

## **complaint**

Hitachi Capital (UK) Plc ("Hitachi") loaned Mrs S money to buy a car. The car quickly developed a number of problems. Mrs S says Hitachi should pay for these under section 75 of the Consumer Credit Act 1974. Hitachi says the problems weren't faults but were reasonable wear and tear.

## **background**

In late November 2014, Mrs S bought a car from a dealership ("the Seller"). To pay for the car, Mrs S entered into a loan agreement with Hitachi. The car cost just over £2,000. It's around nine years old and has driven almost 90,000 miles.

Within a day or two, the car's power steering stopped working. And within a month, the car wouldn't start. A mechanic examined the car and it appears the main cause was the battery. He described it as oxidised and holding little charge. It also appears that the thermostat housing was leaking and he recommended that the cam belt be changed. Additionally, Mrs S noticed that the car's previous MOT advised the brake discs be replaced. I understand that the cam belt broke in February 2015.

Mrs S complained to Hitachi. She said it was responsible under section 75 of the Consumer Credit Act 1974. This says that – in some circumstances – a credit provider is liable for a misrepresentation or breach of contract by a seller.

Hitachi arranged to fix some of the faults. These had a total cost of £153.61. But it said that the battery, cam belt and brake discs were reasonable wear and tear and not a fault. So it refused to fix these.

One of our adjudicators looked at the complaint and recommended that it all the problems be fixed. Hitachi still disagrees so the complaint has been passed to me.

## **my findings**

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

The law says that the car the Seller sold to Mrs S must be of satisfactory quality. Although some guidance is given, there's no strict definition of what this means. It's what a reasonable person would consider to be satisfactory in all the circumstances. In a case such as this, this would include the age and mileage of the car. Because, after all, the effect of wear and tear is one of the reasons second hand cars cost less than new ones. If the car sold to Mrs S wasn't of satisfactory quality then the Seller has breached its contract with her. And as I say above, section 75 says Hitachi can be held responsible for this.

## ***battery and cam belt***

Overall, I've come to the conclusion that these weren't of satisfactory quality. The independent mechanic says the battery was oxidised and held little charge. This was only around a month after Mrs S had bought the car. I note that the battery failed its test at the garage that looked at the car on behalf of Hitachi too.

I accept that the battery will degrade over time. And the fact it needs replacing doesn't mean it's faulty. But it seems highly unlikely to me that the battery would have degraded a huge amount in the month between Mrs S buying it and the car breaking down. It seems likely to me that the battery was already so damaged at the time Mrs S bought the car that a reasonable person wouldn't think it was of satisfactory quality.

Whether the cam belt was of satisfactory quality has been a more difficult question to answer. I accept Hitachi's point that cam belts wear over time. And as I note above, buyers of second hand cars should expect wear and tear which is reasonable for the car's age and mileage. Hitachi says that the cam belt needed replacing under the manufacturer's guidelines. But this doesn't necessarily mean that the cam belt's state was simply a matter of wear and tear. It also doesn't mean, as Mrs S has suggested, that it must mean the cam belt wasn't of satisfactory quality.

Hitachi says its mechanic looked at the car and said the cam belt should be replaced not because it was faulty but because it was due on a car of this age and mileage. I've considered that carefully. But overall, I've decided it's likely the cam belt wasn't of satisfactory quality. I've got a report from the mechanic who was called by Mrs S when her car broke down. His opinion clearly was that the cam belt was so worn that it should have been replaced before Mrs S had bought the car. Mrs S has told us the mechanic pointed out a noise which it's accepted is a sign of *needing* to be replaced – rather than it just being advisable. And given the cam belt did fail in February of this year I think this supports his opinion. I've also taken into account that, I'm afraid I have to say, I don't think this car was generally in very good condition given the number of problems it had. In my view, the cam belt was so damaged at the time Mrs S bought the car that it wasn't of satisfactory quality.

### ***brake discs***

In relation to the brake discs, I agree with Hitachi that the recommendation to replace these was because of reasonable wear and tear. Mrs S says that the car's previous MOT – around eight months before she bought it – advised the brake discs be changed. But, as I've said above, the fact the manufacturer advises that a part should be changed doesn't mean it's not of satisfactory quality. Whether a part actually needs to be changed depends on the particular car. This is especially so with brake discs as their state will depend heavily on how the car has been driven over time.

I can understand Mrs S's position. And I can understand why she's disappointed that the brake discs weren't changed when the MOT recommended this. But as I say, the fact the manufacturer has recommended they be changed doesn't necessarily mean they're not of satisfactory quality. There is no evidence that the brake discs weren't performing as expected or were substantially worse than should be expected. Overall, I think the condition of the brake discs is what a reasonable person would view as satisfactory in a car of this age and mileage. So overall, I'm sorry to tell Mrs S I'm not directing Hitachi to replace the brake discs.

### ***further compensation***

It seems to me that there was significant delay and confusion when it came to what parts of the car would be repaired. And it seems that this was caused by those acting on behalf of Hitachi. So I agree with the adjudicator that Hitachi should pay an additional £200 to compensate Mrs S for this.

**my final decision**

For the above reasons I uphold this complaint and direct Hitachi Capital (UK) Plc to pay Mrs S:

1. £153.61 to cover replacement of the starter motor, coolant temperature sensor and diagnostic check (if it hasn't already covered this – it's already agreed to do this).
2. £176.24 to replace the cam belt (made up of £106.24 for parts and £70.00 for labour).
3. The cost of replacing the battery up to £130 (Mrs S must provide an invoice to Hitachi which it must then refund her for).
4. £200 for the distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 30 December 2015.

Ross Crawley  
**ombudsman**