

The complaint

Miss M complains about the quality of a used car she acquired through a hire purchase agreement with Marsh Finance Limited ('Marsh'). She says the car needed to go back to the garage several times for repairs and so it wasn't of satisfactory quality. She thinks she should receive compensation for this.

What happened

In August 2023 Miss M acquired a car. The car was used and was first registered in April 2015, so it was over eight years old. It had 87,707 miles on the clock.

Miss M acquired the car using a hire purchase agreement. The vehicle had a cash price of £5,750 and she financed the full amount. This agreement was to be repaid through 23 monthly instalments of £284.40 plus a final instalment of £296.40. Based on the statement of accounts an outstanding balance remains due. If Miss M made repayments in line with the credit agreement, she would need to repay a total of £6,883.60.

Below is a summary of the issues complained of by Miss M and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

I understand that Miss M returned the car straight away for a repair to an exhaust bracket that was making a noise. This was repaired by the dealership relatively quickly.

Miss M contacted Marsh again on 3 November 2023 saying that the car was leaking oil and there was a fault with the gearbox. The car was returned to the dealership at this point for investigation.

On 2 January 2024 the dealership authorised the repairs to the car's gearbox. The repairs were completed on 5 February 2023 and the car was returned to Miss M. She has been using the car since then.

Miss M brought her complaint to the Financial Ombudsman Service in January 2024, before the repairs were completed, as she thought it was taking too long for the car to be repaired. She hadn't been offered a courtesy car while the repairs were ongoing, and she says this had caused her significant difficulty.

After the repair was authorised, Marsh considered the complaint and upheld it. It said that the dealership has accepted that the car was faulty and had undertaken to make repairs to it under the warranty. It said that whilst the complaint was upheld this was a suitable outcome and it didn't think any further action or compensation was needed. Miss M didn't agree with this and brought the complaint to the Financial Ombudsman Service.

Our Investigator upheld Miss M's complaint. She said that whilst the car had now been repaired, because this had taken so long to do it had caused Miss M a considerable amount of inconvenience. So, she should now be allowed to reject the car. And she should receive back the payments she made over the time she could not use the car which was

3 November 2023 to 5 February 2024. Our Investigator also recommended that Marsh pay £350 for the distress and inconvenience this has all caused her.

Marsh didn't agree with our Investigator. It said that whilst there was a delay this was due to factors outside of its control (such as the warranty company and the dealership). And she hadn't been provided with a courtesy car as she indicated she has another car she could use. If Miss M was unhappy with the time the car took to be repaired, and wanted to reject the vehicle, she should not have collected it and started to use it.

There was some further correspondence and our Investigator said that Miss M was still paying for the car whilst she didn't have use of it. And Miss M was still inconvenienced by not having the car. She should still be allowed to reject it.

After the car was repaired Miss M said she was happy to keep the car, but she would like the payments she made while it was being repaired refunded to her and some compensation for the inconvenience she was caused.

Our Investigator agreed that this was a reasonable way to resolve the complaint and informed Marsh of this. Marsh didn't agree as it still thought Miss M shouldn't receive compensation for the delayed repair as she had another car she could use.

Because no agreement has been reached, this matter has been passed to me to make a final decision.

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 hire purchase agreement – so we can consider a complaint relating to it. Marsh as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant 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'.

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 and mileage at the time of sale and the car's history.

The CRA 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.

The car was over eight years old when Miss M acquired it and it had over 87,000 miles on the clock. The cash price was £5,750. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Miss M should have been able to use it for a reasonable period of time before it needed significant work.

As a starting point Marsh has upheld this complaint and accepted that the car had a fault with the gearbox. This has been repaired under warranty. I've noted all of what has taken place here, and said about this, and I agree it's reasonable to say that the car wasn't of satisfactory quality. There isn't really any ongoing disagreement about this and so I won't comment further.

The remaining issue for me to decide is whether Marsh did enough to put this right. Our Investigator outlined the sections of the CRA that say that where it is reasonable to repair a car it should be done within a '*reasonable time frame and without significant inconvenience*'. And if this doesn't happen then the consumer will have the chance to reject the car or receive a price reduction.

I don't think the car was repaired within a reasonable time frame. It took over three months for the car to be returned to Miss M after it was returned to the garage with a faulty gearbox. And whilst I note that Marsh has said that it was waiting approval from the warranty company and so on, this is still far in excess than the time it should have taken. I think it's reasonable to say that Miss M shouldn't have been without the car for this length of time.

Miss M has outlined how she was inconvenienced by not having the car. She has said that she had problems getting to work and it has caused her an enormous amount of stress. She has had to pay for alternative means of transport while she was also paying Marsh for a car that had been supplied to her and which she couldn't use. She said that she informed Marsh of this.

As far as I can see, Marsh didn't do anything to mitigate this. There was no courtesy car supplied and Marsh didn't do anything else to help her. Marsh thinks it didn't need to do this as it says Miss M told it she had access to another car. I've thought about whether this was reasonable.

I don't think Miss M possibly having other transport arrangements is relevant. Miss M was paying Marsh for goods that she couldn't use. Regardless of whatever other arrangements she may have had, she should be compensated for the lack of access to the car she was paying for.

Our Investigator said because of these failings Miss M should have the right to reject the car. Whilst I agree with this, Miss M has indicated that she will keep the car as it has now been repaired. This isn't unreasonable, so I've gone on to consider what compensation Marsh should now pay.

Miss M didn't have use of the car for around three months. She was paying Marsh over this time and so these payments should be refunded to her.

I also agree that Miss M was inconvenienced by having to take the car back and forth to the garage. She has also outlined how hard she found getting to work and so on without the car. I can imagine it would have been very difficult and stressful for her particularly over such a long period of time. So, I think the £350 suggested by our Investigator for the distress and inconvenience she experienced is fair.

Putting things right

Marsh should now:

- Refund to Miss M the finance payments that she paid between 3 November 2023 to 5 February 2024.
- Pay Miss M 8% simple yearly interest these refunds calculated from date of payment to date of settlement.
- Pay Miss M £350 compensation for the inconvenience and distress this situation has caused her.

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 Miss M how much it's taken off. It should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Miss M's complaint.

Marsh Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 3 January 2024.

Andy Burlinson
Ombudsman