

## **The complaint**

Mrs G complains about the quality of a car she has been financing through an agreement with Marsh Finance Ltd, who I'll call "Marsh".

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Marsh, but I think they need to put things right for Mrs G. I'll explain why.

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.

Mrs G acquired her car under 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mrs G. The car here was about ten years old and had already completed about 92,400 miles. So, I don't think a reasonable person would expect it to be fault free, as might perhaps be the case with a brand new car.

The relevant legislation gave Mrs G a short term right to reject the car within the first 30 days if it was of unsatisfactory quality. Mrs G took receipt of the car on 17 June 2022 and first complained about the issues with it on 2 July 2022, within 30 days. She told the broker that she would accept repairs if they were covered by the warranty but if not, she wanted to reject the car. The issues weren't all covered by the warranty, so I think Mrs G made a request to reject the car within 30 days.

I've considered whether the car was of unsatisfactory quality, and I think it was. The invoice Mrs G obtained from a third party garage explained that:

*"Aux belt perished, needs replacing, timing chain needs replacing – please check, rear discs. Passenger wing mirror needs replacing. Bang coming from gearbox."*

As Mrs G hadn't been in possession of the car for very long I think it was for Marsh to demonstrate those faults were wear and tear issues or that they'd developed since Mrs G took receipt of the car, and therefore didn't make it of unsatisfactory quality at the point of supply. I don't think they have.

A couple of inspections have been arranged since the car broke down in October 2022. The first inspection failed to assess the gearbox issue as the car couldn't be started, and the second inspection was curtailed when the car went into limp mode due to a Diesel Particulate Filter (DPF) fault, that wasn't something Mrs G had raised within the first 30 days. The inspector was, however, able to provide some commentary on the gearbox issues Mrs G had reported. He noted that after about seven miles of driving a jolt was evident when changing gears and he said:

*"...we found that the transmission had a harsh drive take-up and was sluggish to change gear, which is indicative of the transmission clutches approaching end of their in- service life, it would appear that the vehicle has covered 8000 miles since the date of purchase, and noted in conjunction with the fact that having to replace transmission clutches in a vehicle at has covered well over a hundred thousand miles would not be classed as unusual, this is not the responsibility of the sales agent to rectify."*

I can't see that the inspector took into account that the gearbox issue was first reported by Mrs G within the first 30 days, when I think it's fair to suggest she wouldn't have completed many miles in the car. I don't think a reasonable person would think a car with transmission issues was of satisfactory quality if those problems were present as soon as they took receipt of the car.

On that basis I don't think Marsh have been able to demonstrate the faults first reported within 30 days didn't make the car of unsatisfactory quality. They should therefore allow Mrs G to reject the car.

### **Putting things right**

Marsh should collect the car at no cost to Mrs G and they should end the finance agreement.

They'll need to refund any deposit Mrs G has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Mrs G hasn't been able to use the car since it broke down on 21 October 2022. It's not fair for her to have been paying for a car she couldn't use, so Marsh should refund any finance instalments she's paid since 21 October 2022 and waive any that were due but haven't been paid. They'll need to add interest to the refund as Mrs G has been deprived of that money.

I think Mrs G has been inconvenienced by these issues. She's had to take the car to a couple of garages for investigations and she's had to escalate her complaint to this service when I think it should have been resolved earlier. In the circumstances, I think Marsh should pay her £250 in compensation.

## **My final decision**

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

- Allow Mrs G to reject the car and end the finance agreement.
- Collect the car at no cost to Mrs G.
- Refund any deposit that has been paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any finance instalments paid since 21 October 2022, waive any that were due but haven't been paid. Add 8% simple interest per year to the refund from the date of payment to the date of settlement.
- Pay Mrs G £250 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Mrs G's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 12 June 2023.

Phillip McMahon  
**Ombudsman**