

## **complaint**

Mr A complains that Hitachi Capital (UK) PLC, trading as Hitachi Capital Consumer Finance, ("HCCF") will not meet his claim for misrepresentation and the unsatisfactory quality of a car which was financed by HCCF.

## **background**

Mr A entered into a fixed sum loan agreement with HCCF in early March 2014 to finance the purchase of a car. The car cost over £20,000. The dealership ("D") from where Mr A believed he'd acquired the car, told him that the car was sold with the benefit of a manufacturer's warranty which ended in September 2014. In June 2014 the car had a catastrophic mechanical failure which caused damage to the engine, gearbox and other parts of the car. Mr A was told that this would cost around £36,000 to rectify, which was more than the value of the car. He contacted the manufacturer to claim under the warranty. But it rejected his claim as it said that the manufacturer's service schedule hadn't been adhered to prior to his acquiring the car. Mr A said that he'd only bought the car because he had been told by D that it had the benefit of a manufacturer's warranty and he complained to HCCF about this. He was also unhappy about inaccuracies in one of the documents and was concerned that the car may not have been of satisfactory quality at the point of supply.

The adjudicator didn't recommend that the complaint should be upheld. She didn't think that it was reasonable to expect D to have known that the servicing requirements weren't followed, and that the warranty wasn't therefore valid. She had also noted that an independent engineer's report had been obtained which said that the engineer had seen nothing to suggest that the car wasn't of satisfactory quality at the point of sale. And she also clarified the reasons for the inaccuracies in the inspection sheet Mr A had referred to.

Mr A disagreed and responded to say, in summary, that he had bought the car in good faith relying on D's claim that it had the benefit of a warranty. He also believed that the car had what appeared at face value to be a full service history. He said that D was responsible for checking that the servicing requirements had been followed so that their claims that the manufacturer's warranty was "valid" wouldn't be misleading. He also disputed the conclusions in the independent engineer's report. He had spoken to other engineers who said that the conclusion reached by the independent engineer ("E") couldn't be possible based on E's findings. Mr A also didn't accept the adjudicator's explanation for the inaccuracies in the inspection sheet.

## **my findings**

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

Where things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

I have enormous sympathy for the situation in which Mr A finds himself. I will deal with each of his issues below:

### *Misrepresentation*

I've had to consider whether Mr A has a valid claim for misrepresentation under section 75 of the Consumer Credit Act 1975 ("CCA"). Section 75 allows for a provider of credit to be held equally liable with the supplier of goods where there has been a clear misrepresentation by the supplier. In this case, it appears that the supplier of the car appears to be the credit broker in the case, ("C") but the alleged misrepresentation was made by D. But as D isn't a party to the debtor-creditor-supplier agreement as defined by the CCA, I don't think that section 75 applies to the claim for misrepresentation against D. The documents I've seen appear to show that D bought the car in November 2013. It then invoiced C for the car on 6 March 2014, and then C invoiced HCCF for the car on 7 March 2014. C is also named as the supplier in the loan agreement. I raised this issue with the parties and C for comment. C confirmed that D had sold the car to C who in turn had sold the car to HCCF. C also said that the invoices follow this trail. So, in these circumstances, I don't think that HCCF can be held responsible under the CCA for any misrepresentation made by D.

#### *Unsatisfactory quality*

I note that Mr A experienced no major problems with the car until its catastrophic failure nearly three months after acquiring it. To uphold this complaint, I must be persuaded that the car wasn't of satisfactory quality at the time it was supplied in March 2014. I have considered E's report. E explained that the issues had developed suddenly without warning and couldn't have been present at the point of sale. He had seen nothing to suggest that the car wasn't of satisfactory quality at the point of sale.

So, I don't think, on balance, that there is sufficient evidence for me to conclude that the car was actually faulty when it was supplied. Mr A hasn't supplied any independent evidence to counteract E's report. To hold HCCF liable, I would need compelling evidence that the car was defective in March 2014. In the absence of this, it would be unfair for me to do so.

#### *Inspection sheet*

I note that Mr A has referred to the large number of errors in the inspection sheet. He said that the sheet showed that there were no gaps in the service history, whereas there was only one verifiable service. But I also note that Mr A had provided evidence of two services prior to his purchase. So, I cannot see that the inspection sheet was incorrect in that regard.

I recognise Mr A's strength of feeling and obvious frustration. But, having considered very carefully the circumstances of this complaint, overall, and on balance, I don't think that I have grounds to find that Mr A should be allowed to reject the car, or to require HCCF to repair or replace it or refund Mr A's payments. I appreciate that this is not the outcome that Mr A wants. But he doesn't have to accept my decision and may pursue his case by alternative means should he wish to do so.

#### **my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 April 2016.

Roslyn Rawson  
**ombudsman**