

## The complaint

Mr V complains about the quality of a car he acquired under a hire purchase agreement with Marsh Finance Ltd (Marsh).

When I refer to what Mr V has said and what Marsh have said, it should also be taken to include things said on their behalf.

## What happened

In November 2022, Mr V entered into a hire purchase agreement with Marsh to acquire a used car first registered in October 2014. At the time Mr V acquired the car, it had travelled approximately 76,428 miles. The total cash price of the car was approximately £7,350. The total amount payable under the finance agreement was approximately £9,947. The term of the agreement was 48 months. The first instalment was for around £207 followed by 46 monthly instalments of about £207 and a final instalment including the option to purchase fee was approximately £217.

Mr V said that as soon as he left the supplying dealership after the sale, he noticed that the radio buttons were not functioning at all. Mr V said that the dealership agreed to fix this issue, but it took them three weeks, so he received the car back on 6 December 2022. He said the car worked fine until 23 December 2022 when he experienced a further fault. Mr V said that while driving, the engine management light came on and the car went into limp mode. The dashboard was showing a fault code with the mass air flow sensor performance low. Mr V said that the supplying dealership collected the car on 6 January 2023. The dealership regenerated the DPF on the car, but also told Mr V that the car needed a new turbo. So, Mr V only got the car back on 6 March 2023. After collecting the car, Mr V was told that it would smoke a little on start up. Mr V said that he used the car for two short trips (less than 10 mile round trips) during which a lot of smoke came out for the entire trip. On the 3rd outing on 17 March 2023, Mr V said he was driving up a hill when the exact same thing happened again: the engine warning light came on, it went into limp mode, and black smoke came out of the back. Mr V said that the same fault code appeared on the dashboard. Mr V was unhappy with the car, so he complained to Marsh who commissioned an independent inspection of the car that took place at the end of March 2023.

Marsh wrote to Mr V in April 2023. In this correspondence they said that, following the independent inspection they commissioned, they wouldn't uphold Mr V's complaint. In this correspondence Marsh quoted parts of the report that said that the overall general condition of the car did not give any major cause for concern. It said that there was no doubt that the car was not fit for regular use on the public highway as there is a permanent warning light displayed on the driver's panel and the car has a low oil level. The report also said that it's the car owner's responsibility to check the oil levels on a regular basis to prevent any consequential engine damage that may have arisen due to running the car with insufficient oil in the sump. The report also concluded that the warning light displayed on the driver's panel is not associated with the oil level and also, not associated with the previous turbo charger replacement, as the fault codes appear to be associated with a faulty air mass meter which can fail suddenly and without warning as a result of an internal electrical fault. It said that electrical faults can occur suddenly and without warning, and therefore are not the

responsibility of the sales agent. So, Marsh concluded their correspondence by saying that, on the balance of evidence, they were unable to conclude that the car was not of satisfactory quality at the point of sale.

Mr V was unhappy with this response, so he referred his complaint to our service.

An investigator at our service was of the opinion that the car was not of satisfactory quality when supplied. The investigator thought Mr V should be able to reject the car and that Marsh should refund him all rentals for the period from 17 March 2023 to the date of settlement. The investigator also thought that it was fair that Marsh refund Mr V the payments he made from 23 December 2022 until 6 March 2023, because the car wasn't of satisfactory quality and Mr V was unable to use it during that period. The investigator also thought that Marsh should pay Mr V £250 for the distress and inconvenience caused.

Marsh disagreed with the investigator. So, the complaint has been passed to me to decide.

### **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr V acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Marsh is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr V entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. 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.

In Mr V's case the car was used, with a total cash price of the car being approximately £7,350. It had covered around 76,428 miles and was around 8 years old when he acquired it. So, the car had travelled a reasonable distance and it's reasonable to expect there to be some wear to it as a result, and I'd have different expectations of it compared to a brand-new car. As with any car, there's an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it's reasonable to expect that these may need to be replaced. And with second-hand cars, it's more likely that parts will need to be replaced sooner, or be worn faster, than with a brand-new car. So, Marsh would not generally be responsible for anything that was due to normal wear and tear whilst the car was in Mr V's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

I know that the car needed repairs to the radio, shortly after it was acquired, but given the age, the high mileage, and price paid, I think it's fair to say that a reasonable person wouldn't consider this alone something that would make the car of unsatisfactory quality.

Later, Mr V had another issue with the car, as on 23 December 2022 the car went into limp mode and the engine management light came on. The dashboard was showing a fault code with the mass air flow sensor performance low. So, the dealership collected the car on 6 January 2022 and carried out repairs to the DPF and the engine's turbo. Considering that at that time the car would've travelled less than 2,300 miles and Mr V had it for less than one month, I think, most likely, these were faults that were present or at least developing at the point of supply. I think most likely a reasonable person wouldn't consider the car to experience such significant issues so short after acquiring it, so I don't think the car was of satisfactory quality when supplied.

Around 11 days after the repairs were carried out, Mr V experienced an issue with it again. So, I've gone on to consider what happened. The independent report, which was carried out in March 2023 and commissioned by Marsh, indicates that the car was not fit for regular use on the public highway, as there was a permanent warning light displayed on the driver's panel and the car had a low oil level. This also matches the evidence provided by Mr V, so there seems to be a fault with the car in question. As such, I've gone on to consider if this fault was present or developing at the point of supply and whether it was linked to the original fault that was already repaired.

Marsh believes that the fault the car was experiencing was not developing at the point of sale or finance inception. They say Mr V hasn't supplied any evidence to confirm that there is actually a mechanical fault with the car that would render it of unsatisfactory quality, or unfit for purpose at the point of sale. They also said that the independent report confirms the previous repairs have been successful; And that the warning light on the dashboard is displayed due to the low oil level. They say that maintaining the fluids on a car is the responsibility of the customer and that it's expected to be best practice that a customer checks and tops up the fluid levels on a car on a regular basis. Also, they said that regarding the air mass sensor, it is an electrical fault that can occur at any time requiring replacement of the sensor, which is Mr V's responsibility. So, I've taken their view into consideration.

I've looked at the independent report commissioned by Marsh. The report states that the warning light displayed on the driver's panel is not associated with the oil level and not associated with the previous turbocharger replacement; the fault codes appear to be associated with a faulty air mass meter which can fail suddenly and without warning, as a result of an internal electrical fault. It also said that the electrical faults can occur suddenly and without warning and therefore are not the responsibility of the sales agent. Having to rectify or replace engine sensors, such as an air mass sensor, would be classed as age-related maintenance on a car that is approaching 80,000 miles and would not be classed as premature maintenance. So, I've taken this into consideration. But I've also considered that the report was inconclusive as it indicated that, once the repairs been completed and the oil level adjusted, the car should be given an extended road test to confirm there are no further issues present. And I've considered that it was only 11 days after the repairs that the light came back on the dashboard again, and the car experienced another issue.

Maybe the air mass meter or this internal electrical fault alone wouldn't make the car of unsatisfactory quality. But taken into consideration that the car already had been in for repairs of the DPF, the turbo, the radio, and despite this, there were still issues with the air mass meter, or an internal electrical fault, I don't think a reasonable person would consider that the car was of satisfactory quality when supplied. Mr V only had the car for about a total of two months, and during this period he only covered about 2,300 miles. So, taking all the above into consideration, combined with the price, age, and mileage of the car when it was

supplied and then when the faults occurred, I don't think the car was of satisfactory quality when supplied. I think, most likely, a reasonable person wouldn't expect the car to experience all these issues so soon after acquiring the car, so I don't think the car was of satisfactory quality when supplied.

The CRA sets out that where the supplied goods are not of satisfactory quality, the consumer can require the supplier (Marsh in this case) to fix any faults. But considering that the car was already with the dealership once for repairs and Marsh has been allowed sufficient time to resolve the fault with the car, I think the most fair and reasonable option is for Mr V to be allowed to reject the car. As such, the hire purchase agreement should be cancelled with nothing further to pay. Marsh should remove any adverse information from Mr V's credit file. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

Mr V has been able to use the car, so I think it is reasonable that he pays for this use, except when the car was in for repairs. As the car wasn't of satisfactory quality, Mr V hasn't been able to use it from 23 December 2022 until 6 March 2023, so Marsh should refund him payments he has made during this time. He also has not used the car since 17 March 2023, so all payments he has made from this date to the date of settlement should also be refunded to him.

I have considered that this matter has caused Mr V distress and inconvenience while trying to resolve it. Mr V had to take the car back to the dealership, as well as make time for the inspection that was carried out on the car. He also had to arrange other transport and pay for insurance and car tax for a car that he has been unable to use for a good portion of the time. Which, I think, he wouldn't have had to do had Marsh supplied him with a car that was of a satisfactory quality. So, I think Marsh should pay him £250 in compensation to reflect the distress and inconvenience caused and to compensate him for some of the additional costs he has incurred.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Marsh Finance Ltd to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Collect the car at no cost to Mr V;
3. Refund the hire purchase payments he has made from 17 March 2023 to date of settlement, plus refund any money he would've paid while he was without the car when it was in for repairs from 23 December 2022 until 6 March 2023, to cover any loss of use;
4. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
5. Pay Mr V £250 for the distress and inconvenience caused;
6. Remove any adverse information recorded on Mr V's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If Marsh Finance Ltd considers tax should be deducted from the interest element of my award, they should provide Mr V with a certificate showing how much they have taken off, so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 30 November 2023.

Mike Kozbial  
**Ombudsman**