

## **The complaint**

Mr S complains Marsh Finance Limited (Marsh Finance) hasn't done enough to put things right after supplying him with a faulty vehicle.

## **What happened**

In October 2022, Mr S entered into a 48 month hire purchase agreement for a used vehicle. Its cash price was £5,750, it was around seven years old and had covered over 95,905 miles. Mr S paid £1,000 deposit and the rest was financed by a loan with Marsh Finance. The monthly instalments were £133.

In January 2024, Mr S reported the vehicle's engine was overheating. An independent inspection was carried out in February 2024 and it was found that the cause of the issue was due to the vehicle being fitted with an incorrect engine. This meant the sensors were not correctly fitted to the vehicle meaning the readings were inaccurate.

Based on the above findings, Marsh Finance agreed to unwind the agreement. They said Mr S had covered in excess of 11,800 miles in the months he had use of the vehicle- October 2022 to January 2024. They said he had paid 17 instalments (£1,959) but they said would retain 15 months of payments to reflect the use of the vehicle (meaning they would refund two months). They also said the dealership could retain the £1,000 deposit. Overall, they said Mr S would be refunded a total of £2,791.

Unhappy with this, Mr S referred the complaint to our service. He said he should be refunded all the instalments paid, the deposit and the inspection cost. In total, he said he was out of pocket by £3,206 which wasn't fair as fraud had been committed against him.

Our investigator recommended the complaint was upheld stating Marsh Finance hadn't done enough to put things right. They said the deposit and inspection cost should be refunded, £200 compensation should be paid and adverse information removed from Mr S' credit file.

Marsh Finance disagreed and maintained their stance commenting deductions for usage of the vehicle can be taken from the deposit paid.

As an agreement couldn't be reached, the complaint has been referred 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've decided to uphold Mr S' complaint.

Mr S acquired a vehicle under a regulated credit agreement. Marsh Finance was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the vehicle.

The Consumer Rights Act 2015 (CRA) 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. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

In this case, it’s evident based on the inspection report that the vehicle wasn’t of satisfactory quality due to it being supplied with an incorrect engine for the make and model of the vehicle. Both parties accept this, that isn’t dispute. So I don’t find it necessary to provide any further comment about the same. What’s left for me to determine is whether Marsh Finance has done enough to put things right. Having carefully read submissions from both parties, I don’t believe they have. I will explain why.

In line with what I would expect, Marsh Finance has already agreed to end the agreement and collect the vehicle at no cost to Mr S. In instances where our service has determined a vehicle isn’t of satisfactory quality and rejection should be allowed, it’s a well established approach that the deposit or advance payment should be refunded. I don’t agree it’s fair for the dealership nor Marsh Finance to keep the deposit, this should be refunded to Mr S.

Mr S argues that he should be refunded all the monthly payments he’s made under this agreement. While I agree the vehicle wasn’t of satisfactory quality at supply, I must take into account Mr S has had significant use of it. He’s managed to cover in excess of 11,800 miles before the fault presented itself. Therefore it’s fair for him to pay to reflect that use, the relevant law allow for such deductions to be made.

Mr S used the vehicle from October 2022 up to January 2024. Marsh Finance said he’s paid 17 instalments. I have no reason to believe that isn’t the case. However they said they are willing to retain only 15 payments meaning they would refund the equivalent of two instalments to Mr S. Overall, I find this is a fair approach to reflect Mr S’ use of the vehicle. Therefore any payments Mr S has made over and above 15 instalments should be refunded to him. Additionally all adverse information about this agreement should be removed from Mr S’ credit file.

Concerning the cost of the inspection report, I agree with the investigator this should be refunded (subject to proof of payment). I say this because I find it was an out of pocket expense incurred by Mr S as a result of Marsh Finance supplying him with a vehicle that wasn’t of satisfactory quality.

Lastly, I’ve thought about the likely impact of this situation on Mr S. This includes trips to the garage, having to arrange an inspection, the inconvenience of having to find alternative

transport etc. Given the circumstances, I agree with the investigator that Marsh Finance should pay £200 compensation to Mr S for the trouble and upset caused.

### **My final decision**

For the reasons set out above, I've decided to uphold Mr S' complaint.

To put things right, Marsh Finance Limited must:

- End the agreement with nothing further for Mr S to pay (if not done so already);
- Collect the vehicle at no cost to Mr S (if not done so already);
- Refund the cash deposit of £1,000\*;
- Refund the cost of the inspection report (subject to proof of payment);
- Only hold Mr S liable for 15 months of contractual payments, anything paid over and above the same should be refunded;
- Pay 8% simple interest on the above refunds from the date of payment to the date of settlement;
- Remove any adverse information about this agreement from Mr S' credit file;
- Pay £200 compensation to Mr S for the trouble and upset caused.

\*If Marsh Finance considers tax should be deducted from the interest part of my award it should provide Mr S with a certificate showing how much it has taken off, so Mr S can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 March 2025.

Simona Reese  
**Ombudsman**