

The complaint

Mr K complains about the quality of a vehicle he financed with Marsh Finance Ltd ('Marsh').

What happened

The parties are familiar with the background of this complaint, so I will simply summarise it here. This reflects my informal remit.

Marsh supplied Mr K a car on hire purchase in November 2022. However, Mr K is not happy with the quality of the car. He says he has been having ongoing issues with the DPF causing fault codes and the car to go into limp mode. Mr K says the issue has come up at least 8 times since supply date.

Mr K thinks the car has an inherent fault and would like to reject it but Marsh has refused. Mr K brought his complaint to this service to resolve.

Our investigator did not uphold the complaint. In summary, she was not satisfied that the car Marsh supplied was not of satisfactory quality at the point of sale.

Mr K has disagreed and asked for the matter to be looked at by an ombudsman. He says:

- due to the constant issues he is having with the car he has had no choice but to purchase a cheap run around;
- the car has sat at his address for around 6 weeks because he can't use it due to the re-occurring fault which he needs to spend £3,000 to repair;
- when the issue occurred he was well within his 3 month warranty period;
- the DPF has an expiry date and should have been replaced prior to sale; and
- he has a report showing that Marsh's expert report is incorrect.

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.

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 to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Marsh is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

The Consumer Rights Act 2015 says the quality of goods are 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. 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 and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 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 can be aspects of the quality of goods.

Marsh supplied Mr K with a second-hand car that was around seven years old at the point of supply and with around 72,000 miles on the odometer. Mr F also agreed a purchase price lower than the price of a new car like this. It is fair to say that a reasonable person would expect such a car to have suffered significant wear and tear already, and would certainly be less durable and more at risk of possibly costly repairs and maintenance. I don't think it is reasonable to expect the DPF or other parts will be renewed/replaced prior to sale (as Mr K had suggested) unless this had been agreed at the point of sale – and there is no persuasive evidence that was the case here.

I know Mr K has described ongoing issues with the DPF and warning lights causing the car to go into limp mode around 2 weeks after supply. And that he was aware the car had DPF issues before the sale (which he thought were sorted out). But there isn't persuasive evidence to show this was the case.

What I can see is that Mr K reported DPF issues around January 2023 after the car had done an additional 400 miles which resulted in the dealer regenerating it through an extended road test. No fault was found at the time.

I can then see that Mr K was able to drive the car almost 8,000 miles before again reporting an issue with the DPF and the car going into limp mode. Which would indicate that there were no major issues with the car going into limp mode for a significant amount of mileage.

I am not an expert but my understanding is that DPFs can become blocked over time and require periodic regeneration. Like any part they are subject to wear and tear as well, which might impact their performance. Looking at the nature of the issues Mr K has raised with the DPF and the mileage he has been able to cover before the problem resurfaced, I am under the impression that this is likely reasonably expected maintenance/wear and tear and commensurate with the mileage the car has travelled. However, I am not an expert, and I note here that we have the benefit of an independent report carried out by an expert.

The expert report seems credible and includes the credentials of the examiner and a statement of truth. It is reasonably detailed and concludes that the car has no engine defects or inherent faults. It says that the DPF filter is likely partially blocked and needs to be regenerated and cleaned. The report concludes that *‘this should be classed as a routine maintenance issue not a direct result of a manufacturing defect’*. It also includes information as to why DPF cleaning and regeneration might be required at different times due to variables including driving style or fuel quality.

I know Mr K has produced his own diagnostics report which he says shows the expert report commissioned by Marsh is incorrect – but it isn't very detailed and refers to a possible

reason the EML light is on without reference to why the previous expert's conclusions are incorrect, or why what has been identified is something more than reasonable wear and tear on a car approx. 8 years old (at the time of check) with 86,000 miles on the odometer (and around 14,000 more miles than when the car was supplied). And while I know he has said he will have to spend £3,000 to renew the DPF – there isn't persuasive evidence to support this – or that any work required at this stage is not normally expected wear and tear in the circumstances.

Mr K has focused on the DPF issues with the car – but I know he has raised some other issues. I note that the expert report Marsh commissioned shows an offside mirror to have cracked glass, the fuel flap sticking (with a broken retaining strap) and an additive filler cap is missing. However, the expert did not point to any of these issues as being unexpected. And to me they do appear to be related to general wear and tear in a car of this age and mileage. So I don't think they render the car of unsatisfactory quality.

Mr K has mentioned his car being within warranty when problems occurred – but any warranty agreement with a third party is separate to Marsh's responsibilities to Mr K as the supplier of the goods. So it isn't something that changes my findings here but it is worth noting that in any event warranties usually do not cover reasonably expected wear and tear in any event.

I am sorry to disappoint Mr K. However, in light of the evidence I have, including the age and mileage of the car, Mr K's use of it, and the credible expert report – I am unable to fairly conclude that the car was of unsatisfactory quality at the point of sale and that Marsh needs to pay for repairs or take it back. My role here is only to look at matters informally. Mr K is free to reject my decision and pursue the matter in court if that is what he wishes to do.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 May 2024.

Mark Lancod
Ombudsman