

The complaint

Mr R complains about the quality of a used car he acquired through a hire purchase agreement with Marsh Finance Limited ('Marsh'). Mr R says that the car wasn't of reasonable quality and Marsh didn't help him when he had problems with it.

What happened

Our Investigator thought the complaint should be upheld. Marsh disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr R's complaint should be upheld but for slightly different reasons, and I changed the compensation. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision

Mr R's complaint is about the quality of a car he acquired in October 2023. The car was used, and it was first registered in March 2015. So, it was over eight years old when Mr R received it. The car had covered 69,624 miles.

Mr R acquired the car using a hire purchase agreement that was also started in October 2023. The vehicle had a retail price of £9,495. Mr R paid a £385 deposit meaning £9,110 was financed. This agreement was to be repaid through 60 monthly instalments of £241.19. If Mr R made repayments in line with the credit agreement, he would need to repay a total of £14,481.40.

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

Mr R has provided the historical record of the car's MOT checks. The car had failed its MOT test in February 2023 due to an Engine Management Light ('EML') showing. And this needed to be rectified before the car could pass the test.

Mr R said that he picked the car up and drove it back from the dealership (which was a significant distance). When he arrived home, he noticed an EML was showing on the dashboard. Mr R contacted the dealership about the EML straight away. And was told by the dealership to take it to a local garage to get it checked out, which I understand he did.

I've seen all the information that Mr R has provided about the EML he is seeing in the car, both from the time of supply to when the car was returned. These all indicate that the car had a problem with the cooling system. Some of the warnings say that he should stop driving the car. And Mr R has said that the car 'mists up' at times and was unsafe to drive because of this.

Mr R has provided this information to the dealership and the warranty company so that the car could be fixed. The warranty company has agreed that the car needs a repair. There is a quote from the warranty company that shows the repair costs are £1,405.16. This document says it will pay £334.67 leaving Mr R with £1,070.15 to pay. The car wasn't repaired as Mr R didn't think he should have to pay these repair costs as the car was provided to him faulty.

In February 2024 Mr R complained to Marsh saying that the vehicle was faulty and that he now wanted to reject it. In March 2024 Marsh considered this complaint and upheld it. It said that the dealership had found that the car was faulty and had arranged for the car to be repaired. It said that the repairs had been completed satisfactorily.

Mr R didn't agree with this and said the car remains faulty as there is still an EML. This is the same EML that was present when he acquired the car. He said this had been confirmed by the dealership and Marsh has accepted responsibility for it. Mr R brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr R's complaint. He said that the car wasn't of satisfactory quality when it was sold to Mr R due to the existing engine coolant problem. And whilst Mr R had agreed to a repair this wasn't carried out in a satisfactory time (as it wasn't done) and so he should now have the right to reject the car. He said that Marsh should collect the car and refund part of the premiums Mr R has paid.

Marsh didn't agree with the Investigator. It thought that Mr R, and the dealership, had arranged the repairs and if they were not completed correctly this was an issue between the dealership and Mr R. It wasn't Marsh's responsibility as it was not involved in the resolution to the issue with the car and the complaint.

And Mr R thinks the award is too low as he has not been able to use the car properly since he obtained it due to the engine issue. The car is unable to pass its MOT and Mr R couldn't drive it from 11 October 2024.

Going forward Mr R has said that he stopped making the repayments to the finance agreement in August 2024 as he said he couldn't use the car properly and he was going into debt due to the issues he had with it.

I understand that because of this Marsh terminated the agreement on 8 November 2024. Mr R says the car was collected by Marsh on 19 December 2024. I can see that Marsh said that Mr R would need to pay the outstanding finance amount of £12,069.50.

And Marsh still thinks that they assisted Mr R to the best of its ability and put in place a satisfactory resolution under the Consumer Rights Act 2015 ('CRA'). It was right to terminate the agreement as Mr R had ceased making the repayments.

Because Marsh didn't agree, this matter has been passed to me to make a final decision.

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.

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 was 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 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. 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.

This car was over eight years old when Mr R acquired it and it had travelled around 69,500 miles. 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 Mr R should have been able to use it for a reasonable period before it needed significant work.

Was there a fault with the car

I'm satisfied there was a fault with the car when it was supplied to Mr R. He's provided evidence to show there were engine problems before he purchased it. The dealership and warranty company have also agreed that the car has a fault. There was an EML almost straight away when he acquired the car, and this was not resolved. And Marsh has accepted that the car was faulty in its final response letter and other communications. So, I think it's established that the car had a fault.

Was the car of satisfactory quality bearing in mind the fault

Marsh initially said the faults happened too far on from the point of supply for them to have been present when supplied. But it's clear that Mr R raised the engine coolant problems with the dealership as soon as he acquired the car. And it seems likely that the car already had this fault when supplied to Mr R and this is why it had failed an earlier MOT. So, I'm also persuaded that the car wasn't of satisfactory quality when it was supplied. Again, I think this has been acknowledged by Marsh in its consideration of the complaint – albeit it thinks that the problem was rectified.

The central disagreement in this complaint is the events that took place once the fault with the car was established. Marsh has said that an agreement was reached between Mr R and the warranty company to repair the car, and so it didn't need to take any action here.

But Marsh as the provider of the finance, and under the terms of the CRA, is responsible for the quality of the goods. And so, it needed to ensure that the car was of satisfactory quality, regardless of what other parties to the transaction did. This clearly didn't happen here. The car was of unsatisfactory quality when Mr R received it and remained so throughout the time he drove it. Marsh needed to ensure this wasn't the case and it didn't do this. The fact that other parties to the transaction were involved in a potential repair to the car doesn't absolve Marsh of its responsibility to ensure the car was of satisfactory quality.

And Marsh has said that it wasn't fully aware of the problems Mr R had with the car and he didn't communicate this properly to it. But I don't see how this can be the case. I've seen the communications he has made to all the parties and it's very clear that he was having problems with the car. Marsh has also referred to a conference call with the dealership and the warranty provider about the car issues. Mr R went on to disagree with the resolution Marsh provided and has brought his complaint to the Financial Ombudsman. It isn't credible to say that there was any indication that the problems with the car were resolved.

Even if this wasn't the case Marsh should have actively assisted Mr R with the problems he was having with the car, and it should have put them right. And this would still be the case even if it didn't receive all the communications Mr R said he made.

Marsh didn't do this. As far as I can see, the only significant action that Marsh seems to have made was to terminate the agreement and collect the car. I think this was the wrong thing to do, especially when taking into consideration that our Investigator had already said that Marsh should collect the car and end the agreement at no cost to Mr R. It should have done much more to assist Mr R here.

As this is the case, I've considered what is appropriate compensation. Mr R didn't exercise his right to reject the car within the first thirty days and he agreed to a repair. But the CRA also says that any repair should be performed 'within a reasonable time and without significant inconvenience to the consumer'.

Given all the things I've outlined above, I don't think this happened here and so Mr R should have been allowed to reject the car. However, it has now been collected and so I need to consider what is reasonable for Mr R to have paid when he was able to drive the car.

Mr R was able to drive the car over the year that he had it. Whilst he was having some problems with it, I understand he was able to use it a reasonable amount. But this usage was impaired due to the engine issue. So, I agree that he should have paid lower amounts to Marsh and I think the 20% reduction in the amount he should pay is reasonable.

Mr R couldn't drive the car from 11 October 2024 and so shouldn't have paid any of the finance agreements since this time.

Mr R was inconvenienced by having to have the car looked at by a garage, and by the problems he has had driving it. And I think that the Marsh terminating the agreement and repossessing the car would also have been distressing to him. Especially as this was after a long period when the car wasn't working properly, and he had attempted to get this rectified. I think £500 for the distress and inconvenience he experienced is fair.

Overall, I think that Mr R should receive compensation on the basis that he should have paid 80% of the car finance costs up to 11 October 2024. But no more than this. Marsh should end the contract with nothing further for Mr R to pay than this. If Mr R has already paid more than this the overpayments should be refunded to him. If he has not paid this amount yet, Marsh should enter into a reasonable repayment plan with him. I've detailed this below.

Developments

Marsh and Mr R received my provisional decision. Mr R agreed with what I had said. Marsh didn't reply to my provisional 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.

Marsh and Mr R didn't raise any new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, and for the same reasons.

I still think the car that was sold to Mr R wasn't of satisfactory quality and that Marsh should have ensured that it was repaired or have allowed Mr R to reject it. As this didn't happen, I think he should now be able to reject the car and receive compensation based on this.

As no party to the complaint has raised any further material new issues, I won't comment further.

Putting things right

If it hasn't already done so, Marsh should:

- Pay Mr R £500 for the distress and inconvenience caused by the faulty vehicle.

And also:

- End the agreement, collect the car with nothing further to pay.
- Calculate how much Mr R would have paid if the monthly payments Mr R made between acquiring the car and 11 October 2024 were reduced by 20%.

If Mr R has paid more than the adjusted finance amount (for the avoidance of doubt his deposit should be considered as money he has paid), then Marsh should:

- Refund any overpayments adding 8% simple yearly interest on the refunds, calculated from the date Mr R made the overpayments to the date of the refund[†].
- Remove all adverse entries relating to this agreement from Mr R's credit file.

However, if Mr R has paid less than this adjusted figure, then Marsh should:

- If applicable, recover any debt back from any third-party to whom it may've been sold to or liaise with the debt owner to ensure that all steps are undertaken.
- Arrange an affordable repayment plan with Mr R, while taking into consideration the FCA requirements to treat any financial difficulties Mr R may now be experiencing with forbearance and due consideration.
- When any debt has been fully repaid, remove all adverse entries relating to this agreement from Mr R's credit file.

[†]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 Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr R'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 Mr R to accept or reject my decision before 13 March 2025.

Andy Burlinson
Ombudsman