

## **The complaint**

Ms H complains that a car she acquired with credit from Oasis Motor Finance Limited wasn't of satisfactory quality.

Marsh FM LLP, a part of Marsh Finance Ltd, are the company administering Ms H's account on behalf of Oasis Motor Finance Limited. As Ms H has been corresponding with Marsh regarding this complaint I'll refer to it throughout for simplicity.

## **What happened**

Ms H entered into a credit agreement with Marsh via an intermediary in March 2022 to acquire a used car. The credit to buy the car was granted by Marsh under a hire purchase agreement. Marsh was the owner and Ms H was, in essence, paying for the use of it. As the owner of the car bought from the dealership, Marsh was responsible for the quality of the car.

The cash price of the car was £15,980 and the total payable under the agreement was £24,084. This was to be repaid in 59 monthly instalments of £400 with a final instalment of £499 (all figures rounded). The car was almost three years old and had been driven 46,495 miles when Ms H acquired it.

Ms H complained to the seller in early August 2022 that there was a problem with the car. She explained that the clutch had gone and the air conditioning wasn't working. The seller rejected the complaint and Ms H then got in touch with Marsh. On 12 August Marsh sent Ms H an acknowledgement of her complaint and explained that it would organise an independent inspection of the car.

This took place on the 25 August 2022. It confirmed the problems with the clutch and stated that the clutch biting point was higher than expected and that it was difficult to select reverse gear. So it was likely that the clutch was approaching the end of its in-service life. The inspection concluded that the clutch had minimal future life expectancy remaining when Ms H acquired the car and so the sales agent should be responsible for its replacement. The inspection also confirmed that the air conditioning was not working though it appeared undamaged and so was likely in need of a service.

Marsh wrote to Ms H on 29 September to say that the seller had accepted responsibility for the clutch repair and agreed to cover the cost of the quote. Marsh told Ms H to liaise with the seller regarding any potential assistance with the air-conditioning as the independent inspector had noted that that was a service-related issue. Marsh apologised for the inconvenience the matter had caused to Ms H.

Ms H was unhappy with this response and referred her complaint to us in early October. At this point the car had not yet been repaired. I understand that the car was taken in for repair on 31 October and took four days.

Our investigator looked into the complaint and recommended that Marsh pay Ms H compensation of £150 to reflect the distress and inconvenience this matter had caused her.

Ms H accepted this recommendation but Marsh did not.

Marsh said Ms H was able to continue using the car throughout 2022 and so didn't incur any additional transport costs. It didn't have any control over the time taken for the repairs and it would have been up to Ms H's appointed third-party garage to have provided her with a courtesy car if she needed one. Marsh also said that it had arranged and covered the cost of the independent vehicle inspection and had resolved the complaint within the timeframe afforded to it which was set out in its acknowledgement letter to Ms H. In conclusion Marsh said that it had acted fairly and in a timely manner and kept Ms H up to date at all times.

Marsh asked for the complaint to come to an ombudsman for review and it came to me. I issued a provisional decision on 27 March upholding Ms H's complaint. Ms H agreed with my decision but Marsh did not. This is my final decision on the complaint and will be legally binding on both parties if Ms H accepts it.

### **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 considered the matter again, including what both parties said in response to my provisional decision, I remain of the view that Ms H's complaint should succeed and that my proposals for putting things right for her are fair and reasonable. I'll set out my reasons again in this final decision.

As before, I have taken into account the law and relevant regulatory rules including, for example, the Consumer Rights Act (CRA) 2015 which implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory means what a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances. The relevant circumstances in this complaint would include, for example, the nature of the fault and the age and mileage of the car. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So if goods are found to be faulty, the first question is whether the fault was there or developing when the goods were supplied. It may be that a fault arose later through wear and tear caused by normal usage. Even if it was agreed that there was a fault with the goods which was present when they were supplied, it doesn't automatically follow that the goods didn't conform to the contract at the time and found to be of unsatisfactory quality. It depends on the circumstances.

It seems all parties have accepted the findings of the independent inspection regarding the clutch and it isn't in dispute that the car wasn't of satisfactory quality in this regard when Ms H acquired it. I understand that the clutch repair has now been carried out at no cost to Ms H.

When we investigated Ms H's complaint she told us that she remained unhappy with how the air conditioning unit was working. The independent inspection didn't find a fault with the air conditioning but suggested that it needed a service. I can't find that the car was of unsatisfactory quality on this point given that the air conditioning unit is a serviceable part which needed to be looked after. As the car was three years old and the agreement was for five years, it's likely that Ms H would need to service the air conditioning at some point.

Ms H told us that she had consulted an air conditioning specialist who stated that the air

conditioning in a car should be serviced every three years. Ms H said that her car is a 2019 registration, therefore, if the car was serviced (as stated it had been) prior to purchase in April 2022 then the air conditioning would be filled with gas. I don't know what Ms H was told about the servicing of the car before entering into the hire purchase agreement and I haven't seen anything to show that the air conditioning unit specifically was serviced before the car was supplied to her. So I can't say that something went wrong here on the basis that Ms H's expectations weren't met.

Ms H told us that her main concern was the amount of time that passed before her car was fixed - she raised this complaint at the beginning of August and her car wasn't fixed until the middle of October. In an email to Marsh of the 19 October Ms H said that her car remained faulty and the use of it was putting her and her family at risk. She said that at no point over the last three months had she been offered a courtesy car and would appreciate any update on her request for a vehicle replacement. Ms H said that she didn't feel her monthly payment was justified given the goods she had received and the fear of the vehicle failing each time she drove it. Ms H also said that she has suffered severe stress and anxiety during the length of this complaint, which was getting worse due to the time passed and the lack of communication she was experiencing.

Having reviewed everything, I agree with Marsh that it told Ms H the outcome of her complaint within regulatory time scales (eight weeks) and I can see from the correspondence supplied that it was in regular contact with Ms H and kept her up to date with what was happening with her complaint. However, Ms H experienced distress and inconvenience because she was provided with a car that wasn't of satisfactory quality and it took some time for this to be put right for her. I've concluded that some compensation would be appropriate in this case to reflect the impact that this experience had on Ms H.

There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach which I've borne in mind alongside everything else when making this decision. This approach (which is set out on our website) says that an apology or a small monetary award of less than £100 will typically compensate a one-off incident such as a small administrative error or a short delay, in other words an error that caused minimal impact that is put right quickly. An award between £100 and £300 might be fair where there have been repeated small errors requiring a reasonable effort to sort out. These typically result in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment or loss of expectation. I think an award in this range would be appropriate.

Our investigator suggested an amount of £150 which seems to me to be a fair and reasonable amount in the context of this case.

Ms H said Marsh didn't respond to her request for a courtesy car. Nevertheless, Ms H was able to use her car throughout. She had driven it almost 4,400 miles from when she acquired it to the end of August when it was inspected which seems to me to be a reasonable monthly average. So I can't find that Ms H's use of the car had been impaired although it came with an emotional cost which the above compensation acknowledges.

Ms H says it took four days for the car to be repaired and she was without it in that time. Marsh said that it wasn't responsible for the length of time it took Ms H's chosen third-party garage to carry out the repairs. However, Marsh had accepted the quote from this garage and it was responsible for the quality of the car. I think it's fair therefore for Marsh to refund Ms H her payments for the time she was without her car at a rate of £13 for each day or part of a day.

In response to my provisional decision Marsh said again that it didn't agree with the compensation award as it had assisted Ms H at all times. Marsh asked if Ms H was aware of the time the repair would take when she opted to take her car to that particular garage. It also said that Ms H hadn't provided any evidence to say that she was not supplied with a courtesy car by her appointed garage or any evidence of transport costs incurred during the time the car was in for repair.

I'd covered the first two points in my provisional decision and so they're addressed earlier in this document. Ms H told us that she was without her car while it was being repaired and that she paid for private and public transport for herself and her children. Ms H hasn't been specific or provided receipts for these costs but she has been consistent in what she's said on this point and I'm happy to accept that Ms H wasn't offered a courtesy car at any stage. I remain of the view that Ms H shouldn't have to pay for the time she was without the car.

### **Putting things right**

In summary, Marsh should now:

- Pay Ms H an amount of £150 to compensate her for the distress and inconvenience this matter has caused her; and
- Pay Ms H for the time she was without her car when it was being repaired at a rate of £13 for each day or part of a day.

### **My final decision**

For the reasons I've explained, I'm upholding Ms H's complaint about Oasis Motor Finance Limited and it now needs to carry out the above steps to put things right for her.

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

Michelle Boundy  
**Ombudsman**