

The complaint

Mr K complains about the amount of refund he received from Marsh Finance Ltd following the rejection of a car acquired under a hire purchase agreement.

What happened

In October 2021 Mr K was supplied with a car and entered into a hire purchase agreement with MF.

In September 2022 Mr K contacted MF and advised that the car had failed a MOT due to emissions. It was found that the car had been modified by the previous owner. MF progressed Mr K's complaint with the dealer and proposed a termination of the agreement and a refund of the advance amount paid by Mr K less a fair usage reduction.

The car was collected in January 2023. MF refunded 3 x monthly instalments to Mr K totalling £947.56. MF retained a fair usage charge of £3,470.88 (equivalent to 11 x monthly instalments of £315.56).

Mr K complained to MF. He didn't think the fair usage charge was fair, and said he wanted a refund of the repairs he'd paid for and the expenses he'd incurred, together with compensation for the time he wasn't able to use the car because of the MOT failure. Mr K sought compensation of around £6,720.

MF didn't uphold the complaint, so Mr K complained to this service.

Our investigator upheld the complaint. She said that MF had refunded Mr K correctly but that it hadn't included interest, which it should've done. The investigator also said that Mr K had been inconvenienced by not being able to use the car for 3 months and that compensation of £200 should be paid. The investigator also said that MF should refund the MOT fee of £44.95.

Mr K didn't agree. He felt that the fair usage deduction was unfair. He said he'd had the car serviced three times whilst it had been in his possession, and he'd paid for some repairs.

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.

MF has already agreed a rejection of the car so I won't be commenting on whether the car was of satisfactory quality or whether it was mis-sold. Instead, I'll focus on whether the sum refunded to Mr K was fair.

When a car is rejected, this service would expect monthly payments to be refunded subject to a deduction for fair usage. The legislation allows this. The Consumer Rights Act 2015 doesn't specify the amount that can be deducted for fair usage, but any deduction must be fair and reasonable.

In this case, MF has deducted 11 x monthly payments for fair use. It says that Mr K covered over 23,000 miles in the car since the point of supply to the point where the complaint was made.

In the circumstances, I think the deduction for fair use is fair. Mr K has covered more than twice the average mileage that might reasonably be expected in the time he had the car. A deduction of one monthly payment for every 1000 miles covered is generally accepted as fair. MF hasn't been able to deduct this much.

I agree with the investigator that MF should've added interest to the amount refunded. I also agree that it should refund the MOT fee, because the MOT failure was directly related to the modification carried out by the previous owner.

I've reviewed the information about the repairs and expenses Mr K incurred on the car during the time it was in his possession. However, I'm not persuaded that these repairs and expenses are directly related to the modification carried out by the previous owner. Given the mileage covered by Mr K, I think it's more likely that the repairs and expenses were necessitated because of general wear and tear.

Mr K has told this service that he wasn't able to work during the 3 months following the failed MOT because he couldn't use the car. I've reviewed the bank statements provided by Mr K. When considering loss of income, I need to be satisfied that the loss of income was caused as a direct result of the car being unusable. Mr K hasn't provided any evidence from his employer to show that he wasn't able to work. He's also told this service that he borrowed vehicles and asked for lifts. On balance, there isn't enough evidence to persuade me that it's fair to ask MF to pay compensation for loss of income.

I've gone on to consider the distress and inconvenience caused to Mr K as a result of not being able to use the car. Mr K has told this service about the impact it had on his health. I think it's fair to ask MF to compensate Mr K for the distress and inconvenience he's suffered.

Putting things right

To put things right, Marsh Finance Ltd must:

Pay 8% simple interest per annum on the monthly repayments refunded to Mr K calculated from the date of payment to the date of settlement

Refund the MOT fee of £44.95 and pay 8% simple interest per annum on this amount calculated from the date of payment to the date of settlement

Pay compensation of £200 for distress and inconvenience

My final decision

My final decision is that I uphold the complaint. Marsh Finance Ltd must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 September 2023.

Emma Davy
Ombudsman