

The complaint

Miss M complains about the quality of a car supplied to her by Marsh Finance Limited ("MF").

What happened

I sent Miss M and MF my provisional findings on this complaint on 12 August 2024. A copy of that decision is attached and forms part of this final decision.

I explained why I wasn't planning to uphold Miss M's complaint and asked both parties to let me know if they had anything to add.

Miss M responded and said she strongly disagreed with the provisional decision. She provided a call recording which she has explained is between her and the dealership – who I'll refer to as "D". The call recording confirms that when a repair was carried out, the driver's side front wheel bearing that was making a noise at the time was replaced. Miss M also said the ECU wasn't replaced and she didn't receive a courtesy car.

MF said it didn't have anything further to add.

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 my provisional decision I explained that I didn't think there had been any failed repairs in relation to the wheel bearing. Miss M has since provided a call recording which confirms that the wheel bearing was replaced. So it seems there were failed repairs in relation to the wheel bearing.

However, my provisional decision also explained that the independent inspector confirmed that a wheel bearing failure would be classed as general maintenance. So regardless of whether D agreed to replace the wheel bearing or not when Miss M complained about it, it wouldn't be something that D was liable to repair or replace. This is because the car was eight or nine years old at the time the fault with the wheel bearing occurred and the mileage was around 62,000. Miss M was also able to travel 2,000 miles in the car in three months before she reported issues with it.

So, considering the age and mileage of the car at the time Miss M noticed the issues, the comments from the independent inspector and the MOT history, I'm satisfied the issues occurred due to wear and tear and that the car was of satisfactory quality when it was supplied to Miss M. It follows that I'm not asking MF to do anything to put things right.

My final decision

My final decision is that I do not uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 October 2024.

Provisional decision

I've considered the relevant information about this complaint. Having done so, I initially intend to reach a different outcome to our investigator.

I'll look at any more comments and evidence that I get by 26 August 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Miss M complains about the quality of a car supplied to her by Marsh Finance Limited ("MF").

What happened

Miss M acquired a car under a 56 month hire purchase agreement with MF in October 2023. The car cost around £5,665. Under the agreement, Miss M paid a deposit of £33. She was required to make 55 payments of £153.98, followed by a final payment of £163.98 if she wanted to keep the car. At the time the car was supplied to Miss M, the mileage was 60,437 and it was eight years old. The car was supplied by a dealership I'll refer to as "D".

Miss M says a couple of weeks after acquiring the car, she noticed a vibration through the steering wheel which got worse upon acceleration. She said her partner also noticed a vibration through the passenger side floor and a loud noise as if the car had a sports exhaust fitted. She said she took it to a third party company who couldn't diagnose the issue.

In January 2024, Miss M says she contacted D who told her it had replaced the wheel bearing. She said two weeks later, the noise reappeared and so, she complained to MF.

In March 2024, MF instructed an independent company, that I'll refer to as "G" to carry out an independent inspection of the car.

MF issued its response to Miss M's complaint in April 2024. It said Miss M had complained about a knocking noise and that previous repairs on the car had failed. These were a wheel bearing and an adjustment to the bonnet catch. It said the independent report confirmed that the car had a worn wheel bearing but this was a general maintenance issue. It didn't uphold Miss M's complaint.

Miss M obtained a car health report from a company I'll refer to as "P" in April 2014. This confirmed that the driver's side drive shaft bearing needed to be renewed along with, the front brake pads and discs, the front right wheel bearing, the front passenger side tyre and the lower ball joint.

Unhappy, Miss M referred a complaint to this service. She said the car wasn't fit for purpose and that D had attempted a repair but she was still unable to use the car. To put things right, she said she wanted all negative information removed from her credit file, to be compensated for all the unnecessary costs and the trauma to her daughter. Miss M also said she had no choice but to voluntarily surrender the car in May 2024 and she was told she would be liable for any outstanding amount that remained.

Our investigator looked into the complaint and said that D had accepted it carried out a repair, which G was unaware of when it carried out its inspection and that the repair was unsuccessful or that it didn't fix the issue. She said Miss M should have been able to reject

the car in February 2024 when she requested it. She recommended MF do the following to put things right:

- Unwind the finance agreement with nothing further to pay;
- Amend the credit file to remove any negative data;
- Refund any payments from February 2024 onwards;
- Refund the deposit of £33;
- Reimburse Miss M for any costs related to the health check or diagnostics, upon evidence of these costs;
- Pay 8% simple interest on these amounts from the date paid until settled; and
- Pay Miss M £150 compensation.

Miss M agreed and let this service know that MF had sent her a default notice for an outstanding amount of around £8,000.

MF disagreed with our investigator. It said a repair of a wheel bearing is considered general maintenance and is a serviceable item. It said G's report confirmed that D wouldn't be liable for any repair costs. It also said Miss M had chosen to voluntarily surrender the car.

Our investigator sent MF's comments to Miss M. So Miss M provided additional comments. She said D decided that the issue was a wheel bearing which it chose to repair, but this doesn't mean it was the definite cause. She also said she was unhappy that MF had used G to carry out an independent inspection, G's report was contradictory and the report she obtained confirmed further issues. Miss M also provided a number of online reviews of both D and G. She also said £150 compensation wasn't appropriate for all the upset and stress this matter had caused her. She said it had a huge effect on her mental health, both herself and her daughter could have been hurt, she endured multiple expenses for using taxis – but didn't keep the receipts. She said at a minimum she wanted a refund of all the payments she made since acquiring the car, plus 8% simple interest.

As both parties remain in disagreement, the case has been passed to me to decide.

What I've provisionally 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 incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Both parties have provided a good deal of evidence, so I've had to summarise things in this decision. The rules of our service allow me to do this, but I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate here on what I consider is key to reaching a fair and reasonable outcome overall.

What I need to decide in this case is whether the car supplied to Miss M was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated conditional sale agreement. So our service is able to consider complaints relating to it. MF is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Miss M acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, Miss M says she first noticed the issues with the vibration of the car a couple of weeks after acquiring the car. She said she didn't notice it before as she was abroad and didn't use the car straight away. In January 2024, Miss M reported to D, a vibration and a loud noise when the car accelerated. At this time, the car was around nine years old.

After Miss M reported this in January 2024, she says she took it to D who replaced the wheel bearing. Miss M says she wasn't provided with any information or a job sheet from D to confirm this repair took place.

In G's report from March 2024, it confirms that Miss M had told it that D had also adjusted the bonnet catch and that she had reported concerns with a noise coming from the car when it accelerated. G confirmed there was an unusual vibration coming from the car, which it said, *"appears to be coming from the front wheel bearing"*. The reported mileage of the car at the time was 62,395. P confirmed this in its report and confirmed the front right wheel bearing needed to be renewed.

I've seen an email chain between MF, D and the broker from January 2024. In this email chain, the broker confirms that it has spoken to D about the ongoing repairs. It states:

"Customer has been given a courtesy car.

Needed new ECU – 2 weeks to obtain part. ECU was not coded to vehicle – They had to remove old ECU and send to specialist to get reprogrammed.

They should have the vehicle back this week from the specialist and will be able to update by the end of the week".

Within this email chain, there is no mention from D that it carried out a wheel bearing replacement. The email was sent whilst repairs were carried out by D and so I'm persuaded that the ECU replacement was the only repair that was carried out by D. This means that on balance, given the emails were sent whilst repairs were taking place, that I'm not persuaded that D ever replaced the wheel bearing.

However, having carefully considered everything, I'm satisfied that the wheel bearing needed replacing and both G and P have confirmed this. So I'm also satisfied that the car supplied to Miss M had a fault – particularly as P's report also highlights other issues with the car.

I appreciate Miss M says she was told something else by D, but I'm satisfied that on balance the wheel bearing wasn't replaced. I have made reference to this because this means I don't think there have been any failed repairs in relation to the wheel bearing.

In any event, I've gone on to consider whether the faults with the wheel bearing, brakes, drive shaft bearing, lower ball joint and tyre make the car of unsatisfactory quality.

G's report states:

“Throughout the course of the road test the vehicle handled and performed in a satisfactory manner, steered the chosen path of travel correctly and was free from any abnormal noise or vibration, there was no evidence of any excessive smoke from the exhaust, undue audible noises from the transmission and no evidence of overheating.

However, there was a vibration from the front of the vehicle which we believe is caused by a worn wheel bearing.

It goes on to say:

“There is no doubt the vehicles overall general condition is acceptable for a vehicle that has covered 62,000 miles however, there was an unusual vibration from the vehicle which appears to be coming from front wheel bearing, this will require confirmation under workshop controlled conditions.

Assuming our diagnosis is correct, this will require the wheel bearings to be replaced, having to replace the wheel bearing on a vehicle that has covered 62,000 miles would be classed as general maintenance and not considered as premature maintenance.

Wheel bearing and suspension components are susceptible to damage as a result of potholes on the road for example, given the time elapsed and the fact that the vehicle passed an MOT with a similar mileage at the point of sale all leads us to the conclusion that the sales agent is not responsible for the repairs.

With this opinion being based on the fact that if the vehicle had a worn wheel bearing it would not have passed an MOT hence reason, we believe that the issue the wheel bearing has occurred after the date of sale.”

P's report confirms that there are issues with the wheel bearing, brakes, drive shaft bearing, lower ball joint and tyre. But it doesn't confirm why the issues have occurred.

The MOT check from September 2023 was passed, but had two advisories. These were that the offside front tyre was worn close to the legal limit and the nearside front suspension arm pin or bush was worn, but this didn't result in excessive movement. This doesn't in itself mean the car was not of satisfactory quality though. It means that the car was roadworthy and there were some things that the owner should monitor and repair (if necessary).

I've thought about all this information carefully. In this case, there is no dispute that there is an issue with the wheel bearing. However, the car was around eight or nine years old at the time the fault occurred and the mileage was around 62,000. I think a reasonable person would consider that a car's wheel bearing may suffer wear and tear by this point.

G in its report confirms that this would be classed as general maintenance. It also confirms that these are susceptible to damage for a number of possible reasons such as potholes.

In the absence of any supporting information to confirm otherwise, I consider that the other faults highlighted in P's report are serviceable items that will need repairing or replacing over time with use and time.

I appreciate that Miss M only had the car for around three months before she reported issues with it, but she was able to cover around 2,000 miles in the car. Considering the age and mileage of the car at the time Miss M first noticed any issues, I'm satisfied that it's more likely than not that the faults Miss M has complained about occurred due to wear and tear. I consider that the issues developed and deteriorated after Miss M was supplied the car. And so, it follows that I think the car was of satisfactory quality when it was supplied to Miss M.

I appreciate this is likely to come as a disappointment to Miss M and I'm sorry to hear about how she has been affected by the fault with the car. But overall, I think the car supplied to Miss M was of satisfactory quality and so, it follows that I don't require MF to do anything to put things right.

My provisional decision

My provisional decision is that I do not intend to uphold Miss M's complaint.

Sonia Ahmed
Ombudsman