

## complaint

Mr T complains that Hitachi Capital (UK) Plc refused to let him unwind his loan to purchase a cherished number plate without paying the sum agreed.

## background

On 3 September 2016 Mr T placed an online order with the supplier, which I will call N, for a cherished number plate. N's sales adviser phoned Mr T to check the order and wrote to him the same day to confirm this and enclose the terms and conditions.

He also applied online to Hitachi for finance of £5,006.52 to pay for the number. The finance was agreed. N says that Mr T called again on 3 September 2016 to tell it that finance was in place and asked it to send him the plates immediately. These were sent on 5 September 2016.

On 7 September 2016 Mr T contacted N and informed it he wished to cancel the order. The supplier told him he couldn't do this. It said the plates were a personalised product and a customer couldn't claim a refund just because he'd changed his mind. It referred to the terms and conditions on its website which state:

*"Please note that once a purchase is placed for all registration marks, the registration is deemed to be specifically to the requirements of the purchaser therefore is considered a personalised item, this means under the Consumer Contracts (Information, Cancellation and additional charges) Regulations 2013. If the purchaser does not proceed with the transfer of the registration mark after paying a part/full payment or fails to supply the documentation required by the DVLA for transfer then no part of the payment is refundable as the service period commences immediately. Ordered numbers cannot be refunded or exchanged. Upon receipt of an order, the purchaser is agreeing to give us their informed consent to waive their 14 day cooling off period".*

He also contacted Hitachi and told it he wanted to cancel the finance agreement. Hitachi confirmed that he could do this, but would still be responsible for the amount it had already paid the supplier. I gather Mr T was sent the paperwork required to complete the transfer of the plates to his vehicle. And as requested by his office, the supplier also sent a VAT invoice to his business.

Mr T brought his complaint to this service where it was investigated by one of our adjudicators who didn't recommend that it be upheld. Mr T said he believed that he was entitled to return the cherished registration under the Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013 (CCR 2013). These allow for goods to be returned with 14 days of purchase. He also said that N had failed to provide the contract on a durable medium as required by legislation by the time he had decided to cancel.

She didn't think that Hitachi had done anything wrong in paying N. She believed that if Mr T thought N had been wrong in refusing a refund that was a matter he should take up with it. Mr T didn't agree and argued that the cherished registration wasn't personalised goods and so could be returned within 14 days.

I issued a provisional decision as follows:

I considered the key to this complaint was the application of the consumer regulations, in particular the CCR 2013 and whether cherished number plates are personalised goods?

I thought it worth clarifying what Mr T bought. I noted that although he purchased some number plates the value of the physical plates was nominal. What he has acquired was the right to use a registered number on his vehicle. As such he acquired an intangible asset. I considered if the regulations applied to intangibles and was satisfied they did. Although they don't specify intangibles I believed it was clear from the wording of the legislation that computer software was included and this included a significant intangible element.

The relevant section states that the 14 day returns rule doesn't apply to "*the supply of goods that are made to the consumer's specifications or are clearly personalised*". N's terms and conditions say that registrations are deemed to be personalised as set out in the regulations. I explained that it may deem them as such, but it fell to me to decide if the registration bought by Mr T could be held to be personalised under the regulations. N's assertion that it does wasn't sufficient to make the registration personalised. I believed it had based this particular term or condition on the regulations and its application fell to be decided on what those regulations mean.

It hadn't been suggested that the registration had been made for Mr T's specification; presumably because it is clear it hasn't been so made. The issue was whether it was 'clearly personalised'? I looked closely at various attempts to explain what 'clearly personalised' means and it is apparent that it is not well defined. Most commentators refer to a large grey area and give examples of what is and what isn't included. Most of these are at either end of the spectrum.

One issue that has been raised in this complaint was the issue of uniqueness. I didn't consider that to be either helpful or relevant. Every vehicle registration is unique and I didn't think that this would be grounds to argue that each one is personalised. I believed the number chosen by Mr T contains his wife's initials and I noted that currently on one seller's website you could purchase over 30 registrations that offer those initials. And I was sure there were plenty more variations available. I pointed out the number plate had been owned by another individual with the same initials and I wondered if it could be said to be personal to him?

I also thought it is worth bearing mind the likely reason that lay behind the inclusion of the exception to the 14 days returns rule. I thought it was fairly clear that it was included to protect suppliers who wouldn't be able to sell the goods to another customer because they had been personalised. A shirt with the customer's photograph on it would be unsaleable and of no value to the seller. The regulations protect sellers in those circumstances.

I also noted that Trading Standards have suggested that a shirt with a famous footballer's name on it wouldn't be personalised, but one made with the name of the customer would be personalised. One commentator said that a car with a number of standard options added to it wouldn't be personalised even though the customer has in effect made a personal choice as which of a large range of options they want. However, if the customer arranged for the manufacturer to mix a specific colour of paint for the car then that would most likely be personalised.

I thought the examples above were more relevant to items made to the customer's specifications. In this case the number already existed and has existed for some time and has not been made for Mr T. He simply chose a number that matched his wife's initials.

To that extent I thought it was personal in that he had chosen specific numbers. But I added that if I were to buy a jumper and I chose a blue one with a V neck and a zip, made by a certain designer then that would be personal in the sense that I chose it because I liked it or it suited me. Exercising personal choice doesn't make goods personal otherwise much of what we buy would be caught by the regulations.

I thought the term was better viewed as meaning personalised such that it was unsaleable to another customer. However, I recognised that in itself causes difficulties since for example, the car with a personalised paint colour may well be saleable to another person. In short, I said the term was not clearly defined, nor did I consider it capable of being well defined. However, I considered that cherished number plates are not personalised despite the term 'personal plate' being used in common speech. I feared this is one of those terms which was misleading and it is why I used the term cherished number in my decision.

N's terms and conditions say that customers give informed consent to waive their rights to a cooling off period.

Having concluded that the number plate didn't fall within the exception set out in the regulations it followed that Mr T was entitled to return it when he attempted to do so. That led me to conclude there was breach of contract as I didn't consider N's terms and conditions relating to the payment being non-refundable were valid. I was therefore minded to uphold the complaint and require Hitachi to refund the loan and for Mr T to return the registration. In reality I believed the number was resalable and that N would be able to sell it in due course.

Mr T agreed, but Hitachi didn't. It said that N believes its terms and conditions are clear and it pointed out they were overseen by the Office of Fair Trading. It suggested that I was seeking to overturn the law and I was applying subjective judgement.

N said Mr T had confirmed he was happy with the terms and wouldn't have sought to return the plate if his wife hadn't liked it. It added that Mr T had ticked that he had read the online terms and conditions and he also received these in a durable form by letter within two days of placing the order.

It argued that the number plate was a bespoke personalised plate and it didn't have 30 suitable plates, only four. N explained that it acted as broker in this sale as it purchased the plate from an investment client and the only profit it made was £230 commission. If it took the plate back it would do so at a considerable loss.

### **my findings**

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

Because Mr T's transaction with N was financed by credit supplied to him by Hitachi, section 75 of the Consumer Credit Act 1974 (CCA1974) is a factor that needs to be taken into account when dealing with his complaint. In simple terms, section 75 gives Mr T an equal right to claim against Hitachi or N for a breach of contract or misrepresentation by N.

There's no suggestion here of misrepresentation. The issue in dispute is whether N breached its contract with Mr T due to N's stance over Mr T seeking to cancel the arrangements. If N's actions amount to a breach of contract, then Mr T has the right to seek redress for the consequences of that breach. And by virtue of section 75, he can pursue that claim against Hitachi.

Given its response to my provisional decision, I asked Hitachi for clarification of its claim that I was seeking to overturn the law and in particular which law it was referring to. In turn it said that Mr T had confirmed he had received a written contract before he decided to cancel and asked for my view on all web purchases. Regrettably Hitachi failed to respond to my request for clarification of its position despite several reminders.

I remain of the opinion that the cherished number plate is not a personalised item and I don't consider I can add anything helpful on this issue beyond the points I made in my provisional decision. Neither Hitachi, nor N has come up with a credible argument why my view is wrong other than to say it is subjective. The merchant has suggested that the plate had a personalised unique appeal to Mr T. I agree it suited his needs and as I explained in my provisional decision the exercise of personal choice doesn't mean the goods purchased must also be personalised.

Incidentally, I should point out that my provisional decision referred to some 30 plates bearing the same initials being available on another retailer's website and not that of this merchant. But the point remains that Mr T had a choice of plates and while each was unique, as are all number plates, they are not personalised goods as required by the Consumer Regulations.

It follows that I do not accept N's position (and by extension, Hitachi's) that the registrations it sells are personalised goods or that this allows it to claim that its customers are giving informed consent to waive their rights to a 14 day cooling off period. I don't consider informed consent can be given where misleading information is given to the customer.

I would add that there is a contradiction in N saying that the registrations are not personalised goods and at the same time requiring customers to waive their rights. If the goods are personalised then the consumer has no rights which he or she can waive. Section 21 of the Department for Business Innovation and Skills guidance note on the CCR2013 states: "*Where cancellation rights apply, the consumer **cannot** waive those rights (although the consumer is of course free to choose not to exercise their right to cancel)*".

Hitachi and the merchant claim that Mr T received details of the terms and conditions in writing before he called to cancel. He says the letter wasn't received until after he had supplied the registration. In any event Mr T cancelled the order within 14 days of both the initial contact and the receipt of the letter as is allowed by CCR2013.

For the avoidance of doubt I would add that the contract between Mr T and N falls within the ambit of UK law. Both Mr T and N are resident in the UK, and the contract has been performed and executed within the UK. Although it is not specifically stated in N's terms and conditions I consider it follows that the contract is subject to CCR 2013. This view is reinforced by the fact that N's terms and conditions refer to CCR2013 which shows that it implicitly accepts that the contract for sale is subject to those regulations.

N has said that it was acting as a broker in the sale and I asked for further details. It said that its website distinguishes between numbers it owns which are denoted as 'our stock' and

those for which it is acting as a broker. It said Mr T was told the number was owned by a third party. It also explained that its general terms and conditions apply to all sales regardless of type.

It added that it doesn't legally take ownership of the number and on receiving payment from the buyer it requests the relevant document from the seller. It takes a deposit from the buyer and it pays a deposit to the seller and it then pays the balance which I presume to be less than the price for which sells the registration. It says it is unable to return the registration to the seller. The rights to the registration are transferred to the purchaser. It also supplied a copy of the invoice sent to Mr T. This shows the seller to be N.

Although N describes itself as a broker in this transaction I do not agree. In simple terms, it says to a prospective seller we will buy your registration for £x. It then advertises the number at a price it deems suitable and when a customer wishes to buy it the number is purchased and sold on. Even though it may not register the number in its name everything else points to N as the purchaser and seller of the registration. If it was acting as broker then the contract would be between the seller and the purchaser, in this case Mr T and the original owner with N taking a commission fee. However it isn't and this is demonstrated by the invoice which shows a sale by N to Mr T.

Furthermore, if it was acting as a broker it would also be able to return the registration to the original owner. The fact it cannot do so indicates that it becomes the de facto owner even if it is not registered in N's name. Also I would expect it to have separate terms and conditions for different types of sale if it made a real distinction between what it says are stock sales and those made on commission. In any event the terms and conditions I have seen are relatively loosely drawn. I gather N holds a significant number of cherished numbers in stock and I don't believe taking this one into stock would be unreasonable or unfair.

In conclusion I don't consider the fact that N doesn't pay the seller until it finds a buyer and receives payment from them and then routes the number directly to the purchaser points to it being a broker.

In summary this transaction is caught by Section 75 of the Consumer Credit Act and I believe there has been a breach of contract due to N not adhering to the requirements of CCR 2013. The number is not personalised goods and so is not within the personal goods exemption of CCR 2013. As such I don't find Hitachi's position sustainable. It follows that I consider Mr T's complaint should succeed.

### **my final decision**

My final decision is that I uphold this complaint and I direct Hitachi Capital (UK) Plc to unwind the finance agreement and return any money Mr T has paid, subject to him returning the relevant registration documents to either Hitachi or to N. Hitachi should also remove any reference to the finance agreement from Mr T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 October 2017.

Ivor Graham  
**ombudsman**