

The complaint

Mr G complains that a used car he got with a hire purchase agreement (HPA) from Marsh Finance Ltd was of unsatisfactory quality.

What happened

Mr G acquired this car near the end of August 2021. He had problems not long after - an engine management light (EML) illuminated and he asked a friend who is a mechanic to check the car. Diagnostics suggested there were faults present and Mr G contacted Marsh on 7 September 2021 to complain. Marsh asked for more evidence and Mr G thought a report would be costly so Marsh arranged for an independent expert to inspect at the start of October.

The expert found nothing unusual. He thought the fault codes Mr G reported were probably caused by a low battery - which might be due to the car not being used for a time. Marsh didn't uphold the complaint and Mr G remained unhappy. He contacted Marsh shortly after to say he was going to get his own report. He supplied a vehicle health check (VHC) from a main dealer (that I'll call D) for this brand, a week or so later. D identified issues with the turbo and repairs needed were estimated to cost nearly £1,200. Marsh considered this was a new fault - and didn't change its final response - so Mr G referred the matter to our service.

One of our investigators considered the evidence. She acknowledged the independent expert didn't find any faults. But she didn't think he'd done enough to try and replicate the intermittent issues Mr G reported - as he didn't take the car for a test drive. She was satisfied that D confirmed the car had a significant turbo issue causing loss of power. She thought that sounded similar to problems Mr G reported soon after supply. She wasn't persuaded that this was likely to be a new fault. She was satisfied it was probably present when the car was supplied and the car was of unsatisfactory quality.

The investigator recommended Mr G should be allowed to reject the car and have his deposit refunded plus the cost of the VHC (on proof of payment). She noted that Mr G had covered around 2,500 miles by the time of the VHC, but she thought his use of the car was likely impaired - given the reduced power. She considered Marsh should refund of 10% of any monthly payments made to reflect that - and pay interest on refunds as well as removing any adverse information recorded about the finance from Mr G's credit file.

Marsh disagreed. It says (in summary) Mr G was unable to evidence the faults he reported originally - and the expert didn't find any evidence of these either. Marsh thinks Mr G only raised concerns about a turbo fault after his complaint was rejected and he'd driven the car about 2,500 miles by that point. It considers this would be classed as normal use. And Mr G couldn't have driven the car as far as he did if the turbo had failed. Marsh is concerned that Mr G has continued to drive the car with issues present. It doesn't accept the car had faults present or developing at the point of supply and asked for an ombudsman to review the matter.

Having considered the available evidence, I was minded to uphold the complaint but I thought it was fair to let the parties see my provisional findings and make further

submissions (if they wanted to) before I made my final decision. I issued a provisional decision last month and I've set out below what I decided provisionally - and why. This forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr G brings his complaint to our service because he acquired this car with a HPA. And I'm satisfied that Marsh, as the vehicle's supplier, is responsible for ensuring that the car was of satisfactory quality at the point of supply under the Consumer Rights Act 2015 (CRA).

Satisfactory quality

The quality of goods includes their general state and condition as well as other things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. What amounts to "satisfactory" quality will vary depending on individual circumstances - goods need to meet the standard that a reasonable person would consider "satisfactory".

I think it's reasonable to take a vehicle's age, cost and mileage at the point of supply into account in this situation. I can see this car was around four years old, cost over £5,000 and had around 82,000 miles on the clock when Mr G got it. As such, I think most people would accept that it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle. That doesn't mean however that Mr G didn't have a reasonable expectation that the car would be reasonably durable – taking its age, cost and mileage into account.

What (if anything) went wrong with the car

Based on the current evidence, I'm satisfied that Mr G had concerns about the quality of the car within a very short time. He contacted Marsh to complain on 7 September. And information from Marsh indicates that several issues were reported at that time - including a fuel warning light and an "engine malfunction service now" light had illuminated, the start/stop system wasn't working properly, there was a fault with the door module and oil was leaking from the sprocket cover and gearbox.

Marsh asked for evidence of faults present and I don't think that was unreasonable in the circumstances. It looks as if Mr G wanted to reject the car (Marsh says he asked to do so on 14 September) and, under the CRA, it's for a consumer who wants to reject goods within 30 days (the short term right to reject) to provide evidence of unsatisfactory quality.

It looks as if Mr G was concerned about the cost of obtaining expert evidence and Marsh arranged for an independent expert to check the car in October 2021. I think that was fair. I have considered the expert's report carefully. I accept he found no faults present. And I can see why Marsh rejected the complaint – based on the expert's conclusions. I'm satisfied however that Mr G took the car for a detailed VHC at a main dealership not long after the expert's inspection. And he supplied evidence from D - that includes a video of tests undertaken - to Marsh. So, Marsh had the chance to consider this at the relevant time.

I couldn't access D's video (because the link had expired) but I have seen detailed notes compiled by our investigator from her viewing. I think these are likely to be accurate. In summary, the investigator noted that the technician found the car lacked power based on stored fault codes and detailed diagnostic tests. He said boost pressure was just above 1000 RPM, as it should be during idle conditions, but "it barely boosts above 1 bar of pressure" on acceleration - when "the turbocharger should engage and boost to around 1.4 to 1.5 bars".

The technician acknowledged the expert hadn't seen relevant fault codes. He thought this might have been due to some sort of reset before the inspection (as the expert himself acknowledged). Or the expert didn't use the same sort of diagnostic equipment and he was unable to access data that was visible to D - with more sophisticated diagnostic capability.

I'm satisfied the evidence from D suggests that the car has a significant issue. Reduced power is (at the very least) likely to be frustrating and inconvenient - and lack of acceleration may inhibit a driver's ability to negotiate traffic safely. I think it would have been reasonable for Marsh to consider this evidence - given it was provided shortly after the expert's inspection and less than two months after the car was supplied.

I appreciate the independent expert didn't identify the issues found by D (or any other fault) when he inspected. And I haven't seen any documentary evidence to show that Mr G complained of loss of power when he first contacted Marsh in September 2021. Mr G told us the car was in limp mode in October 2021 but that was over a month after supply. However the expert acknowledged in his report that his inspection was "mainly visual" and carried out with no specialist equipment other than a fault code reader. Whereas I think it's reasonably clear that D carried out a more thorough inspection - which included conducting different checks using specialist equipment and a road test.

D is a main dealer for this brand and I'd expect it to have relevant knowledge and expertise. I think it's reasonable to give some weight to D's evidence in this situation. And, even if it only became apparent that power was reduced in or about October 2021, this was within six months of supply. So, under the CRA, this issue taken to have been present when the car was supplied - unless there's evidence to the contrary. If Marsh had any doubts about D's evidence it could have approached D for further information - I can see Mr G provided contact details and suggested Marsh should do so. Alternatively, Marsh could have asked the expert to comment. I think it would have been reasonable to do so in these specific circumstances - in light of the expert's limited inspection and the new evidence from D's more targeted testing.

As things stand, from the evidence I've seen, I'm satisfied, on balance, that faults appeared with the turbocharger within two months of supply. I don't know what caused this exactly. And I accept Mr G was able to drive the car some 2,500 miles by the time D carried out the VHC. I realise Marsh considers the miles covered after supply mean the car must have been fit for purpose at the outset. But I don't think a car has to stop running entirely to be of unsatisfactory quality.

I'm satisfied that D carried out detailed testing here and concluded that the turbo had failed - in that there was a lack of power - and needed replacing. I'm satisfied that a turbo is expected to much longer - if not for the life of a car. I find it unlikely this was due to something Mr G did or didn't do - in the relatively short time (and distance covered) he had the car when this fault appeared. And I consider it's more likely than not the issue was present or developing when the car was supplied. I don't think a reasonable person would expect this sort of problem - even in a car of this age and mileage - so soon after supply. And I'm inclined find the car was probably of unsatisfactory quality at the outset.

I understand from information provided more recently that there's been an issue with the

timing belt (at around 92,000 miles). I don't have much evidence about that. But information available online suggests the manufacturer would expect this part to last significantly longer. And, given I'm already minded to find this car was not sufficiently durable, I don't think I need to make any further findings about that.

Putting things right

For the reasons I've given, I'm inclined to conclude that this car was of unsatisfactory quality when it was supplied to Mr G. So I've gone on to consider what's a fair and reasonable way to put things right.

I don't have enough evidence at the moment to fairly find Mr G was entitled to reject the car, in the short term. But, I'm minded to find the car probably had faults present when it was supplied. And, under the CRA, a consumer usually has the right to repair in this situation with a final right to reject if the cost of repairs is disproportionate or repairs don't work – or they're likely to take too long or cause too much inconvenience for the consumer. I think Mr G may well have accepted repairs here if this had been offered last year. However, having considered everything that's happened since – including the upset and inconvenience Mr G has likely experienced since – I'm minded to find it fair that he should be allowed to reject the car now and have his deposit of £100 (according to the HPA) refunded.

Like the investigator, I consider the lack of power - due to the presence of the faulty turbo - is likely to have impaired Mr G's use of the vehicle. I'm inclined to find it fair that Marsh should refund 10% of each monthly payment made from October 2021 until collection to reflect that. I've seen an invoice for £138 from D for the VHC. I'm satisfied that Mr G would not have incurred this expense if the car had been of satisfactory quality at the outset. So I find it reasonable that Marsh should reimburse Mr G – on proof of payment.

I think it's likely being supplied with this faulty car caused Mr G to experience some distress and inconvenience. He had to take it for diagnostic and other checks, for example. And I am minded to find Marsh should pay Mr G £200 to compensate him for any distress and inconvenience caused.

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 invited the parties to consider my provisional findings and let me have any further comments and/or new evidence. Mr G didn't respond (by the time set) or raise any objections but Marsh disagreed.

In summary, Marsh told us they'd spoken to Mr G, he's driven the car at least 10,000 miles and it has broken down because the timing belt failed. Marsh considers Mr G couldn't have driven the car so far if faults were present at the point of supply - which is consistent with the expert finding no faults present when he inspected in October 2021. Marsh goes on to say Mr G was unable to supply evidence of faults when he made the initial complaint and the car passed an MOT in May 2022 – which confirms it was fit for use then.

Having considered the additional information Marsh supplied, I wasn't persuaded to change my mind but I thought it was fair to let the parties have my provisional view about the more recent developments – the failed timing belt - so they could make further submissions if they wanted to before I made my final decision.

I wrote to both parties informally on 30 September 2022 and said (for the reasons given in

my provisional decision) I remained of the view that this car was not sufficiently durable. I accepted it passed an MOT in 2022 but this test checks that a vehicle is roadworthy on the day of the test only. And I wasn't persuaded this means the car must have been of satisfactory quality when it was supplied. I acknowledged Mr G was able to drive the car some distance after supply but I thought it probably wasn't performing as it should have been during this time. And I remained of the view it's fair and reasonable for Marsh to take the steps set out in my provisional decision to put things right.

I explained that I'd seen nothing to show that the recent breakdown was connected to the issues reported previously. So, on the current evidence, I was unable to reasonably hold Marsh responsible for that. And I wasn't therefore minded to find Marsh should provide a greater refund or do anything further in this regard. I thought this issue would fall to be dealt with under the finance terms and conditions, in the usual way, after the car is returned. If Mr G was unhappy with that it would be open to him to raise any issues with Marsh and, if he's not satisfied with the response, he may be able to bring another complaint to this service.

I invited the parties to let me have any further comments or evidence by 6 October 2022. Mr G hasn't responded but Marsh (in summary) repeats the comments made previously about the expert's inspection, MOT and distance travelled after supply. It says the expert would have noticed if the car had a turbo fault turbo during the inspection and Mr G couldn't have driven the car so far if faults said to be present were there at the point of supply.

Marsh also asked if Mr G could supply an up to date image of the odometer and the investigator requested that - but we haven't had a reply. I don't think it's fair or reasonable to delay this matter any further. I've considered what Marsh says carefully but this hasn't persuaded me to change my mind. For the reasons I've given already, I remain of the view it's more likely than not this car wasn't of satisfactory quality when it was supplied. And I find it is fair and reasonable for Marsh to take the steps set out below to put things right.

My final decision

For the reasons I've explained, my decision is I uphold this complaint and I require Marsh Finance Limited to:-

1. End the finance agreement and arrange to collect the car at no additional cost to Mr G;
2. Refund any deposit paid plus 10% of each monthly payment made from October 2021 until the car is collected;
3. Refund £138 for diagnostic checks – if Mr G provides documentary proof that this cost was incurred;
4. Pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
5. Pay Mr G £200 compensation for associated distress and inconvenience; and
6. Remove any adverse information recorded about the HPA from Mr G's credit file.

If Marsh considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr G 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 from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 November 2022.

Claire Jackson
Ombudsman