

## **The complaint**

Miss M complains that she was supplied with a car which wasn't of satisfactory quality under a hire purchase agreement with Marsh Finance & Commercial Ltd ("Marsh").

## **What happened**

Miss M entered into a hire purchase agreement with Marsh on 26 October 2021 to fund the acquisition of a car. The cash price of the car was £3,985. Miss M paid a £500 deposit and was required to repay the lending over 24 months, with an optional purchase fee at the end.

The car broke down in April 2022 and Miss M had it recovered to a local garage. I understand that garage replaced damaged engine components, only to report that damage had previously been caused to the extent that the cylinder head likely needed replacing.

Miss M told Marsh the car had broken down and was undriveable on 9 May 2022. She complained that the car had failed due to it having been poorly maintained prior to its supply.

Marsh issued a response to the complaint in June 2022. It said an independent inspection of the car had been completed which accepted a fault with the car, but concluded that there was insufficient evidence to suggest the fault had been present at the point of supply. It decided that the car had been of satisfactory quality when supplied to Miss M.

Miss M referred the matter to this service. She cast doubt on the inspection Marsh had relied on, suggesting that the fault with the car hadn't been adequately investigated. Miss M provided a report from the garage the car had been initially recovered to – it concluded that the car hadn't been properly maintained for as much as the last 20,000 miles. And, that the fault would've been developing in the last 5,000 miles.

On the basis that Miss M had only travelled 2,848 miles in around six months from the point of supply, our investigator was persuaded that the car was likely not of satisfactory quality when supplied. They recommended, in summary, that Marsh collect the car, end the agreement, compensate Miss M for costs incurred and pay her £150 for distress and inconvenience caused.

Marsh disagreed. It said the car was advertised without a full service history so Miss M ought to have expected issues to develop shortly after it was supplied. Additionally, the issue happened more than six months after supply, so it'd be reasonable to assume it wasn't present at supply, which is also what the initial inspection of the car had concluded.

Marsh asked for a final decision on the matter. The case was passed to me. I issued a provisional decision on it. In summary, I said;

*Miss M was supplied with a car under a hire purchase agreement. That's a regulated agreement and one which this service is able to consider complaint about. Under this type of agreement, Marsh is the supplier of the goods and is responsible for dealing with a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) is relevant to this case. It implies terms into the agreement that the goods supplied will be of satisfactory quality. That's defined as the meeting the standard a reasonable person would consider satisfactory, taking into account the description of the goods, price paid, and other relevant circumstances.*

*Such factors relevant to this case might be the age and mileage of the car at the time of supply, as well as the car's history.*

*In this case, Miss M was supplied with a car which was approximately seven years old and had travelled 43,000 miles. I also accept it was advertised as being supplied without a full service history.*

*So, given the car's age, mileage and (lack of) history I accept that a reasonable person ought to expect certain components to be worn and perhaps in need of replacement sooner than if the car had been new. I also accept that the car as a whole might be more prone to failure or deterioration as some components might be near the end of their expected life cycle.*

*The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within the first six months, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Miss M to show that the goods were not of satisfactory quality. I think the goods were found to be faulty within six months, but in any case I also think Miss M has successfully demonstrated they weren't of satisfactory quality as well. I'll explain why.*

*We're not engineers or technical experts in terms of diagnosing faults with cars. We need to rely on independent and expert evidence. In this case we've been given a differing perspective from two different sources.*

*I think all parties agree that there's a fault with the car. It seems everyone agrees the fault is likely in relation to a lack of lubrication/ oil being supplied to the camshafts/ valve lifters and/ or cylinder head. It's for me to determine whether that fault was either present or developing at the point the car was supplied to Miss M.*

*In its submission to this service I think Marsh accepts that Miss M raised the issue with the supplying dealer within six months of the car being supplied. And the information I've received shows that on 8 April 2022 a garage had identified a failed timing chain tensioner causing a lot of noise as a result of a slack timing chain. It also identified what it considered to be evidence which it thought showed oil hadn't been changed for at least 20,000 miles.*

*I understand that in diagnosing fault with the engine, the garage replaced damaged parts as well as those necessary to make the engine functional again. For this, Miss M incurred a cost of £733.89. Having done so, the garage noted that the engine remained noisy, likely as a result of blocked hydraulic valve lifters. They said the cylinder head would almost certainly require replacement.*

*The garage ultimately concluded that the fault had been a "cumulative and progressive failure" and was likely developing in the last 5,000 miles. It reported that in its view, nothing other than a lack of long term maintenance could've caused this premature failure.*

*The independent inspection and report which Marsh has relied on was completed subsequent to this. It ultimately concluded that there was insufficient evidence to say that the fault with the car was present when the car was supplied to Miss M. Although I note that in a subsequent clarification issued the initial inspector seems to accept it's possible that the fault*

*may not have been apparent at the point of supply but could've been developing. They nonetheless maintain their position that there isn't sufficient evidence to say that the issue was either present at the point of supply or hadn't developed solely during the period in which Miss M had the car.*

*Ultimately I need to decide which perspective I find more plausible. Whilst I have no reason to doubt the reliability of the report Marsh relied on, I have to take into account that it was compiled without the engine or associated components having been dismantled and examined. But, in contrast, the report provided by Miss M was completed after what seems to have been a more detailed examination on relevant and associated engine components.*

*Having carefully considered all of the evidence presented in this case, I'm more persuaded by the report provided by Miss M. I find it particularly plausible that the nature of the fault seems to have been a progressive one, and most likely did not occur solely in the short time that Miss M had use of the car. It satisfies me, at the very least, that the car had a serious issue which was developing, and therefore present, at the point of supply.*

*Taking into account the likely value of the car as well as the probable costs associated with the appropriate repair – estimated to be around £2,000 – I don't think it'd be economical or in either parties interest to require that of Marsh. So, I think the fairest thing to do is allow Miss M to reject the car without cost to her.*

*And, I think Miss M ought to be compensated for the costs she incurred as a result of the car's fault. I accept the garage Miss M had the car recovered to had replaced some damaged parts associated with replacing the timing chain, and this made up some of the costs she incurred – I'm satisfied that this was necessary in order to diagnose other faults with the car though. So, that cost ought to be covered in full.*

*I also think Miss M ought to be compensated for distress and inconvenience caused by what's happened. I agree that the £150 our investigator recommended is appropriate in the circumstances.*

*Overall, I'm persuaded from what's been said that the current fault had likely been developing for a long time, most likely prior to the car being supplied to Miss M. As a result, I'm persuaded, on balance, that the goods supplied to Miss M were not of satisfactory quality and Marsh therefore needs to put things right.*

I went onto explain what I intended to require of Marsh to put things right.

Both Marsh and Miss M responded. Marsh had nothing further to add and Miss M accepted my provisional decision.

The case has been passed to me to make a final decision.

### **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.

Neither party has provided what I consider to be any materially new evidence in response to my provisional decision. As such, I find no reason to depart from my provisional decision and now make those findings final.

## **My final decision**

For the reasons explained above, my final decision is that I require Marsh Finance & Commercial Ltd to;

- End Miss M's agreement with nothing further to pay;
- Collect the car at no cost to Miss M;
- Refund all payments Miss M made from 8 April 2022, which is the point at which we know fault was identified with the car and Miss M didn't have use of it;
- Refund Miss M's deposit;
- Pay Miss M £733.89 in respect of costs incurred for the work and report completed by an independent garage;
- Pay Miss M simple interest at 8% per annum on all sums above from the date of payment until the date of settlement;
- Pay £150 compensation to Miss M for distress and inconvenience caused; and
- Remove any adverse information reported in relation to the agreement with credit reference agencies, if any has been reported.

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

Stephen Trapp  
**Ombudsman**