

The complaint

Miss F complains about the quality of a car provided to her under a hire agreement regulated by the Consumer Credit Act 1974 taken out with Mitsubishi HC Capital UK Plc (Mitsubishi) – previously known as Hitachi Capital (UK) PLC.

What happened

Miss F approached a company that I will call H for a car.

On 4 June 2020 Miss F signed a number of documents, including a statement of needs, an information notice, an order form and a terms and conditions of business.

On 5 June 2020 Miss F signed a hire agreement (with Mitsubishi) for the car. Under the terms of this hire agreement – everything else being equal – Miss F undertook to pay 60 monthly rentals of £354.82. The allowable mileage (without a charge being payable) was 40,000, equating to 8,000 a year.

On 24 June 2020 Mitsubishi wrote to Miss F to say her hire agreement had started on 19 June 2020.

About three months after taking delivery of the car Miss F says a dashboard light came on that caused her concern.

On 27 October 2020 Miss F had the car inspected at a manufacturer's garage.

On 9 December 2020 Miss F called a roadside recovery business out to the car.

On 15 December 2020 Miss F had the car inspected at a manufacturer's garage.

On 6 January 2021 H wrote to Miss F to say it wasn't upholding the complaint she had made to it.

On 9 February 2021 the BVRLA wrote to Miss F to say that it wasn't upholding the complaint she had made to it about H.

On 10 February 2021 the manufacturer wrote to Miss F to say that it wasn't upholding the complaint she had made to it.

On 1 March 2021 Mitsubishi wrote to Miss F to say it wasn't upholding the complaint she had made to it.

On 8 March 2021 Miss F called a roadside recovery business out to the car.

On 18 March 2021 Miss F had the car inspected at a manufacturer's garage.

After the above inspection Miss F says she continued to use the car but with the dashboard light permanently illuminated.

In August 2021 Miss F referred a complaint to our service.

In January 2022 one of our investigators wrote to both parties to say that he was upholding Miss F's complaint (on the grounds that she was supplied with a car that wasn't of satisfactory quality) and that Mitsubishi should:

- Collect the car at no cost to Miss F.
- End the agreement with nothing further to pay.
- Refund 25% of each monthly instalment paid by Miss F under the agreement from August 2020 to the date of settlement, together with interest.
- Pay Miss F £200 for the distress and inconvenience she had been caused.

Miss F accepted the investigator's view, but Mitsubishi didn't respond to it.

Because Mitsubishi didn't respond to the investigator's view the complaint was passed to me for review and a decision.

In September 2022 Miss F informed our service that the car had been stolen and the same had been reported to both the police and the insurance company. Miss F added that the insurance was in her partner's name and the insurance company had confirmed that matters would be sorted out between it and Mitsubishi. Miss F says the car had travelled approximately 6,000 miles when it was stolen.

In December 2022 Mitsubishi confirmed to our service that the agreement, following payment from the insurer, had been settled.

In December 2022 Miss F confirmed to our service that the agreement had been settled in full (with her partner liable for a £500 insurance excess) and that what she was now looking for by way of compensation from Mitsubishi was a refund of 25% of the payments made by her against the agreement from August 2020 (together with interest) plus £200 for the distress and inconvenience the whole matter had caused her.

In December 2022 I issued a provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I would like to point out I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

Miss F complains about a car supplied under a hire agreement. Entering into consumer credit contracts such as this is a regulated activity. So, I'm satisfied I can consider Miss F's complaint about Mitsubishi.

When thinking about what's fair and reasonable, I take into account relevant law, regulations and guidance. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. This explains under a contract to supply goods, the supplier – Mitsubishi here – needs to make sure the goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

It seems to me in a case like this involving a car, that a court would consider relevant factors to include, but not be limited to, things like the car's age, price, mileage and description. I should also point out in this case that the CRA specifically explains that the durability of goods should be considered a part of whether they are of satisfactory quality.

The car Miss F got was brand new and from a premium manufacturer. She was paying over £350 a month to hire the car. And, in total, she was due to spend over £21,000 to hire the car over the total period. Keeping this in mind, I think a reasonable person would have very high expectations for the quality of the car and I think they would expect trouble free motoring for a significant amount of time.

What I first I need to consider in this case is whether the car supplied to Miss F was of satisfactory quality or not.

It's not in dispute that the problems Miss F experienced with the car, resulting in her having to (on two separate occasions) call out a roadside recovery business and having to (on three separate occasions) take it to a manufacturer's garage for inspection (and as I understand for work to be undertaken), were due to issues with the diesel particle filter ("DPF").

But whereas Miss F says this isn't acceptable and Mitsubishi should compensate her, Mitsubishi says it's simply down to Miss F's "*driving style*", in particular her failure to undertake "*regular journeys (approximately 1–3 journeys per every 10 days) at speeds between 30-50 MPH for 20-40 minutes*" as outlined in the drivers manual. And because of this it shouldn't have to compensate her anything.

I accept what Mitsubishi says about what was required of Miss F to ensure the successful regeneration of the DPF, but I'm not persuaded this is the reason for the problems Miss F has experienced.

I find Miss F's submission that after the problem with the DPF was first diagnosed she took steps to ensure that she heeded the advice in the drivers manual to be both plausible and persuasive. I would also not expect, regardless of Miss F's driving style, for the problem with the DPF to reoccur as quickly as it did after each inspection (and after what I understand was work undertaken) by a manufacturers garage. And because of this, I'm satisfied that the car supplied to Miss F was of unsatisfactory quality.

Having concluded that Miss F was supplied with a car that wasn't of satisfactory quality, what I now need to decide is what Mitsubishi should have to do to fairly and reasonably compensate her.

The investigator concluded that Mitsubishi should have to refund Miss F 25% of the monthly payments she made against the agreement from August 2020 onwards, to reflect the impaired use she had of the car. But taking everything into account my view is that Mitsubishi should refund 15% of the monthly payments Miss F made against the agreement and from October 2020 onwards. I say this for the following reasons:

- Miss F had the worry of driving the car between the end of September 2020 (when the dashboard light first came on) and March 2021 (when, after a third inspection, the dashboard light came on again) through what I've found to be no fault of her own. And she should be compensated for this.
- Miss F had the worry of driving the car between March 2021 (after the third inspection) and August 2022 (when the car was stolen) with the dashboard light permanently on through what I've found to be no fault of her own. And she should be compensated for this.
- Miss F has confirmed the dashboard light came on (for the first time) approximately three months after she took delivery of the car, the end of September 2020.
- Although Miss F had the above worry (and upset) she has submitted to our service that rather than driving the car less than she would have otherwise done, she drove it more than she would have otherwise done to try and remedy the issues with the DPF. And in my view, when this fact is taken into account (even with the added diesel costs and expenditure of time this clearly would have involved), a 25% refund of agreement payments made, is simply too high – 15% being a more appropriate sum.

The investigator concluded that Mitsubishi should pay Miss F £200 for the distress and inconvenience this whole matter has caused her. And taking everything into account, including the number of times Miss F had to call out a roadside recovery business and had to take the car to a manufacturer's garage, I find that such a sum to be both fair and reasonable.

Miss F responded to say she accepted my provisional findings.

Mitsubishi confirmed receipt of my provisional findings but submitted nothing in response to them for my consideration.

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.

Because Miss F accepted my provisional findings and because Mitsubishi didn't submit anything in response to them – at least by the date I gave for any submissions – I can confirm that I see no reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that Mitsubishi HC Capital UK Plc must:

- refund Miss F 15% of each hire payment she made against the agreement from October 2020 onwards*
- pay Miss F £200 to reflect the distress and inconvenience she has been caused by the whole matter
- ensure any adverse information in respect of the agreement recorded with credit reference agencies is removed

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Mitsubishi HC Capital UK Plc considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss F how much it's taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 8 February 2023.

Peter Cook
Ombudsman