

## The complaint

Mr N complains about the quality of a car he has been financing through an agreement with Marsh Finance Ltd (who I'll call "Marsh").

## What happened

I issued my provisional decision on this complaint last month. An extract from that provisional decision is set out below.

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

*I know it will disappoint Marsh, but I think Mr N should be allowed to reject the car. Whilst I agree with much of what our investigator has said, she didn't consider compensation for distress and inconvenience and hadn't considered Mr N's consequential costs. I'm considering them here.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr N acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Marsh, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.*

*The relevant legislation allows a business one opportunity to repair a car that is faulty when supplied. Here there's no dispute that the car had a fault with the NOx sensor when Mr N collected it from the dealer. The dealership accepted that the sensor could be replaced at a third party garage and the work was completed on 12 May 2022, two weeks after Mr N had collected the car.*

*I don't think that repair was successful as Mr N told Marsh it hadn't worked on 13 May 2022 when he asked to reject the car. His assertion has since been corroborated by a main dealer who I'll call "H".*

*The independent inspector summarised H's position when he inspected the car in June 2022. He said:*

*“The garage then explained that despite the AdBlue level being reset to the correct amount, the software was at fault and didn’t recognise the correct AdBlue level. They felt this was due to the AdBlue being overfilled, due to previous faulty sensor which is a common issue in this particular model of vehicle {sic}”.*

*Marsh have suggested that Mr N therefore caused the problem by overfilling the AdBlue. I don’t think that’s what the independent inspector or H are saying. They are saying that the AdBlue was probably overfilled due to a faulty sensor. And if the sensor was faulty, as seems most likely to be the case, Mr N wouldn’t have known he was overfilling the reservoir and can’t fairly be held accountable for a fault that’s subsequently occurred as a result of that pre-existing fault.*

*Mr N asked to reject the car within the first 30 days and the relevant legislation allows him to do so if there is a fault with the car, without giving the business an opportunity to complete a repair. I think that’s what should happen now.*

### **Putting things right**

*Marsh should take the car back and end the finance agreement with nothing more to pay. Mr N has had very limited use of the car and that use was hampered by issues with the NOx sensor and the AdBlue sensor. I think Marsh should refund all of the finance instalments he’s paid (or waive them if they were due and haven’t been paid). Marsh will need to add interest to the refund as Mr N has been deprived of the money.*

*Marsh should also remove any adverse information they may have reported to the credit reference agencies.*

*Mr N has experienced some distress and inconvenience as a result of this issue. He’s had to take the car to be fixed, wasn’t kept mobile, and has had to escalate his complaint to this service when I think it could have been resolved earlier. Mr N has also explained the impact this has had on him, and I can understand the distress caused. In the circumstances I think Marsh should pay him £300 in compensation.*

*It seems that the dealership paid for the repair work to the NOx sensor, but Mr N appears to have paid £166.80 to H to diagnose the AdBlue sensor fault. That appears to be a cost that*

*Mr N wouldn’t have incurred if it hadn’t been for the fault with the car. So Marsh should refund that expense, with interest, if Mr N can provide a receipt.*

### **My provisional decision**

*For the reasons I’ve given above I’m expecting to uphold this complaint and to tell Marsh Finance Ltd to:*

- *End the agreement and collect the car at no cost to Mr N.*
- *Refund all finance instalments that have been paid (or waive any that were due and haven’t been paid). Add 8% simple interest per year from the date of payment to the date of settlement\*.*
- *Pay Mr N £300 to compensate him for the distress and inconvenience he’s experienced.*
- *Remove any adverse reports they may have made to Mr N’s credit file about this agreement.*
- *Refund the cost of the diagnostic performed by H if Mr N can provide a receipt. Add 8% simple interest per year to the refund from the date of payment to the date of*

*settlement\**.

*\*If HM Revenue & Customs requires Marsh to take off tax from this interest. Marsh must give Mr N a certificate showing how much tax it's taken off if Mr N asks for one.*

### **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.

Mr N accepted my provisional decision and Marsh didn't provide any additional comments. So, I've not been provided with any additional information that would lead me to change my provisional decision.

### **Putting things right**

My provisional decision therefore becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Marsh Finance Ltd to:

- End the agreement and collect the car at no cost to Mr N.
- Refund all finance instalments that have been paid (or waive any that were due and haven't been paid). Add 8% simple interest per year from the date of payment to the date of settlement\*.
- Pay Mr N £300 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr N's credit file about this agreement.
- Refund the cost of the diagnostic performed by H if Mr N can provide a receipt. Add 8% simple interest per year to the refund from the date of payment to the date of settlement\*.

*\*If HM Revenue & Customs requires Marsh to take off tax from this interest. Marsh must give Mr N a certificate showing how much tax it's taken off if Mr N asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 May 2023.

Phillip McMahon  
**Ombudsman**