

The complaint

Mr B complains about a car supplied to him using an agreement taken out with Marsh Finance Limited (“Marsh Finance”).

What happened

Mr B referred a complaint to us along with his representative. As the complainant is Mr B, for ease, I have addressed my decision to him only throughout, when referring to what he and his representative have told us.

In August 2023, Mr B acquired a used car using a hire purchase agreement with Marsh Finance. The car was over nine years old, the cash price of the car recorded on the agreement was £3,750, the agreement was for 48 months, made up of 47 regular, monthly repayments of £113.09, followed by a final payment of £123.09, which included a £10 option to purchase fee. The advance payment recorded on the agreement was zero pounds. The mileage recorded on the sales invoice for the car was 82,000 miles.

Mr B said he immediately noticed the car struggled to start and contacted the supplying dealership about the issue. Mr B then said he returned the car to the dealership and the battery was replaced on 2 September 2023. He said the issue persisted after the battery was replaced and the following day, the car still struggled to start again.

Mr B believed there was a fault with the car after having a health check completed on it by a third-party. Mr B said his relationship with the supplying dealership began to deteriorate as they were referring him to his third-party warranty provider.

In October 2023, Mr B called Marsh Finance due to his concerns with the quality of the car. Marsh Finance didn't uphold Mr B's complaint. In summary, they said that the car was scheduled for repairs towards the end of October 2023, which Mr B agreed to with his warranty provider. And as they didn't have the opportunity to investigate the concerns and they thought a suitable outcome had been reached, they closed their complaint.

In November 2023, an independent report was arranged by Marsh Finance. The mileage recorded on the report was 82,145. In summary it said that while further investigation was needed, the symptoms with the car were synonymous with a fault to the body control module which controlled a charging rate and should prevent a battery from draining over a short period of time. The report also concluded that they didn't believe the previous repairs to the battery was a failed repair.

Unhappy with Marsh Finance's response, the complaint was referred to our service.

In December 2023, Marsh Finance issued another final response to Mr B. They said that they arranged and paid for an independent inspection to be completed on the car in November 2023. In summary, Marsh Finance said that the supplying dealership accepted responsibility of the reported concerns, after seeing the independent report and that they had agreed to arrange the necessary investigations or repairs to the car.

Marsh Finance said they were not able to support Mr B's request to reject the car as they didn't think the issues with it were deemed to be a direct result of failed repairs. The final response also said that Marsh Finance had noticed insurance for the car and the direct debit instruction for the agreement had been cancelled which was in breach of the terms and conditions of the agreement. And meant the monthly payments for the car were no longer being met.

Mr B provided our service with a copy of a partial email chain with Marsh Finance following their December 2023 final response. It explained that Mr B contacted the supplying dealership to arrange collection of the car for it to be repaired, but he said that the dealership told him not to contact them directly anymore.

Marsh Finance said that Mr B refused to allow the supplying dealership the opportunity to repair the car. A partial email chain that Marsh Finance provided showed they responded back to Mr B and explained the supplying dealership had agreed to take the car back for repairs to be completed.

A Default Notice was served to Mr B in both January 2024 and February 2024. Mr B also received a Notice of Termination in February 2024.

Our investigator upheld Mr B's complaint. In summary he said that he thought it was likely the car had a fault and that the car wasn't of satisfactory quality at the point of supply. The investigator disagreed that the battery replacement didn't count as an attempted repair of the car. He thought Marsh Finance had the opportunity to investigate matters when Mr B got in touch with them in October 2023, but were happy for repairs to be carried out towards the end of October 2023 by Mr B's warranty provider in an attempt to resolve the issue with the car. The investigator put forward to both parties what he thought was a fair way to resolve matters.

Our investigator explained that he thought Mr B should be able to reject the car. Among other things, he said for Marsh Finance to:

- End the agreement (if this has not been done already) with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr B.
- Reimburse Mr B's repayments from 12 October 2023 when he stopped using the car
- Pay Mr B £200 to reflect the distress and inconvenience caused.
- Remove any adverse information from Mr B's credit file in relation to the agreement, if any.

Mr B accepted our investigator's findings.

Marsh Finance disagreed with the investigator's findings. In summary, they said they believed the car was financed for it to be used solely by a third-party and not by Mr B, which they said was in breach of their terms. They also said Mr B had refused to allow the supplying dealership to carry out repairs to the car.

Our investigator responded and said he was only making a finding on the quality of the car Mr B acquired as part of the agreement with Marsh Finance. And that he believed there had been a failed repair, which meant Mr B can reject the car.

Mr B said the distress of this complaint had impacted his health and provided some details of how it had.

Our investigator then reviewed the complaint along with Mr B's further comments. He explained he now thought all of the repayments should be reimbursed due to the minimal use of the car and that Marsh Finance should pay him £350 to reflect what happened.

Mr B agreed with this and Marsh Finance did not respond.

As Mr B agreed with the investigator's findings and Marsh Finance didn't respond to our investigator, the complaint was 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.

Having done so, I'm upholding this complaint and I'll explain why below.

Mr B complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr B's complaint about Marsh Finance.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Marsh Finance here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note that the car Mr B acquired was used, over nine years old, had been driven around 82,000 miles and cost £3,750. I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

An independent inspection was completed on the car in November 2023, when the car had been driven less than 150 miles by Mr B. The report said:

"We also noted that the battery was flat with no evidence of recent works having been undertaken in and around engine bay and no evidence of driver error or abuse.

During under bonnet checks we also noted that the battery was new.

...

A battery drain test was completed confirming the vehicles battery is draining therefore the vehicle requires further checks under workshop controlled conditions by a qualified auto electrician to ascertain the cause.

...

Although we are recommending that the vehicle is taken to an auto electrician for checks under workshop controlled conditions, the highlighted symptoms are synonymous with a fault with the vehicles body control module which controls a charging rate and should prevent battery draining over a short period of time.

With any necessary repair cost in our opinion being borne by the sales agent on the grounds that we believe this was a pre-existing condition at the point of sale.”

Considering the above, and that the supplying dealership accepted responsibility of the reported concerns to the car following receipt of the independent inspection report, I think it is likely there was a fault with the car, specifically to the body control module. And considering the fault presented itself shortly after the car was acquired, and the inspection report says they believed the fault to be a pre-existing condition, I’m satisfied the fault was likely present or developing at the point of supply.

I’ve gone on to think carefully about the remedies available to Mr B under the CRA. I’ve also thought carefully about the comments both Marsh Finance and Mr B have made about attempts to have the car repaired, following the December 2023 final response.

One of the remedies available to Mr B under the CRA is repair. Marsh Finance has relied on the findings of the independent report where it said:

“We do not believe the previous repairs by replacement battery was a failed repair as normal industry standard protocol would be the vehicle suffering from a battery drain you [sic] which initially replaced the battery and if this is unsuccessful further checks by a suitably qualified auto electrician be required as in this case.”

Additionally, Marsh Finance believe Mr B hasn’t given the opportunity for the car to be repaired.

I’m not persuaded by Marsh Finance’s comments here. I say this because Mr B called Marsh Finance about issues with the car in October 2023 and explained the car was scheduled to be investigated later in the month, by the warranty company. So, I think it is fair to say that at this point Marsh Finance had the opportunity to investigate matters if they chose to, before further works were carried out. At the very least, they could have informed Mr B to not proceed through the warranty company and allow them the opportunity to look into things and complete any necessary repairs. Instead, Marsh Finance left Mr B to attempt to resolve this alone.

I’ve also considered the findings of the independent inspection where they didn’t consider the replacement battery to be a failed repair. And I disagree with what has been said here.

The CRA says in relation to the final right to reject:

“There has been a repair or replacement for the purposes of subsection (5)(a) if—

(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and

(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.”

Mr B has said the battery was replaced on at least two occasions by either the dealership or warranty company and the car was then returned to him. I haven’t seen job sheets to show this. But, in any event, I’m satisfied the battery has been replaced on at least one occasion, as the independent inspection report says the battery was new. In this instance, by replacing the battery, it was an attempt to repair issues that the car was presenting with. So I consider the battery replacement to be an attempted repair.

As I'm satisfied Mr B has had one repair, and the car still had a fault, it follows that I think it is fair and reasonable for Mr B to be allowed to now reject the car.

Mr B says issues began with the car within a day or so of the car being supplied and it continued to have issues with it, even after repairs were carried out. I have noted that the car had been driven rarely – around 145 miles since the point of supply. I'm also mindful that Mr B says most of the miles travelled in the car were to take it to garages to diagnose the fault with it. So, Mr B has had limited use of the car.

With all this in mind, I think Mr B should be reimbursed all monthly payments he made towards the agreement. I'm aware that Mr B stopped making payments towards the car from around December 2023. So, Marsh Finance only need to reimburse payments made and should not hold Mr B liable for any arrears nor associated charges.

Mr B has also provided copies of letters to show that Marsh Finance issued default notices and a notice of termination on his account he held with them. Considering that I'm satisfied the car wasn't of satisfactory quality at the point of supply and that Marsh Finance needs to do more to put things right, I'm satisfied adverse information reported to Mr B's credit file should also be removed.

I think it must have been frustrating for Mr B to have to deal with the car's fault. It meant that immediately after acquiring the car, it broke down and it continued to have problems. Mr B didn't continue to drive the car and lost faith in it. And Mr B has explained the impact this complaint has had on his health. Thinking about all this, I think it would be fair and reasonable for Marsh Finance to pay Mr B £350 in total to reflect the distress and inconvenience he suffered in relation to this complaint.

I note Marsh Finance has asked for an ombudsman to make a finding regarding their understanding that an "accommodation deal" was taken out with them, which they say is in breach of their terms. However, I'm not making a finding on this as this isn't a complaint point Mr B has referred to our service, nor is it something that Marsh Finance had commented on in their final responses to Mr B.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct Marsh Finance Limited to put things right by doing the following:

- End the agreement (if this has not been done already) with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr B.
- Reimburse Mr B all monthly repayments he made towards the agreement until the date of settlement. *
- Pay Mr B £350 to reflect the distress and inconvenience caused.
- Remove any adverse information from Mr B's credit file in relation to the agreement, if any.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Marsh Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If Marsh Finance has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 January 2025.

Ronesh Amin
Ombudsman