

## The complaint

Mr C complains about issues he experienced with a car supplied under a hire purchase agreement with Marsh Finance Ltd (Marsh Finance).

## What happened

On 4 January 2023, Mr C took ownership of a car supplied by Marsh Finance under a hire purchase agreement. The car was around 6.5 years old and had travelled 44,661 miles. The monthly payments were £222.08 with a 60-month term. The total finance cost of the car was £13,334.80.

Mr C reports in just over a month he was required to replace two tyres on the car – one Tyre did not meet the legal requirement and the other had a slow puncture. On 15 March 2023, the battery failed, and Mr C had to replace it.

On 29 March the car failed whilst travelling at 70mph on the motorway. Mr C reports the car made a loud noise and just stopped without any warning lights or other indication. He had to get the car on the hard shoulder and breakdown recovery towed the vehicle back to the dealership.

Mr C said the salesman agreed to extend and increase the 3-month warranty and after a conversation about the experiences Mr C had with the car, refund the cost of the tyres, the battery and the recovery costs.

The dealership then informed Mr C that the engine had failed and whilst the dealership was prepared to cover £1000 of repair and labour costs, there would be an additional amount of anywhere between £500-£1000 that Mr C would need to contribute. The mileage at breakdown was 48,935. Mr C has explained the car has been off-road since the it broke down in March 2023.

Dissatisfied, Mr C complained to Marsh Finance.

Marsh Finance instructed a third-party organisation to conduct an independent inspection in May 2023 before they are deciding whether to reject the car. The report said the engine noise suggest that the crankshaft was broken, which is a catastrophic engine failure. The report further states:

*'taking into account the distance travelled since purchase (approx. 4,262 miles) it is not suggested the fault would have been evident at the point of sale, and given the time elapsed since the date of sale and the mileage covered, we believe that the sales agent should not be responsible for the repair costs, as we believe the most likely cause of the engine damage has been that the car was driven using power driving techniques'*

Marsh Finance concluded that the vehicle was fit for purpose and of satisfactory quality at the point of supply basing their decision on the independent report. It says Mr C is responsible for maintaining the vehicle and it says the failure was due to poor maintenance and excessive mileage.

Mr C disagreed. He doesn't accept that the 4,000 miles covered is excessive and because of his line of work he was relying on a vehicle to cover sites and wasn't expecting to experience problems after completing what he considers a short distance. He asked this service to look into matters for him.

An investigator considered all the information. In her view she didn't think Marsh Finance had acted fairly. She didn't consider a catastrophic engine failure within three months of ownership to be reasonable and despite the independent report, she was persuaded that there was more likely than not a fault present at the point of sale. She asked Marsh Finance to:

- end the agreement with nothing further to pay.
- collect the car at no further cost to Mr C.
- pay a refund all monthly instalments from 29 March 2023 to cover any loss of use due to the inherent quality issues.
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- pay a further amount of £150.00 for any trouble and upset that's been caused due to the faulty goods.
- remove any adverse information from the customer's credit file in relation to the agreement.

Marsh Finance didn't agree with the investigator's findings. It said:

*An independent engineer has inspected the vehicle and confirms the current issues have only occurred during the customer ownership and believe that to have been caused by the driving style of the customer. We also disagree with the comments around the mileage that the customer having completed in the vehicle was average. The customer had the vehicle in his possession for 2 months and completed 4,000 miles in that period.*

Marsh Finance asked for an ombudsman review.

My provisional findings

In summary I said the car was just less than seven years old and had already travelled over 40,000 miles. So, in my view a reasonable person would expect it to have some wear and tear present with limited components to be reaching the end of their working life. That said, I didn't think a reasonable consumer wouldn't expect to pay just over £13,000 for a car and experience a catastrophic failure resulting in not being able to use the car at all.

Marsh Finance has relied on the independent report suggesting "*the current issues have only occurred during the customer ownership and believe that to have been caused by the driving style of the customer*". But the report also says:

*"In order to assess and confirm the cause of the failure it will be necessary to remove and dismantle the engine. However, this is a time consuming, and therefore, expensive operation which will not affect the outcome that a replacement engine will be required. Potential causes include lubrication issues (depleted/de-graded/incorrect oil, oil supply issues), harmonic vibration issues, and engine overspeed due to operator error."*

I said I appreciated the engineers' sentiments that stripping the engine down will be the only sure way to establish the cause and this would be time consuming and expensive and wouldn't alter the outcome needed which is a new engine. But this is the only way to fully establish the cause. The engineer also makes clear a potential cause would also include lubrication issues caused by the depletion/degrade or incorrect oil supply.

The investigator already highlighted that the manufacturer recommends changing the oil every 12,500 miles, or every 12 months, whichever comes first - These are maximums that shouldn't be exceeded. The service history indicates the mileage was slightly over this in 2019, over in 2020 and missing in 2022 - This could account for the crankshaft failing as oil degrades with use over time well before Mr C took ownership of the car.

I said I was in agreement with the investigator, that a snapped crankshaft isn't a common occurrence and typically happens due to a manufacturing defect or consumers have travelled over 100,000 miles. In this case, Mr C has covered an additional 4,000 miles and the mileage remains under 50,000 – so this is not something one would expect to see. If Mr C was driving the car too hard one would expect to see more common failures such as the clutch failing.

The car has existed for nearly seven years and Mr C had the car in his ownership for less than 4 months, for the crankshaft to fail so rapidly at 48,935 miles suggests on balance it is more likely than not the faults were present at the point of supply and as such I said I was of the view Mr C should be allowed to reject the car.

Mr C accepted my provisional findings.

Marsh Finance did not. It said:

- The cost of the vehicle was £8,695 and not £13,000 as indicated in my provisional decision
- The independent report pointed to the engine failure as being a result of the “aggressive driving style” of driver.
- The independent engineer also stated that if the consumer disputed the independent report, he should be required to pay for a 2<sup>nd</sup> inspection and to date that had not been carried out.
- If the decision remained to uphold this complaint Marsh finance should be offered the opportunity to repair the car in accordance with its rights under the Consumer Rights Act.

### **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 haven't been provided with any new evidence to consider and so it follows I have reached the same outcome as that of my provisional decision. However, for clarity I will address the points raised by Marsh Finance in its submissions.

I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time. The hire purchase agreement in this case is a regulated consumer credit agreement – therefore this service can consider a complaint relating to it. There are various rules and protections about how hire purchase agreements operate, including those set out in the Consumer Credit Act 1974 ("CCA") The CCA is therefore relevant law in this complaint. Marsh Finance is also the supplier of the goods (i.e., the car) under this type of agreement, and responsible for a complaint about their quality. The CRA in particular sets out some of the responsibilities of a supplier in relation to the quality of goods it supplies. The CRA is therefore also relevant law in this complaint. The CRA says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to 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. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age of the car when supplied and when the issue that the consumer complains about first arose.

With regard to the point raised regarding the cost of the car, my provisional decision referred to the total cost including the finance. The actual cost of the car being £8,695 doesn't materially make a difference to the conclusion I reached. I say that because the same test applies. The car must be considered "satisfactory", the goods would need to 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. I have already pointed out that that includes the durability of the car and I remain of the view a reasonable person would not expect a car to fail within the first 2 months of ownership.

I have taken due consideration of the independent report and whilst I do not discount it, I am required to take a view based on all the circumstances. The engineer also makes clear a potential cause would also include lubrication issues caused by the depletion/degrade or incorrect oil supply. I have already addressed concerns regarding this in my provisional decision, but my view remains that the car has existed for nearly seven years and Mr C had the car in his ownership for less than 4 months, for the crankshaft to fail so rapidly at 48,935 miles suggests on balance it is more likely than not the faults were present at the point of supply.

Marsh Finance also draws my attention to the Consumer Rights Act (CRA). Under the Consumer Rights Act 2015, where a fault occurs in the first six months, it's presumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. After six months the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality.

Marsh Finance now say it should have the option to repair the car. I've thought about whether repair is a feasible option here as the law talks about this. However, it is not clear if repair is possible, the car has suffered a catastrophic engine failure and Marsh Finance has not previously looked at repair as option. Mr C is clear that he has lost confidence in both the car and Marsh Finance.

Having considered all the submissions carefully I haven't been dissuaded from my provisional findings and it is my view that Mr C should be allowed to reject the car for the reasons I have given.

## Putting things right

My starting point for redress is to put Mr C back in the position he would have been in had he not taken out the agreement in the first place.

Mr C has provided evidence however for the battery needing a replacement and this cost should be refunded.

Mr C has said he incurred tow costs and has provided a receipt for £150 from the AA and so this will also be included within the redress.

I have rejected the cost of the tyres as detailed in my provisional decision. This is because a slow puncture could have occurred at any time and the MOT passed the tyres at that point, albeit the tyres could still have been close to the threshold, they are a wear and tear item and so I don't find it reasonable that these costs are refunded.

Mr C should have the agreement rewound and removed from his credit file.

I have considered the distress and inconvenience Mr C has reported to this service. The breakdown incident itself, without warning must have been very frightening and he has explained how the experience has affected him and his work. I have increased the redress for distress and inconvenience to reflect the impact this matter has had.

I direct Marsh Finance Ltd to:

- end the agreement with nothing further to pay.
- collect the car at no further cost to Mr C.
- pay a refund all monthly instalments from 29 March 2023 to cover any loss of use due to the inherent quality issues.
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- remove any adverse information from the customer's credit file in relation to the agreement.
- refund £171.99 for the cost of the replacement battery
- refund the tow costs subject to Mr C providing the receipt
- pay a further amount of £300 for any trouble and upset that's been caused due to the faulty goods.

If Marsh Finance Ltd considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

It must pay the total compensation within 28 days of the date on which Mrs C accepts my final decision. If it pays later than this, it must also pay interest on the £300 from the date of the final decision until the date of settlement at the rate of 8% simple per year.

My final decision

**My final decision**

For the reasons I uphold this complaint and I direct Marsh Finance Ltd to carry out the redress as detailed in the putting things right section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 October 2023.

Wendy Steele  
**Ombudsman**