

### **The complaint**

Ms W complains about the response she got from Mitsubishi HC Capital UK Plc (trading as Hitachi Personal Finance) (HPF) after she raised a complaint about goods and services she bought with a fixed sum loan HPF provided. She's also unhappy about the application of interest and charges to her account and the way that refunds were dealt with.

### **What happened**

In October 2019 Ms W ordered a new kitchen from a third party supplier (that I'll call W). Ms W paid a deposit and took out a loan with HPF to finance the balance. It was important to Ms W that the kitchen would be delivered and installed before Christmas. She says W assured her this would happen and she wouldn't have placed the order and taken out the finance if it hadn't been guaranteed. The kitchen was due to be delivered in the first week of December and installed a week or so later but W said the installer (who I'll call E) was ill and installation might be delayed until the New Year. Ms W's partner (who I'll refer to as Mr M) contacted E who said he wasn't unwell and he could do the job before Christmas so they paid him £1,700. to carry out the work.

Ms W feels W wasn't honest about problems with the fitter and let them down by failing to arrange installation as agreed. She also says some items were missing and faulty and W didn't help when they complained. In addition she was upset when HPF started to collect monthly payments by direct debit in September 2020. She wasn't expecting this as her dispute with W was unresolved and she contacted HPF shortly after asking for a full refund and compensation.

HPF says the loan was activated in August 2020 so it started collecting payments a month later (in line with the terms and conditions) and agreed to investigate when Ms W got in touch to say she was unhappy - but explained that she remained liable for payments. HPF contacted W who said the kitchen was delivered and Ms W hadn't notified any missing items. W accepted she shouldn't have to pay for installation (because she paid the fitter direct) but said it had tried to contact her about this and received no response.

On 16 December 2020 HPF told Ms W that the cost of installation would be removed from the finance and she should contact W so this could be processed and notify W of any missing items so these could be taken into account. W invited Ms W into store to sort things out but Ms W had lost faith in W and that didn't happen. In March 2021 HPF removed installation costs from the loan and adjusted interest so approximately £2,790 was removed from the balance owing. Ms W remained unhappy about faulty and missing parts (among other things) and she wanted the entire kitchen removed and the finance cancelled.

HPF sent a final response on 10 March 2021 to say it was closing the complaint as information requested hadn't been provided and the kitchen was supplied and should be paid for. HPF told Ms W that she had the right to refer the matter to our service and offered to suspend payments for a few months so she could consider her options.

Ms W brought her complaint to us and said (in summary) misrepresentations were made at the outset, W breached the agreement to supply and install the kitchen, she wanted faulty

items/items ordered but not delivered to be removed along with compensation, she thought HPF was wrong to take payments in 2020 and 2021 and interest and charges weren't applied properly.

Our investigator didn't recommend the complaint should be upheld initially as there wasn't enough evidence of a breach of contract or misrepresentation by W and she was satisfied payments were adjusted and installation costs (plus interest) were removed - which seemed fair. Ms W disagreed as she was unaware of any amount owing and believes interest and charges were added to her account unfairly. She thinks it's unacceptable, for example, that she was charged late payment fees when she hadn't had a full response to her complaint.

The investigator looked at the account history. She was satisfied that HPF wasn't required to put payments on hold while this service investigated - so missed payments in 2021 could be charged for. But, she thought the complaint should be upheld, in part, because HPF agreed to refund two payments in 2020 but only provided one - telling Ms W to reclaim the second via the direct debit guarantee (DDG). The investigator considered this confused matters and resulted in Ms W receiving three refunds not two which caused arrears - and it wasn't surprising that Ms W didn't realise what had happened. She recommended HPF should remove one monthly payment from the overall balance owed to put things right

HPF objected to providing a refund or compensation. It said (in summary) it agreed to refund two payments as a goodwill gesture and told Ms W only one would be refunded direct and she could claim the second via her bank under the DDG. HPF refunded one payment but Ms W went on to claim two back via the DDG which caused one month's arrears and it wrote to Ms W about this but she didn't respond. HPF then rescheduled payments and/or put payments on hold (several times) between October 2020 and August 2021, as a goodwill gesture, to give Ms W time to resolve things. In addition installation costs were removed reducing the amount owed, interest was adjusted appropriately and HPF told Ms W it would start taking payments again in August 2021. Payments were missed in September and October that year however (because the direct debit instruction was cancelled) which caused further arrears and late charges were applied to the account.

Our investigator wasn't persuaded to change her mind. She didn't think HPF had explained things properly in 2020. She remained of the view that one payment should be refunded. HPF didn't agree and the matter was referred to an ombudsman for a decision. Having considered the available evidence, I wasn't minded to uphold this complaint. I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted to) before I made my final decision. I issued a provisional decision on 29 September 2022. I've set out what I decided provisionally, and why, below (in italics) and this forms part of my final decision.

### **My provisional decision**

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Ms W brings this complaint about HPF to our service because she's unhappy with goods and/or services that she paid for with a loan that HPF provided. I can see Ms W feels strongly about what happened and she's disappointed with the service she got from W, in particular. I note she asked (in the letter she sent us) for a senior person at W to investigate and provide a full apology, amongst other things so I want to be clear from the outset about my remit here.*

*A lender, like HPF, may be held equally liable with a supplier (like W) for breach of contract*

*and misrepresentation under section 75 of the Consumer Credit Act 1974 (CCA), in certain circumstances. I make my decision based on what I consider to be fair and reasonable in all the circumstances and, when considering what's fair and reasonable, I'm required to take taking relevant law into account (among other things). I'm satisfied that section 75 is relevant here. It's not my role to apply the law however - only a court can do that. Instead, I'm looking at whether HPF has taken appropriate steps in response to Ms W's complaint. In doing so, I've considered whether W made misrepresentations and/or there were breaches of the agreement that Ms W had with W. But it's not within my power to require W itself to take any particular steps and/or provide a refund or compensation.*

#### *Misrepresentation*

*Ms W has explained that she considers misrepresentations were made by W at the outset. To be specific, she says W guaranteed that her kitchen would be supplied and installed before Christmas 2019. For me to find that misrepresentations were made, I'd need to be satisfied that W told Ms W something untrue and she reasonably relied on this when she agreed to buy the kitchen and take out the finance. However I'm unable to hold HPF responsible for things that W may have said to Ms W after that – or any failings in W's general customer service or complaints process.*

*I can't be certain what was said exactly when Ms W placed her order. I've seen a copy of the order itself and the terms and conditions of sale. As I understand it, the installation was to be carried out by one of W's approved fitters under separate terms and conditions. I haven't seen these and I'll say more about installation further in this decision.*

*I can't see anything in the sale paperwork to show that W guaranteed the kitchen would be installed before Christmas. The sale terms and conditions say (as regards delivery) "Our aim is to deliver your order within the published lead-time current at the date you placed your order. Please check with any member of staff for details of such lead-time. We will do all we reasonably can to meet the date agreed with you for delivery. In the case of unforeseen circumstances beyond our reasonable control preventing us meeting that date we will contact you to agree an alternative date".*

*I'm satisfied that W drew Ms W's attention to these terms specifically in an email sent the same day she placed her order. In the same email W confirmed that it was trying to get installers who could do the job before Christmas. I don't think this sounds like a firm commitment that the kitchen would definitely be installed before Christmas. I also find it unlikely, on balance, that W would guarantee an installation date when it doesn't guarantee to deliver by a specified date – given the kitchen would need to be delivered first. I think it's more likely than not the parties agreed to try for pre-Christmas delivery and installation. I've seen reference to this agreed "lead time" but I'm not persuaded that's the same as a guarantee and I can't reasonably conclude that there was a misrepresentation in this respect.*

#### *Breach of contract*

*I can see the loan included the cost of both supply and installation initially. There's no dispute that Ms W subsequently engaged and paid the installer direct and this element was removed from the finance. And that means I can't fairly hold HPF liable (under section 75) for any issues arising out of the installation work itself (because the loan didn't pay for it).*

*For the reasons I've set out above, I'm not persuaded that there was a term in the contract between Ms W and W that guaranteed the kitchen would be delivered and installed before Christmas. I accept the parties agreed they would work towards this timescale. And I think it's understandable Ms W was unhappy to be told the kitchen couldn't be installed when she*

wanted - given the lead time agreed.

*The circumstances around this are somewhat unusual. W said it was unable to meet this timescale - as regards to installation - due to "unforeseen circumstances", as the appointed fitter was ill. I appreciate Ms W thinks W wasn't telling the truth – because the fitter told Mr M that wasn't true and he could take on the work. I can't be certain what happened. But I'm satisfied the kitchen was delivered in early December and I'd expect W to want it installed – enabling the loan to be activated and the funds released. So it's difficult to see why W would seek to mislead Ms W about that. I can't rule out the possibility that E may have had his own reasons for accepting the job direct.*

*In any event, even if I were to accept that W had breached the agreement by failing to supply an installer before Christmas, I can't see that Ms W incurred any financial loss as a result. I'm satisfied the work was carried out in time for Christmas - for about £800 less than the sum originally agreed – and HPF has removed installation costs from the loan itself. I think it's understandable Ms W decided to pay for the kitchen to be installed separately. And I realise that must have been really stressful and frustrating for her and Mr M. But, I think that was her decision to make - and parties are expected to mitigate their losses in this sort of situation.*

*Ms W also told us that some items ordered weren't supplied and others are faulty. On the information I have at the moment, I think it's reasonable to assume that there was only one missing item – a splashback (based on the chronology Ms W provided). I've checked the original order which contains two splashbacks so I accept these were ordered. However it looks as if at least one splashback was provided – I can see what looks like a splashback in photographs of the kitchen that Ms W sent us. And Ms W also refers (in her chronology) to a poor seal between the splashback and the worktop. If only one of the two splashbacks ordered was supplied - or Ms W had to source and pay for the splashback I can see herself – she should let me know in response to this provisional decision and provide any relevant paperwork.*

*Ms W says other parts are defective – a tap is faulty and there's a broken oven seal and the oven door has moisture between the glass panels. As far as it's relevant, the Consumer Rights Act 2015 (CRA) says goods supplied should be of satisfactory quality at the point of supply – and (broadly speaking) any faults found within six months are taken to have been present at the outset, unless there's evidence to the contrary. In addition the CRA provides that a supplier like W is usually entitled to have one opportunity chance to rectify faults.*

*I'm not sure when the faults above first appeared. I haven't seen the original complaint to W and I can't see any reference to faulty parts in the letter Ms W sent HPF near the end of October 2020. HPF has supplied customer notes which seem to be reasonably detailed and consistent with events (so I think it's reasonable to take what's recorded there into account). I'm satisfied that HPF asked Ms W to provide more information about missing items and faulty items - such as photographs - but this wasn't received. I can see HPF also offered to re-open the complaint if such evidence was provided – which seems reasonable - but Mr M said they wanted a final response in order to refer the matter to our service.*

*Ms W has sent us some photographs of the tap and oven but I can't tell from these when or how faults occurred. I'm not persuaded, on the current evidence, that there are sufficient fair and reasonable grounds to find issues present are likely to have been there at the point of supply (meaning the goods were of unsatisfactory quality). I can't reasonably exclude the impact of wear and tear over time and/or the possibility that faults present were due to installation. I note Ms W also refers to a poor joint in the worktop and the seal from the backsplash that has come away. I think those sound like installation problems rather than faulty goods. And installation work is not something I can consider here – as the loan didn't*

include that cost.

For the reasons I've set out above, I'm not presently persuaded that there's been a breach of contract and/or misrepresentation here that caused Ms W to lose out financially. I'm satisfied this kitchen was supplied and I don't have enough evidence to fairly conclude that parts are missing or faulty. Even if I accepted that the items Ms W refers to are missing or of unsatisfactory quality at the outset, I don't think that's sufficient to require HPF to cancel this loan, remove the kitchen and provide a full refund – which is the outcome Ms W requested from HPF. I consider that would be disproportionate in all the circumstances - not every breach of contract entitles a party to end an agreement and receive a full refund. And, as I explained above, a supplier like W would, in any event, generally be entitled to have the chance to put things in this situation.

#### *Payments and refunds in 2020*

I've also considered what Ms W says about HPF's administration of the loan account. It looks as if she's unhappy that payments were taken by HPF in September and October 2020. She told us she wasn't expecting this – as the contract with W hadn't been fulfilled as agreed. I'm satisfied the loan agreement says payments would commence "one month after either the date of this agreement, or, if later, the date of supply of the goods/services. We will tell you in writing the date on which the first monthly payment will become due". So, I think it was open to HPF to take the first direct debit in or around January 2020. It looks as if W didn't actually activate the account until about seven months later, in August 2020. I'm not sure why that was. It may have been due to outstanding issues – W says it tried to contact Ms W in December 2019 and February 2020 about removing installation costs. Or it may be been due to the pandemic - or a combination of both.

I appreciate Ms W says she heard nothing from W throughout this time – even though marketing emails reached her account. And the mobile number W quoted isn't hers (and her number hasn't changed). I can see Ms W had at least two different email addresses. W and HPF both used the same email address so I think that must have been the one she provided initially. And I can't explain why she would have received some communications but not others. According to HPF's contact notes – Ms W was sent a welcome email on 26 August 2020 to say payments were about to start. I'm satisfied the kitchen had been supplied at this stage and Ms W doesn't seem to have reported any problems to HPF - so I can't fairly find HPF made an error here.

Ms W contacted HPF around this time and, on receipt of her section 75 claim, HPF said it would investigate. It also offered, as a goodwill gesture, to refund the two payments already taken and, in effect, freeze the account for a few months. I think that was reasonable in the circumstances. I appreciate Ms W says she had no explanation about what was happening in terms of payments and arrears at this time. But, looking at the contact notes and correspondence from the relevant time, I'm satisfied that HPF made it fairly clear that one payment would be refunded by HPF and Ms W could obtain the second refund via the DDG from her bank. I can see HPF refunded one payment on 4 November 2020 and Ms W acknowledges this (in her chronology of events) – so I don't think she was confused about that. She also confirms that HPF said (on 17 November 2020) she should claim the second payment back via her bank. It's not clear however why Ms W went on to reclaim two payments via the DDG on 18 November.

Claiming a refund via the DDG means the refund would come from the bank initially and then be reclaimed (by the bank) from HPF. I'm satisfied that Ms W made two payments but received three back from HPF – and she received the additional payment because she claimed two via the DDG, even though she knew that HPF had already refunded one. The additional refund claimed caused the loan to fall one month in arrears and I can't fairly

*criticise HPF for that.*

*I appreciate Ms W may have been somewhat confused when HPF sent a notice of arrears in early December 2020. I think this was probably generated automatically – because two payments were (technically) missed. But I can see HPF wrote to Ms W the next day explaining that the account had been frozen and payments were re-scheduled. So, I think she should have been reasonably aware what was happening. I'm satisfied, in any event, that no charges were applied at this time – so Ms W didn't lose out financially. I've seen nothing to suggest that HPF reported adverse information to her credit file either - about this one month arrears. And I can't fairly find HPF should provide a refund or compensation in this regard.*

#### *Other arrears, interest and charges*

*I think HPF explained what was happening fairly clearly in December 2020 and I consider the steps it took at this stage – refunding and rescheduling payments – seem fair. This allowed Ms W some time to either provide more information to HPF to support her section 75 claim or sort things out with W direct. I'm satisfied that W had acknowledged that Ms W didn't have to pay for installation and explained she'd still need to pay for the goods supplied by the start of 2021. It looks as if W then suggested the original loan could be cancelled if a new finance agreement was taken out - to pay for supply only. But Mr M said Ms W didn't want to enter into a new loan agreement.*

*Ms W had the use of the kitchen for some time by this stage and I think she should reasonably have appreciated she'd need to pay something for that. I realise Ms W was very upset with W about what happened and she feels HPF should have done more to help. But, as far as I can see, HPF made efforts over several months to try and resolve matters to her satisfaction – this included investigating the section 75 claim, requesting additional information and removing installation costs from the loan as well as suspending and re-scheduling payments.*

*I can see HPF also agreed to suspend payments until May 2021 - as a further goodwill gesture – and it extended this by another three months in May. HPF's notes indicate that Ms W was then notified that payments would recommence in August 2021. I appreciate Ms W had referred the matter to our service in the meantime - and she feels it's unfair she had to pay while the matter was being investigated. However, as the investigator explained, HPF isn't required to suspend payments just because a complaint has been brought to our service. I'm satisfied that Ms W remained liable to meet the payments due under the loan. And payments requested in September, October and November 2021 (and possibly later) were not made because the direct debit was cancelled. It follows I can't fairly find it was wrong of HPF to apply late charges and take steps to recover arrears.*

#### **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.

I explained in my provisional decision that (based on the evidence I'd seen) I wasn't persuaded that HPF has treated Ms W unfairly or acted unreasonably overall and I wasn't inclined to uphold this complaint. I invited the parties to consider my provisional findings and let me have any further comments or new information by 20 October 2022. I said I'd look at all the evidence available after that date and make my final decision. Both parties responded and they have nothing further to add. I see no reasonable grounds to depart from my provisional conclusions in the circumstances. I remain of the view that there aren't enough fair and reasonable grounds to uphold this complaint and I'm unable to reasonably require

HPF to pay compensation or do anything else.

**My final decision**

For the reasons set out above, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 22 November 2022.

Claire Jackson  
**Ombudsman**