

The complaint

Mrs H complains that the car she acquired through a hire purchase agreement with Marsh Finance Ltd ("Marsh Finance") was not of satisfactory quality.

What happened

Mrs H acquired a car from Marsh Finance in March 2022. The hire purchase agreement was over 52 months. She began experiencing problems almost immediately when the engine management light came on and suffered several delays and problems with the car dealership over the following months. Eventually after some repairs had been undertaken, but the car was still suffering problems, she complained to Marsh Finance in July 2022.

What followed was a period of confusion about who was dealing with what. There was Marsh Finance, the car dealership, and also a third party finance broker who had arranged the finance involved.

Mrs H was issued with a final response letter (FRL) by Marsh Finance on 2 August 2022. This letter confirmed the car was of unsatisfactory quality and confirmed the agreement had been ended. They offered her a payment of £237.77 which was one month's payment on the agreement for the last month when the vehicle was off the road and advised her to contact the car dealership to get a refund of the £1,500 deposit she had made.

Unhappy with this, Mrs H brought her complaint to our service.

An investigator here investigated the case and upheld in Mrs H's favour. In their view issued on 21 October 2022, they agreed the car should be rejected and the agreement unwound. They said that it was Marsh Finance's responsibility to return the £1,500 deposit to Mrs H, and also confirmed that 8% simple interest should be added to the one monthly payment they had refunded. Finally, they said Marsh Finance should pay Mrs H £150 for the distress and inconvenience caused.

Marsh Finance said that as the broker had liaised with Mrs H to arrange the return of the £1500 deposit (which happened on 8 September 2022), and they had swiftly dealt with the complaint, they didn't agree with refunding 8% simple interest on the one monthly payment being refunded, or the £150 for the distress and inconvenience. As Marsh Finance didn't agree with the investigator's view, they asked for an Ombudsman 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any

regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mrs H was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Marsh Finance have already agreed a rejection of the car, unwound the finance agreement, and refunded one monthly payment to Mrs H. They didn't return her £1,500 deposit to her, but she has now received this from the broker or dealership, around five weeks after Marsh issued their FRL. On this basis, they don't feel they should have to pay for the distress and inconvenience caused to Mrs H. Nor do they feel they should pay 8% simple interest on the refunded monthly payment, as they refunded it in early August 2022, within around a month of the complaint being raised.

I'm not going to review the details of the car's problems and the decision to reject it, as that isn't the ongoing element of the complaint raised with us by Mrs H. Both parties have agreed that rejection was the right way forward, and it has been processed. So, I'll focus instead on the redress offered, which is where the dispute now lies.

Marsh Finance offered to refund one monthly payment, which has been accepted by Mrs H, and which I agree is fair. It was around a period of one month that the car was off the road, so I am satisfied that this refund is correct.

However, Marsh Finance should have included simple interest at 8% from the date of the last payment made by Mrs H, to the date they refunded it. I appreciate this was a short period, and it's possible that some consumers might feel this wasn't necessary, but Mrs H is unhappy with the redress offered, and this would be the standard way of dealing with a refunded payment; to include interest from the date it was paid by Mrs H, until the date it was refunded. This recognises that she's been deprived of her funds for that period when she couldn't use the car.

The deposit was the biggest issue for Mrs H. Most consumers will need to replace a faulty car quickly to remain mobile, and to do this, most will need their deposit back to use for their next car finance agreement. Marsh Finance said they wouldn't refund this, and that it was the dealership who would have to refund this.

When hire purchase agreements are taken out, there's an 'invisible' transaction going on in the background – the supplier (the car dealership) actually sells the goods to the finance provider. The finance provider then owns the goods. In return for making the monthly payments in the hire purchase agreement, the finance provider allows the consumer to use the goods.

Marsh Finance told Mrs H that she had to retrieve her deposit from the dealership. But the car was in fact supplied to Mrs H on a hire purchase agreement by Marsh Finance. As such, there's no contract to refund the deposit between the car dealership and Mrs H.

I'm unclear why Marsh Finance felt Mrs H should have to deal with the car dealership to get her deposit back, when it was their responsibility. This clearly caused her distress and inconvenience, as she didn't know who was going to give her money back to her. It took over a month to resolve before she was finally given her deposit back by the finance broker/car dealership. The broker has said that the dealership took legal advice over the situation, which I can imagine caused Mrs H concern.

Overall, I'm satisfied that a payment of £150 for the distress and inconvenience is fair. It recognises the distress caused in having problems with the car and having to complain about it, as well as the incorrect information given to Mrs H regarding getting the deposit

back, and the confusion and stress that caused.

My understanding is that the rest of the recommended redress has been carried out, but I will confirm the full details below to ensure this has all happened. Both parties agreed that the car was of unsatisfactory quality and Mrs H should have had the right to reject it.

Putting things right

Marsh Finance should process the rejection of the car and offer redress as follows:

- End the agreement with nothing further to pay (already done I believe)
- Collect the car at no further cost to Mrs H (already done I believe)
- Refund one monthly payment of £237.77 (already done I believe) plus 8% simple interest from the date the last payment was paid by Mrs H until the date it was refunded by Marsh Finance.
- Refund Mrs H her £1500 deposit for the car (already done by the broker/dealership I believe)
- Remove any adverse information from Mrs H's credit file in relation to this agreement.
- Pay Mrs H £150 for the distress and inconvenience caused.

If Marsh Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint and direct Marsh Finance Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 January 2023.

Paul Cronin
Ombudsman