of £1,282.82 and the agreement was for 36 months with 35 monthly rental payments of £427.61.

Mrs P complained to Hitachi that she started to experience issues with the car shortly after it was delivered. There was an issue with the sports bar fitting, which was repaired, and issues with a rattle from the rear door and an unsecure load liner, which haven't been fixed as far as I'm aware. Mrs P was also unhappy that she was without her car for two weeks while the sports bar was being repaired, and that she'd had to hire a car during this time.

Hitachi recommended that Mrs P visit her local dealership to have the other issues assessed. They also compensated her £40 for the mileage the car had done while at the dealership being repaired. But they didn't think they were responsible for Mrs P's hire car costs, as she'd chosen to hire the car. Mrs P wasn't happy with Hitachi's response, and she brought her complaint to us for investigation.

Our investigator said that, given the faults with the car happened shortly after it was supplied to Mrs P, then it wasn't of a satisfactory quality. And he thought that Hitachi were responsible for the repair costs. He also thought Hitachi should refund Mrs P the equivalent of 50% of one monthly rental payment, to compensate her for the time she was without the car, as well as pay her £150 compensation.

However, the investigator didn't think that Hitachi were responsible for Mrs P's hire car costs, as she'd been given the choice to have the sports bar fixed immediately, when no courtesy car was available, or wait a few weeks and have it repaired when a courtesy car could be supplied. And, as Mrs P had chosen the immediate repair, the hiring of a car was her choice.

Hitachi didn't respond to the investigator's view. Mrs P did and, while she agreed with most of what the investigator had said, she didn't agree that her hire car costs weren't covered. She said that she wasn't told that she could wait for a courtesy car, as she would have taken this option. And, while the investigator explained that he couldn't share the evidence showing she'd been given this option, as it was a screenshot from Hitachi's system and contained confidential information; Mrs P said that Hitachi should be able to provide evidence of *"safe receipt of the email sent to me"* explaining her options. And, without this, she couldn't agree that she'd been given the option of waiting for a courtesy car.

Because of this, the matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs P was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Hitachi are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Hitachi can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs P to show it was present when the car was supplied.

So, if I thought the car was faulty when Mrs P took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Hitachi to put this right.

I've not seen any evidence that there was a fault with the car, or that the faults presented themselves shortly after the car was supplied to Mrs P. But these facts don't seem to be disputed. As explained above, given the timescale in which the faults appeared, it's reasonable to expect Hitachi to put things right.

The car went in for repair on 10 March 2021 and was returned to Mrs P 14-days later. However, only the issue with the sports bar had been fixed. The dealership has said this is because Mrs P only raised the issues about the door rattle and load liner with the third-party who collected the car for repair. But I don't consider this to be relevant – the dealership did over 300 miles in the car while it was in for repair, so the additional issues would've been apparent. And should've been fixed.

Where there are still issues after a repair, as is the case here, the CRA gives Mrs P the right to reject the car. However, in this instance, I don't think that allowing this would be fair. I say this because of the amount of time Mrs P has had the car, that she hasn't asked to reject the car during that period, and that when Hitachi offered the option of having these items repaired she was agreeable to this (subject to having a courtesy car). As such, in these circumstances, I'm satisfied that, if the repairs haven't already taken place, then Hitachi should arrange for this, at no cost to Mrs P.

What's more, Hitachi have already paid Mrs P £40, the equivalent to more than 350 miles at the excess mileage rate stated in the agreement. And I think it was fair for them to do this, given the additional mileage done by the dealership.

Turning now to what happened when the car was being repaired. I've seen Hitachi's case notes, and these cover a conversation they had with the dealership on 26 March 2021. And this says that Mrs P was offered a courtesy car by the dealership while the car was being repaired, but this wouldn't be available until 12 April 2021. I don't think this was unreasonable as the UK was subject to a national lockdown as a result of the Covid-19 pandemic, with 12 April 2021 being the earliest date on which restrictions for businesses were being lifted.

I appreciate Mrs P has asked to see a copy of the email Hitachi sent her, given her the option of waiting for a courtesy car. However, it's clear from the case notes that this was a verbal discussion between the dealership and Mrs P, so no email would've been sent. And Hitachi weren't aware of what was happening until after the repairs had been completed. As such, I don't think it's reasonable to have expected Hitachi to have emailed Mrs P.

While I can't say what was discussed between the dealership and Mrs P, if Mrs P needed a courtesy car, I would've expected her to have asked for one. And, when one wasn't made available, given the lockdown restrictions in place at the time, I consider it reasonable that a conversation would've taken place about the availability of a courtesy car as and when the lockdown restrictions were lifted. As such, I consider it more likely than not that Mrs P did discuss a courtesy car with the dealership, but chose to go ahead with the repairs immediately because she couldn't foresee herself needing the car given the national restrictions in place.

Moreover, I've seen that Mrs P didn't hire a car for the whole period the repairs were taking place. Which again points to her not initially seeing a need to use a car during the repair period. As such, I won't be asking Hitachi to cover the hire car costs.

But this doesn't alter the fact that Mrs P was paying for a car she didn't have access to. And I agree with the investigator that she should be refunded her payments for this period. Additionally, I agree that Mrs P was inconvenienced by being supplied with a car that needed repair, and by having to sort this out. So, I'm also in agreement with the investigator that she should be compensated for this.

Putting things right

For the reasons stated above, Hitachi should:

- arrange to have the door rattle and load liner repaired, at no cost to Mrs P and at her earliest convenience, if this hasn't already been done;
- refund 50% of one monthly rental payment, to recognise the fact that Mrs P was without the car she was paying for for 14-days;
- apply 8% simple yearly interest on this refund, calculated from the date Mrs P made the payment to the date of the refund[†]; and
- pay Mrs P an additional £150* for the distress and inconvenience she's suffered as a result of being supplied a car that wasn't of a satisfactory quality.

*If Hitachi does not pay the £150 compensation for inconvenience and distress within 28 days of the date on which we tell them that Mrs P accepts my final decision, then they must also pay 8% simple yearly interest on this amount, from the date of my final decision to the date of payment.

[†]HM Revenue & Customs requires Hitachi to take off tax from this interest. Hitachi must give Mrs P a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Mrs P's complaint and Hitachi Capital (UK) Plc trading as Hitachi Capital Vehicle Solutions should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 17 November 2022.

Andrew Burford
Ombudsman