

## The complaint

Mrs A complains that a used car supplied by Marsh Finance Ltd under a finance agreement is of unsatisfactory quality.

Mrs A is represented by a third party but I'll refer to everything that's been said on her behalf as if Mrs A said it herself, to keep things simple.

## What happened

Mrs A acquired this car (which was over 9 years old and had travelled over 68,000 miles) under a hire purchase agreement (HPA) from Marsh in December 2022. She had problems soon after collection and found the supplying dealer was unhelpful so she took the car to a third party garage ("H") in January 2023. H said the car was faulty and Mrs A contacted the broker that arranged the finance to complain, but this didn't resolve things. She paid H nearly £400 to undertake repairs but the car broke down again shortly after. H said more work was needed (to the expansion tank) that cost about £135 and Mrs A contacted the supplying dealer, who reimbursed this amount.

The car broke down again in May 2023 and, when the supplying dealer wouldn't assist further, Mrs A had it checked by a main dealer for the brand ("F"). F initially thought repairs needed would cost about £1,500 and Mrs A instructed F to proceed. F found further issues however and told Mrs A that the repairs required would cost about £4,000.

Mrs A complained to Marsh and an independent expert was instructed to inspect the car in July 2023. The expert found evidence of long-term coolant staining in and around the engine bay, the head gasket needed replacing and there was an oil leak. He considered there was probably an underlying fault with the coolant system at the point of supply and Marsh agreed to take the car back and unwind the HPA. Marsh arranged for the car to be collected from F and paid nearly £2,000 for storage and repairs F had undertaken. Marsh didn't refund all of the deposit or pay compensation however and Mrs A didn't think that was fair. She referred the matter to our service.

Our investigator recommended the complaint should be upheld. He's satisfied the car was likely faulty at the point of supply and it's reasonable Marsh agreed to take it back and end the HPA. He didn't think the remedy Marsh proposed went far enough to put things right however. He accepted Mrs A contacted the supplying dealer and got no useful response so her options were limited. He considered it wasn't unreasonable for her to take the steps she did and it was fair that Marsh should refund the deposit/part exchange contribution of £880 in full plus £379.41 Mrs A paid for repairs undertaken by H.

He found it reasonable that Mrs A stopped using the car on 8 June 2023 (when F told her it was unsafe to drive) and considered she should have a refund of any monthly payments made from this date for loss of use. He thought it likely the car wasn't performing as it should have, from 17 January 2023 until 7 June 2023, meaning Mrs A's use was impaired and recommended Marsh should refund 20% of payments made during this period to reflect that. He also considered Marsh should pay Mrs A £150 compensation for distress and inconvenience, remove any adverse information recorded about the finance from her credit

file and pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement.

Marsh disagreed and asked for an ombudsman to review the matter. In summary, Marsh said part of the delay was caused by Mrs A authorising F to undertake repairs before she notified Marsh of her complaint – meaning it didn't have the chance to investigate. Marsh notes that Mrs A says she contacted the supplying dealer, who refused to assist, but says it has no evidence to support this. Marsh considers the dealer only refused to assist initially.

Having considered the available evidence, I was minded to uphold the complaint but I was inclined to reach a different outcome overall. I thought it was fair to let the parties see my provisional view (and make further submissions if they wanted to) before I made my final decision so I sent this to them informally on 16 May 2024. I've set out below (in italics) what I decided provisionally (and why) and this forms part of my final decision.

### **My provisional view**

*Where 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.*

*Mrs A brings her complaint about Marsh to our service because she acquired this car under a HPA and I'm looking at Marsh's obligations arising out of that finance agreement here. I'm required to take relevant law (amongst other things) into account. I'm satisfied the Consumer Rights Act 2015 (CRA) is relevant and Marsh was required, under the CRA, to ensure that this car was of satisfactory quality at the point of supply*

#### *Satisfactory quality*

*There seems to be no dispute that this car was of unsatisfactory quality when Mrs A got it. Marsh agreed to take the car back and provide a refund and I think that seems reasonable but, like our investigator, I'm not persuaded this goes far enough to provide fair redress in these particular circumstances and I'll explain why below.*

*I understand Marsh has collected the car already so I've thought about what else (if anything) Marsh needs to do to put things right – in order to (as far as it's reasonably possible) put Mrs A back in the position she would have been in if she hadn't been supplied with this faulty car.*

*In general, when goods are rejected because they're of unsatisfactory quality and returned to a lender, we expect the finance agreement to end and any adverse information recorded be removed from the consumer's credit file. The consumer would also usually to receive a refund of any deposit paid and be reimbursed for any reasonable out of pocket expenses. We'd also generally award compensation for any lost or impaired use and relevant distress and inconvenience.*

*Like the investigator, I find it fair that Marsh should end this finance agreement (if it hasn't done so already) and remove any adverse information recorded about the HPA from Mrs A's credit file. I can see that Marsh considers the deposit paid should be refunded pro-rata. On the current evidence I'm not persuaded that's reasonable. The advance payment made under this HPA is a deposit, that's not the same as an advance rental made under a hire agreement - which we would usually say should be refunded pro-rata. I'm minded to find it fair that Marsh should refund the deposit paid here in full - which, according to the finance agreement, was £880.*

### Repairs

Marsh has also suggested it shouldn't have to refund the cost of/pay for repairs as Mrs A authorised these without contacting Marsh first to enable it to investigate. Mrs A says she told the dealer about the problems she was having early on but it was unhelpful – simply directing her to a warranty she got with the car that didn't cover the issues. And, when the dealer reimbursed the cost of the expansion tank repairs, it said this was a goodwill gesture only and wouldn't assist further.

I understand Mrs A depends on her car to get to work (amongst other things). I can see it must have been frustrating and very stressful for her when this car broke down repeatedly within months of purchase. I've seen evidence that shows she contacted the dealer early in 2023 and the dealer responded in mid-January - refunding the cost of some repairs. I find what Mrs A says about contacting the dealer before and after this - and the unhelpful response she received - to be plausible.

Taking everything into account, like the investigator I think it's understandable that Mrs A felt she had little option other than instructing both H and F to go ahead with the various repairs. I'm mindful that a consumer is required to mitigate their losses in this situation and I think Mrs A probably took the steps she did to try and get her car back on the road as soon as possible - and avoid the need for/cost of alternative transport (such as taxis or a hire vehicle) as well as the associated distress and inconvenience. On the current evidence, I don't think she acted unreasonably overall.

I note the independent expert considers repairs undertaken were carried out to a reasonable standard and form part of the ongoing problem with the coolant system – which it's accepted was likely to have been present when the car was supplied. I'm satisfied that Mrs A wouldn't have needed to pay H or take the car to F for various investigations and repairs if she hadn't been supplied with this faulty car. It follows I'm minded to find it is reasonable that Marsh has made payments to F and I find it fair Marsh should also refund the £379.41 Mrs A paid H in early January 2023.

It looks as if Mrs A had the £134 she paid H for repairs to the expansion tank reimbursed by the supplying dealer so I don't think I need to require Marsh to refund this as well - if I'm wrong about that Mrs A should let me know.

### Loss of use

I think it's right that Mrs A should pay for the use she had of this car. As far as I can see, the vehicle was off the road after it broke down on 8 June 2023. I've seen correspondence from F that says it would be extremely risky to drive at that point so I can't fairly find it was unreasonable of Mrs A to stop using the car then. And I'm minded to agree with the investigator that Marsh should refund any monthly finance payments made from 8 June 2023 to reflect this.

I can see the car broke down three times before 8 June 2023 - twice in January and then on 5 May - but it's not clear to me how long the car was off the road for repairs at these times. If it was more than a day or two - and Mrs A wasn't provided with a courtesy car to keep her mobile - then I'd be minded to find she should have a pro-rata refund of any relevant monthly payments. I'd need to see more evidence however in order to fairly reach this conclusion. It's open to Mrs A to provide details of when the car was off the road, for how long exactly and why – in response to this email and I'll consider any related loss of use when I make my final decision.

### Impaired use

*The investigator has recommended that Mrs A should also receive a 20% refund of each monthly payment made between 17 January 2023 and 7 June 2023 for impaired use. I accept the car broke down several times (as referred to above) but I've got nothing to show how Mrs A's use of the car was impaired between these breakdowns. Again, it is open to Mrs A to provide more evidence about this – setting out the nature of the impaired use, the relevant cause and how long this lasted – and I'll take that into account when I make my final decision. Just to be clear, on the evidence I have at the moment, I'm unable to fairly find Marsh should reasonably provide a refund for impaired use.*

#### *Distress and inconvenience*

*I'm satisfied that being supplied with this faulty car probably caused Mrs A to experience distress and inconvenience. She had to take the car back and forth for repairs and investigations involving third parties, for example. Taking everything into account, I'm minded to agree with the investigator and find it fair that Marsh should pay her £150 compensation for this.*

*In summary then, for the reasons set out above, I'm inclined to uphold this complaint and require Marsh to do the following to put things right:-*

- 1. end the HPA (if it hasn't ended already) and record the agreement as settled on Mrs A's credit file;*
- 2. refund the deposit paid of £880 plus £379.41 Mrs A paid H for repairs;*
- 3. refund any payments made from 8 June 2023 (in full) for loss of use;*
- 4. pay interest on the above refunds at 8% simple a year, from the date of payment to the date of settlement;*
- 5. pay Mrs A £150 compensation for her distress and inconvenience and remove any adverse information recorded about the HPA from her credit file.*

#### **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.

I invited the parties to consider my provisional view and let me have any further evidence and comments by 24 May 2024. I said I'd review all the evidence available after that and make my final decision.

Mrs A hasn't provided any new evidence or raised any objections to my provisional findings above. Marsh doesn't accept my provisional view however. In summary, Marsh says it ended the HPA because the car was faulty but problems were reported after the first 30 days and it has the right to retain payments from the deposit for usage. In addition, Mrs A had repairs completed and incurred storage fees without its consent so it was entitled to retain contractual payments made up to the point the complaint was raised, including the deposit.

Marsh hasn't supplied any additional evidence and nothing that's been said has persuaded me to depart from my provisional view, as set out above. I find the car Marsh supplied to Mrs A under this HPA was of unsatisfactory quality at the outset and I think it's right that Marsh agreed to take the car back and end the HPA. For the reasons I've given already, I find Mrs A is entitled to have her deposit refunded. I'm satisfied she wouldn't have needed to have the car stored and/or repaired if it hadn't been faulty at the point of supply and I don't think the steps she took around this were unreasonable in the circumstances. Taking everything into account, I find it is fair and reasonable that Marsh should take the steps set out below to put things right.

## **My final decision**

My decision is I uphold this complaint and I require Marsh Finance Limited to:-

1. end the HPA (if it hasn't ended already) and record the agreement as settled on Mrs A's credit file;
2. refund the deposit paid of £880 plus £379.41 that Mrs A paid for repairs;
3. refund any payments made from 8 June 2023 (in full) for loss of use;
4. pay interest on the above refunds at 8% simple a year, from the date of payment to the date of settlement;
5. pay Mrs A £150 compensation for her associated distress and inconvenience and remove any adverse information recorded about the HPA from her credit file.

If Marsh does not pay the £150 compensation for inconvenience and distress within 28 days of the date on which we tell it that Mrs A accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If Marsh considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs A how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 5 July 2024.

Claire Jackson  
**Ombudsman**