

The complaint

Mrs P acquired household fixtures in August 2019, partly by means of fixed sum loan agreement with Hitachi Capital (UK) Plc. She complains that the installed fixtures were not of satisfactory quality at the point of supply, and that attempts by the supplier to correct faults in the fixtures were unsuccessful. In these circumstances, she found it necessary to pay alternative tradespeople to undertake remedial works.

What happened

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 29 December 2022, as follows.

Background

Mrs P paid a deposit to the supplier amounting to 20% of the household fixtures price. The remaining 80% was covered by her loan agreement. Monthly repayments under this agreement were deferred, to start 12 months after the date on which the goods were supplied and installed, with 120 monthly payments thereafter. Also, if the loan was repaid in full by the deferred first payment date, Mrs P would incur no interest charges.

The fixtures were installed in September 2019, and Hitachi activated its agreement with Mrs P (which meant the deferral period would end in September 2020). In October 2019, Mrs P raised her concerns about the installed fixtures with Hitachi.

The supplier completed remedial works in May 2020. Hitachi extended the deferral period to May 2021.

It also offered Mrs P a goodwill gesture of £400 for her negative experience of the installation process. Mrs P declined this offer.

In July 2020, Mrs P (via her solicitors) asked Hitachi to agree that the fixtures should be rejected. The solicitor's letter also noted that Mrs P's 20% deposit had been refunded to her bank account in February 2020. Hitachi did not agree to her rejection request.

In October 2020, Hitachi received a formal complaint from Mrs P. In response, it commissioned (via the Furniture Ombudsman) an independent inspection of the installed fixtures, which took place in December 2020.

The inspector did not recommend rejection of the installed fixtures. He reported in January 2021 as follows:

- The supplier had installed excellent products, compromised by very poor working practices
- The greatest concern related to the integrity of the installed wall coverings – their lack of adhesion would eventually lead to complete failure of the installation
- The wall covering issue required immediate attention – partial or complete removal and re-installation to professional standards was recommended
- Addressing the other issues was not so urgent, but these faults should not be present in a professional installation

In March 2021, Hitachi sent to Mrs P (via her solicitors) its final response to her complaint, saying:

- Following the inspection, the supplier offered either to return and rectify the reported faults, or to pay a third party to complete the works as required in the report
- These offers were rejected by Mrs P, because she was seeking a full refund – she wanted the whole installation taken out and refitted
- It rejected Mrs P's proposal, because it felt the inspection report's conclusions did not indicate a full refund
- Instead, it offered –
 - either the supplier should be allowed to complete the works as required by the report (as previously offered)
 - or Mrs P should accept £800 for her to pay a third party to complete these works
- In addition, it offered –
 - both a goodwill gesture from the supplier of £500
 - and an increased goodwill gesture from it of £500
- It reminded Mrs P that, if she wished to settle her agreement account interest free, she needed to do so by the deferral date in May 2021

The balance of Mrs P's agreement account in March 2021 was just under £7,000. This excluded interest charges of just under £11,000, which would be applied at the end of the deferral period.

Mrs P replied (via her solicitors) to Hitachi's final response, saying that she had obtained various quotes from tradespeople to complete the required works (copies of which she provided to it) – and, as a result, she was only prepared to pay Hitachi £2,000 of the £7,000 balance in her agreement account.

The supplier criticised these quotes, particularly in terms of both the extent of work and the change of wall covering being proposed. It pointed out that it had offered to provide replacement wall covering and other materials, and it saw no reason to pay for different materials. It argued that a payment of £800 was sufficient to cover Mrs P's necessary costs, using its replacement materials, and it was not prepared to pay more.

Hitachi commenced taking monthly repayments from Mrs P's bank account in May 2021. She contacted it immediately, saying that she had been assured that this would not happen until her complaint had been resolved.

Mrs P also referred her complaint to us. She told us that she had intended to repay the loan as soon as the installation work was complete.

Our investigator thought this complaint should be upheld in part:

- Hitachi had not been wrong to apply interest and commence monthly repayments in May 2021
- But it should reimburse the expenses Mrs P incurred, to achieve installed fixtures of satisfactory quality

Deferral period, interest charges and monthly repayments

Our investigator thought that Mrs P did not want to settle her agreement account before achieving a satisfactory outcome to her complaint – and this was why the deferred period ended without the account being settled. Although he felt that he understood Mrs P's stance, he did not think that the interest payable was a result of the installed household fixtures' unsatisfactory quality.

Achieving installed household fixtures of satisfactory quality

As noted earlier, Mrs P decided in March/April 2021 to invite quotations from several tradespeople, to address the issues identified in the January 2021 independent inspection report. She subsequently accepted three estimates: for joinery work, stripping/refitting and electrical work.

Mrs P received receipted invoices for electrics (£156) in February 2022, and for joinery work (£2,438.77) and stripping/refitting (£600) in March 2022. This meant that her total expenses were £3,194.77. But she had already received in February 2020 a refund (£1,740) of her deposit, which reduced her net expenses to £1,454.17.

Our investigator noted the supplier's view that £800 should be sufficient to pay for the required works. But he thought it was unlikely that this amount would have covered her costs. He considered whether or not Mrs P had mitigated her losses, and he concluded that her actions were reasonable.

Our investigator also noted that, at the time Mrs P incurred these expenses, she could not have been sure of recovering them. So, he doubted that she would have willingly paid out more than was necessary.

Mrs P sold her home and moved away in April 2022.

Our investigator recommended that Hitachi should:

- Reimburse expenses of £1,454.17 incurred by Mrs P, plus interest at 8% simple per annum from the date of receipted payment to the date of settlement
- Pay interest on Mrs P's deposit (£1,740) at 8% simple per annum from the date she made this payment to the date of refund

Hitachi disagreed with our investigator, saying that the costs incurred by Mrs P were unreasonable, and so this complaint was referred for review by an ombudsman.

My provisional findings

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

Hitachi has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances. But there are limits to these responsibilities. In particular, matters complained about must be present or developing at the point of supply.

Deferral period, interest charges and monthly repayments

As noted earlier, Mrs P's loan agreement said that monthly repayments under this agreement were deferred, to start 12 months after the date on which the goods were supplied and installed. Mrs P complained that the household fixtures installed in September 2019 were not of satisfactory quality.

In May 2020, Hitachi implicitly acknowledged that the goods were not of satisfactory quality when supplied and installed, by extending the agreement's original deferred period (ending in September 2020) to a date in May 2021. It made this change because it thought that the supplier had successfully completed works in May 2020, intended to correct earlier installation faults.

Hitachi implicitly acknowledged as well that for goods to be correctly supplied and installed, they also had to be of satisfactory quality. The independent inspection report commissioned by Hitachi did not challenge the inherent quality of Mrs P's fixtures. But it did confirm that these fixtures had not been properly installed to professional standards – which meant the resulting installation was not of satisfactory quality in December 2020 (when the inspection took place).

Mrs P implicitly indicated, when in early 2022 she paid the three invoices for remedial works that she had commissioned, that the installed fixtures had achieved satisfactory quality, in her view. So, my view is:

- The goods were not correctly supplied and installed until these remedial works were completed
- The deferral period should begin on the date that these remedial works finished
- The chronologically last of Mrs P's three invoices was raised (and paid) on 09/03/22, and this should be taken as the works completion date

Based on the above, Mrs P's agreement account should be reworked. In particular:

- Monthly payments taken before the new deferral period end date should be refunded (plus interest)
- The date on which interest charges are applied should be adjusted to reflect this change

Achieving installed household fixtures of satisfactory quality

Mrs P spent just under £3,200 on the above remedial works. The supplier argued that Mrs P should have used wall covering and other materials provided by it, and that £800 should have been sufficient to cover the costs of these works.

Mrs P raised her concerns with Hitachi in October 2019. Between then and May 2020, the supplier undertook remedial works, at the end of which it appears to have considered the installation to be of satisfactory quality. Mrs P disagreed, and the independent inspection confirmed that the installation was still not of satisfactory quality.

When the inspection report was received, Hitachi told the supplier that current legislation permitted it one opportunity to correct faults, before other remedies became available to Mrs P – and the supplier had already been given that opportunity. The supplier responded saying the faults identified in the report were different from those it had previously repaired. It argued that it should be allowed to repair the newly identified faults.

I think that, if Hitachi had agreed with the supplier's interpretation of current legislation, its stance would have been unfair and unreasonable. It mostly did not do so – instead, it offered Mrs P a choice of either allowing the supplier to undertake further repairs, or her being paid £800 to commission others to do so. Mrs P's experience of the supplier's installation work was very negative, and she rejected its further involvement. She also rejected the alternative offer on financial grounds.

The £800 offered appears to have been on the assumption that some materials were to be provided by the supplier. I think it might have been acceptable to offer these materials from the supplier. But apparently making this further involvement of the supplier effectively a financial condition was not acceptable, in my view.

I think that Mrs P was entitled to reject Hitachi's alternative offer, and instead to find another way fairly and reasonably to bring her installed fixtures up to satisfactory quality, based on the independent inspector's conclusions.

I have carefully examined the quotes Mrs P obtained, and the invoices from those tradespeople she commissioned. I cannot be certain – but, on the balance of probabilities, I share our investigator's view that she acted prudently, and that she mitigated her losses.

This means that I am unable to find a reason why the expenses Mrs P incurred should not be reimbursed by Hitachi, and that I agree with the financial settlement recommendations made by our investigator.

My provisional decision and responses

For the reasons explained above, but subject to any further comments or evidence I receive from Mrs P or Hitachi, my provisional decision is that I uphold this complaint.

My provisional settlement recommendations are that Hitachi should:

- Change the date on which the deferral period in its agreement with Mrs P commences to 09/03/22
- Rework Mrs P's agreement account to reflect the above change, and in particular –
 - refund monthly repayments taken before the changed deferral period end date, plus interest at 8% simple per annum from the dates that payments were taken to the date of settlement
 - adjust the application of interest charges to reflect the changed deferral period
- Reimburse expenses of £1,454.17 incurred by Mrs P, plus interest at 8% simple per annum from 09/03/22 to the date of settlement
- Pay interest on Mrs P's deposit (£1,740) at 8% simple per annum from the date she made this payment to the date of refund

Mrs P did not respond to my provisional decision. The supplier responded on behalf of Hitachi:

- The supplier felt that on every occasion it had replaced, under the terms and conditions of the guarantee, any faulty goods
- It had challenged earlier quotes obtained by Mrs P on the basis that the independent report would be adhered to by all parties, for it to replace the wall coverings
- It had also challenged these earlier quotes as excessively expensive
- It said everybody's understanding had been that it would pay for the independent report, and that it would do any work identified by the inspector as necessary to bring the installation up to an acceptable standard – it had not agreed that Mrs P would undertake this work with new contractors
- But, when Mrs P refused to allow it to do this work, a fair and practical alternative way forward had been offered – the supplier would pay Mrs P installation costs of £800 and, as a gesture of goodwill, it would pay her a further £500, in order to settle her complaint
- The supplier suggested that the joinery tradesperson was not qualified or competent to complete to a satisfactory standard the work commissioned by Mrs P
- It had asked as well for evidence that the work had been completed, but this had not been provided

Hitachi responded to say that it had nothing to add to the supplier's response.

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.

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

Deferral period, interest charges and monthly repayments

I note that Hitachi did not comment on my provisional findings and decision, or on the settlement recommendations I added to those made by our investigator:

- Change the date on which the deferral period in its agreement with Mrs P commences to 09/03/22
- Rework Mrs P's agreement account to reflect the above change, and in particular –
 - refund monthly repayments taken before the changed deferral period end date, plus interest at 8% simple per annum from the dates that payments were taken to the date of settlement
 - adjust the application of interest charges to reflect the changed deferral period

Achieving installed household fixtures of satisfactory quality

The supplier responded on behalf of Hitachi. It said that, on every occasion, it had replaced faulty goods. Although this assertion must be considered alongside the January 2021 independent inspection report – which did not criticise the quality of products installed, but which did strongly criticise the way these products had been installed. I think it would not be appropriate to disregard the report's conclusions.

The supplier also said it paid for the inspection, and there was an understanding that it would undertake any work arising from the inspection report. But my understanding is that Hitachi told the supplier that current legislation permitted it one opportunity to correct faults, and it had already been given this opportunity. And I agree with Hitachi's interpretation of current legislation.

The supplier said as well that, when Mrs P refused to allow it to undertake further work, it offered a fair and reasonable alternative way forward. I accept that an alternative way forward was offered, which may or may not have been fair and reasonable. Mrs P was not obliged to accept this alternative, and she chose not to do so.

I note that the supplier criticised earlier quotes obtained by Mrs P. But, because she did not take up these quotes, I do not consider them to have any further relevance.

I additionally note that the supplier criticised the competence of the joinery tradesperson commissioned by Mrs P. The supplier added that it had asked for evidence that this work had been completed, which had not been provided.

Certainty is not possible about whether or not this work was completed – and, if it was completed, whether or not this was to a satisfactory standard. But Mrs P paid in March 2022 the invoices submitted by the joinery tradesperson and the two other tradespeople, from which I infer that she was at last satisfied with the installation.

We are unable to test my assumption that the goods had been satisfactorily installed, because Mrs P sold her home and moved away in April 2022. But, taking account of Mrs P's actions in paying the tradespeople's invoices and on the balance of probabilities, I find that a satisfactory outcome was achieved.

My conclusion

In the absence of further information or evidence, I see no reason to change my provisional findings or decision.

Putting things right

Similarly, I see no reason to change my provisional settlement recommendations.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. In full and final settlement of it, I order Hitachi Capital (UK) Plc:

1. To change the date on which the deferral period in its agreement with Mrs P commences to 09/03/22
2. To rework Mrs P's agreement account to reflect the above change, and in particular –
 - a. to refund monthly repayments taken before the changed deferral period end date, plus interest at 8% simple per annum from the dates that payments were taken to the date of settlement
 - b. to adjust the application of interest charges to reflect the changed deferral period
3. To reimburse expenses of £1,454.17 incurred by Mrs P, plus interest at 8% simple per annum from 09/03/22 to the date of settlement
4. To pay interest on Mrs P's deposit (£1,740) at 8% simple per annum from the date she made this payment to the date of refund

If Hitachi considers that it has to deduct tax from the interest element of my award, it should send Mrs P a tax deduction certificate when it pays her. She can then try to reclaim this tax, if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 16 March 2023.

Roy Mawford
Ombudsman