

The complaint

Mr A is complaining that Mitsubishi HC Capital UK Plc (trading as Hitachi Personal Finance) hasn't fairly supported him in respect to a dispute he has for an installation of a kitchen. He brings the claim under Section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

In July 2019 Mr A entered into a contract with a third-party company – who I shall refer to as W – to buy a new kitchen. W was also contracted to fit and install the kitchen. The cash price of the kitchen was £11,166.15 and he agreed to pay a further £2,515 for W to install it. He paid a deposit of £1,354.63 and took out a separate fixed sum loan agreement provided by Hitachi to pay the balance. Part of W's order form also included a requirement to carry out some electrical work at a further cost.

Under the terms of the finance agreement, Hitachi would activate the agreement when the kitchen is installed, upon which payments were then to be deferred for six months. If Mr A settled the finance in full in that time, he didn't have to pay any interest.

W delivered the kitchen in December 2019, but didn't provide the extractor fan and delivered some incorrect parts. In January 2020 W delivered the extractor fan, but Mr A said it wasn't suitable. So he arranged to replace it at a W store. Furthermore, some of the parts delivered were still incorrect.

Mr A looked to arrange with W's contractor fitter to get the new extractor fan and remaining parts fitted, but there were delays in doing so – initially due to the contractor missing appointments and then further delays owing to Covid-19.

Mr A also highlighted that there were some significant electrical issues as a result of the work done by the kitchen fitter.

Mr A also complained that, in January 2020, W informed Hitachi the kitchen had been fully installed, so Hitachi activated the finance. As a result, the first payment became due in July 2020.

Mr A was unhappy with the way W was resolving his concerns so he referred his complaint to the Furniture Ombudsman (FO). The FO arranged to inspect Mr A's kitchen and highlighted a number of faults. It said the kitchen wasn't installed to a satisfactory standard in certain areas and it said there were remedial works that needed to be done to bring the aesthetics up to the required standard. It highlighted around 17 issues it said needed to be rectified. It recommended W paid £400 in compensation, plus a further £120 for the cost Mr A paid to rectify one of the electrical issues.

Mr A didn't accept the FO's findings and asked Hitachi to step in as the finance provider. Hitachi said it wasn't liable for the electrical issues as these were in relation to work carried out separate to the main contract with W. It said it and W were bound by the FO's findings. However, it offered him £450 to put things right. And it highlighted W was willing to carry out the remedial work.

Mr A didn't accept Hitachi's offer and referred his complaint to this service. And, in summary, he raised the following:

- The kitchen was supposed to be installed at the beginning of December, but wasn't for a number of months after. He said this meant they didn't have full use of it for Christmas.
- He had to continually chase W and the fitter to get the work completed and he said the fitter failed to turn up to some of the appointments.
- The fitter left the kitchen in a dangerous state with the electrical work.
- He's lost faith in W and doesn't want W to do the rectification work.
- He doesn't think £450 is fair compensation.
- He thinks W fraudulently told Hitachi the kitchen was completed, which meant Hitachi released the funds from the finance agreement. He thinks Hitachi should have recovered the money back from W.
- He's unhappy Hitachi started to charge interest on the finance. He asked it to put the matter on hold while this service completed its investigation, but it wasn't willing to do so. He thinks it's unfair he's incurred charges on the finance when the kitchen still wasn't installed.

I issued a provisional decision partially upholding this complaint and I said the following:

"I think there are two things I need to consider in this complaint:

- 1. Is Hitachi's offer to resolve Mr A's Section 75 claim fair?*
- 2. Is it fair for Hitachi to have charged Mr A interest?*

Is Hitachi's offer to resolve Mr A's Section 75 claim fair?

Mr A partly paid for the kitchen through a fixed sum loan agreement. Section 75 sets out that in certain circumstances, as the finance provider, Hitachi is jointly liable for any breach of contract or misrepresentation by the supplier. I'm satisfied those circumstances apply here. Under the contract with Mr A, W had agreed to supply and install a kitchen. Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the contract that W had to supply a kitchen that was of satisfactory quality and then fit it with reasonable care and skill. W was also required to fit it within a reasonable time.

I've reviewed the report compiled by the FO and it's clear there are numerous issues from the installation. So I'm satisfied the kitchen wasn't fitted with reasonable care and skill. Furthermore, not all parts were delivered on time. As a result of this, Mr A didn't have a functioning extractor fan for a number of months. So I don't think W supplied all aspects of the kitchen within a reasonable time.

Hitachi has offered £450 in compensation and to pay for a third party to carry out the rectification work. I understand W has offered to supply any parts that need replacing free of charge. The issue for me to decide here, is whether Hitachi's offer to put things right is fair. I think it partly is. I'll now explain why.

Firstly, I note Mr A has referred to issues with the electrical work the kitchen installer did, but the schedule of works makes it clear that the electrical work didn't form part of the contract for the kitchen installation. It also clearly sets out that this work was a separate invoice. I can also see that Mr A paid separately for this too. So I don't think Hitachi has any liability for anything that may have gone wrong with the electrical work, so I won't comment on this any further in this decision.

Section 75 gives Mr A a 'like claim' against Hitachi if there has been a breach of contract or misrepresentation by W. So, I must give consideration to what losses Mr A would likely be able to recover in court against W when considering what the 'like claim' might look like. I'm mindful when doing this that courts don't typically tend to make awards for non-financial losses such as distress and inconvenience for breach of contract apart from in limited circumstances (which I don't think would be likely to apply here).

As I said, the CRA implies a term that a service must be provided with reasonable care and skill, but it also sets out Mr A's rights where this doesn't happen. Essentially, Mr A has the right to two things:

1. Require the merchant – W – to repeat the service – i.e. fix the issues that have arisen; and
2. Request a refund – up to the full amount paid.

Hitachi has agreed to pay for a third-party company to do the work to put things right. But it thinks it's fair that W provides the replacement goods rather than the third party to provide them. I think this is fair. Mr A has said that his trader won't guarantee the work unless he provides the goods. But I don't think this is a fair reason to require Hitachi to pay an inflated cost to put things right. And I'm not persuaded W providing the goods would invalidate any installation or rectification guarantee the third-party trader would ordinarily give. It needs to be remembered that it's standard practice for a company such as W to provide the goods and a third-party trader will install them. And this doesn't invalidate any guarantee or warranty a trader may provide. Ultimately there would be two separate contracts here – a supply contract provided by W and an installation contract provided by the third-party trader. The supply contract wouldn't have any bearing on the quality of the service provided by the third party.

So, taking all this into consideration, I think it's fair that W provides the goods free of charge and Mr A then finds a reasonably priced contractor of his choice to carry out the rectification work. I think Mr A should provide up to three quotes to do the work from a trader of his choice and Hitachi can decide which is most suitable. If Mr A is unable to provide a suitable quote, Hitachi should arrange for the work to be done.

I've now thought about whether the £450 in compensation is fair. As I said, Hitachi isn't liable for the distress and inconvenience Mr A has suffered. But, given the issues Mr A faced with the installation, I think he's entitled to a price reduction on the amount he paid to install the kitchen.

I think it's important to note that Mr A paid an amount for the kitchen goods itself and a separate amount to install it. I haven't seen anything to suggest there were issues with the quality of the goods W supplied – merely with the way they were installed. And this is confirmed by FO's inspection. So I think Mr A is only entitled to a price reduction off the cash price of the installation – £2,515.

I've reviewed the photos of the kitchen and the FO report. It seems to me that the issues were largely aesthetic – i.e. the issues didn't impact the way Mr A was able to use the kitchen. I can understand how upsetting it would have been for Mr A to have paid the amount he did for his kitchen and to have had the number of issues he did. But I also have to take into account that he did have the kitchen installed and has been able to use it in the way intended. So I think it's fair that he pays for this.

However, I've also taken into account that the kitchen was due to be installed at the beginning of December 2019. But W didn't deliver the extractor fan and also provided incorrect parts. Ultimately, I understand the kitchen wasn't fully installed for around a further

six months. I acknowledge part of this was down to the impact of Covid-19. But, had the correct parts been provided when they should have done, Mr A wouldn't have suffered these delays.

I do think Mr A is entitled to a reduction in the cash price for the installation. £450 equates to around 18% of the cash price, but I don't think this is sufficient. I think Mr A is entitled to around a 30% reduction. So I think Hitachi should increase this offer to £750.

Is it fair for Hitachi to charge interest?

Mr A feels it's unfair that he's had to pay interest on the finance agreement while there were still issues with the kitchen. He also thinks W acted fraudulently in telling Hitachi it had installed the kitchen.

I should first set out that, while Hitachi has joint liability under Section 75, the finance agreement and W's supply agreement are separate agreements. Mr A isn't paying Hitachi to "use" the kitchen, but his payments are to repay the money he borrowed to finance the purchase of a new kitchen. Hitachi has fulfilled its contractual responsibility to pay W, on Mr A's behalf, so I don't think it was unreasonable for Hitachi to require Mr A to repay the finance and to charge interest in line with the terms of the finance.

I acknowledge Mr A is unhappy the finance agreement was activated and he believes W acted fraudulently in telling Hitachi it had installed the kitchen, given he hadn't signed a completion satisfaction form. However I don't agree. Hitachi hasn't been able to provide the covering letters that were sent to Mr A explaining when an agreement will be activated. But, from experience, Hitachi wouldn't require a satisfaction note from W prior to activating the finance as the finance can be activated when the kitchen is installed. And I don't think the presence of a few "snagging" issues to be fair grounds to say W isn't entitled to be paid for the work. Ultimately, W had carried out a significant substance of its contractual requirement to supply and fit the kitchen. So I don't think it's unreasonable it was paid for this.

But, even if this wasn't the case, I'm conscious that Hitachi provided Mr A with a further 10 month interest free payment deferral. And, while I understand why he was reluctant to do so, it was ultimately Mr A's decision to not pay the finance. So, taking everything into consideration, I can't say it was unreasonable for Hitachi to start charging interest on the finance agreement when it did."

Mr A didn't accept my provisional decision and, in summary, raised the following points:

- It was his understanding that the finance agreement wouldn't be activated until he signed the completion satisfaction form. He said the installer didn't return to complete the installation which is why he didn't sign the form. He says Hitachi told him that it was activated in error and shouldn't have been activated without a signed completion satisfaction form. He maintains that the installer fraudulently signed the form to get paid for the work he did.
- He acknowledged Hitachi deferred the payments for 10 months, but he said this was in line with its offer to defer payments until the matter was resolved, which it still isn't. He said he wasn't prepared to pay for a service he hadn't received. He'd estimated the interest charge to be around £50 per month which he said he was prepared to risk to get the matter resolved. He didn't understand how the interest was calculated and said he's been stung by such a high interest charge.
- He didn't receive an electrical certificate, appliance guarantee or workmanship guarantee as per our W installation customer documentation.
- He doesn't agree that it would cost Hitachi more for his contractor to purchase the goods

from W, rather than for W to supply them directly. He said the quote was based upon W's January 2022 list price.

- He doesn't think it's possible to find a contractor to rectify the work as he said that, when he tried before, contractors said they weren't interested in rectifying other people's work.
- He says the issues with the kitchen aren't just aesthetic and maintains that there were structural issues and unnecessary massive cut-outs in the carcasses which he said allowed a rat to enter the larder unit.

Hitachi responded to accept my provisional 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.

I've taken Mr A's comments into consideration, but I've come to the same conclusion as I did in my provisional decision.

I don't think Mr A has raised anything significantly new to what he's raised before. I appreciate Mr A feels strongly about what's happened and he doesn't agree with what I've said, but I'm satisfied that my provisional decision sets out why I reached the decision I did and also fairly addressed the points Mr A raised. But, for the avoidance of doubt, I shall make the following additional comments:

- Mr A disputes that the issues were largely cosmetic and he's highlighted that his family did suffer a lot of distress and inconvenience as a result of what happened. But, as I set out in my provisional decision, I don't think Hitachi is liable for any distress and inconvenience W – or its agents – caused him. And I remain of the opinion that a £750 price reduction is fair compensation.
- I acknowledge Mr A's comments that Hitachi said the agreement shouldn't have been activated. But for the reasons I set out in my provisional decision, I don't think the issues that were present with the kitchen gave fair grounds to say W wasn't entitled to be paid for the work carried out. I don't think it's unreasonable that Hitachi doesn't have to have a signed completion satisfaction form to activate the agreement. If it had to wait for this in every case, it would enable a consumer to delay the activation of the finance by refusing to sign the form, even if the work was fully completed. I'm not saying that's the case here, but, ultimately, I don't think it's unreasonable that the agreement can be activated without a signed satisfaction form.
- Mr A says he didn't receive the appliance certificates and guarantees, but I think he needs to contact W directly to request these.
- I note Mr A says there's no difference between W supplying the replacement goods directly to his contractor supplying them as the quote was based on W's own list prices, but I don't agree. The list prices include a level of profit and Hitachi would be paying to purchase the goods, but W has offered to provide the goods free of charge. So I can't reasonably say it's unfair for Hitachi to say W should provide the goods and Mr A can arrange for them to be installed.
- I note Mr A says he can't get a contractor to carry out the rectification work, but my provisional decision sets out what Hitachi should do in this instance – i.e. it should appoint a contractor to carry out the work. It's for Mr A to decide which avenue to undertake.

Ultimately, I remain satisfied that the fairest way to resolve this complaint is that Hitachi increases its compensation offer to £750. And I don't award anything further.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require Mitsubishi HC Capital UK Plc to increase its compensation offer to £750. It can use this to reduce the amount owed on the finance agreement if Mr A hasn't already paid it off. If Mr A has paid the finance, which I understand he has, it should also pay 8% simple interest (less tax if appropriately deducted*) from the date Mr A paid off the finance until Hitachi pays it.

* If Mitsubishi thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 February 2023.

Guy Mitchell

Ombudsman