

The complaint

Mr D complains about the quality of a used car supplied to him by Marsh Finance Limited ("Marsh").

What happened

Mr D entered into a hire purchase agreement with Marsh in January 2024 for a used car. The car was almost ten years old and had covered around 93,500 miles when supplied.

Mr D had some problems with the car fairly quickly, and after it broke down in February 2024, he had it recovered to a local garage for diagnostics. The report showed several faults, and at this point Mr D complained to Marsh and shared the details with the supplying dealership.

The supplying dealership said they would carry out repairs required, and after some delays, in April 2024, Marsh sent their final response letter (FRL) to his complaint, confirming the supplying dealership had agreed to carry out the required repairs, which they felt was a fair resolution.

In late May 2024, Mr D went to collect the car having been told it was fixed, but he wasn't happy with its condition, and believed the repairs hadn't been carried out. Mr D decided to leave the car at the dealership, and in June 2024 brought his complaint to our service.

Meanwhile, Mr D was sent several letters about him abandoning the car, and before our service had chance to begin investigating his complaint, the finance agreement was terminated by Marsh in July 2024 on the basis that he'd abandoned the car.

An investigator here investigated the complaint and partly upheld it. They didn't agree that the evidence provided meant Mr D could reject the car, but they felt that he should be compensated for the period between February 2024 and May 2024, when the car was off the road. They recommended he be refunded for some car hire charges, and other costs involved in diagnosing the faults with the car, but that from the point he was told the car was fixed and he left it at the dealership, they weren't recommending anything further.

Marsh accepted this view, but Mr D didn't and asked for a final decision. He feels that he has provided evidence that the repairs hadn't been carried out, and it isn't fair he can't reject the car now. The case has come to me for 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most

likely to have happened given 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. Mr D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Marsh are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Marsh can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr D to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr D took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Marsh to put this right.

The problem here is, I have no persuasive proof what was wrong with the car after Marsh said it had been repaired. Mr D can't obtain that proof now, as he abandoned the car and doesn't have access to it. Whilst I empathise with him about what's happened, he was responsible for the car and the finance agreement until it was agreed this was no longer the case, and his decision to leave the car wasn't agreed with any other party.

The diagnosis originally obtained by Mr D said the engine would need stripping down to identify the exact problem, and Marsh, through their supplying dealership, said they would repair it. The complaint raised originally was about mechanical issues, stating contaminated oil as the problem. It would not be possible for Mr D to see this hadn't been repaired when he went to collect the car.

He appears to have moved on to concerns about a heated seat, but this isn't what was raised as a complaint originally, and equally, cannot be evaluated via a video, or commentary from someone who isn't a mechanic. I've no evidence of the heated seat not working originally, no evidence of it being complained about to Marsh, and no evidence of the seat being changed, which Mr D claims has happened. I've no evidence of the original seat even, to even be able to see if it has been changed.

Since the investigator here gave their view, Mr D seems to have realised that he must have the car, to be able to prove the faults remain. He's been attempting to track it down via Marsh, but with no success. I'm afraid the fact his agreement has been terminated because he abandoned the car at the dealership likely means he won't have access to it anymore.

I can only answer the complaint that was raised with Marsh originally, back in February 2024. In this, Mr D provided proof of some issues that had been diagnosed, and I think it was correct of Marsh to agree they should investigate and repair these issues, which the supplying dealership said they would.

From 28 May 2024, when Mr D was supposed to collect the car, but chose to leave it at the garage, I'm not awarding him any compensation. There is no persuasive proof of ongoing faults or issues with the car, and it wasn't fair for him to abandon the car. I accept that this was probably through frustration at believing the repairs hadn't been done, but he was responsible for the car and for paying the finance agreement, so he can't just decide to leave the car at the garage in protest.

I would need to have seen proof of things not having been repaired, to allow me to do anything further. This would usually come in the form of a report by a mechanic/engineer, explaining what was the state of the car, any repairs still required, any repairs which had not been done properly, etc etc.

So, I can only consider the circumstances that we have evidence for. At the point he was due to collect the car on 28 May 2024, he was told the car was repaired, and I have no persuasive evidence to say that wasn't the case. At that point, Marsh should have recognised the period he was without the car, and the costs he had incurred which were not fair for him to have to pay. So, I agree with the investigators view partly upholding the complaint, and saying some of these costs should be reimbursed.

I do think the investigator's explanation of what Marsh should pay was a little confusing, so I have simplified it here, but it's the same total amount. Mr D was without a car from February 2024 to May 2024. We could look to refund his monthly payments during this period, but he's also supplied proof that he had to spend £708.20 during this period to hire cars. This breaks down as £112.49 on 12 February 2024, £123.98 on 1 March 2024, £98.43 on 4 March 2024, and £373.30 on 2 April 2024.

It wouldn't be fair to expect Marsh to refund his monthly payments, and to pay for his car hire, as that would be double compensating him. I'm satisfied that the car hire payments are reasonable and not excessive, and they amount to slightly more than at most four monthly payments he might be due as a refund ($£165.85 \times 4$ is £663.40), so I think it would be fairer for Marsh to pay him the £708.20 costs for car hire and not refund any monthly payments for February to 28 May 2024. This is the same amount the investigator recommended, just explained in a more straightforward way. Of course, if Mr D didn't make some or all of the payments between February and 28 May 2024, Marsh can deduct those amounts from this compensation before paying it to him.

Alongside this, Mr D paid £200 on 16 February 2024 to have the broken-down car recovered to a local garage and diagnosed, so I think it would also be fair for Marsh to reimburse him this cost.

I also agree with the investigator that it would be fair for Marsh to pay £150 for the distress and inconvenience caused having supplied Mr D with a car that wasn't of satisfactory quality.

Mr D has also sent receipts and talked about other transport costs including for his whole family to go and collect the car, but I don't think it would be fair to add further costs to amount Marsh has to pay. None of these costs were agreed in advance with Marsh, and the car hire is already more than the equivalent monthly payments would have been for the car, so I am satisfied that a fair resolution here limits the refunds to the car hire, and the costs to recover and diagnose the car.

I also agree it would be fair for Marsh not to put any adverse information onto Mr D's credit file about his payments up to and including 28 May 2024, when the car was off the road.

As the investigator told Mr D, any complaint about how the agreement was terminated, and whether this was done fairly, will have to form a separate complaint to Marsh, which if he

hasn't already, he is entitled to raise with them. All of this happened after this complaint was raised with Marsh, and after it was brought to our service, so can't form part of my assessment of this complaint.

With regards to this complaint, I don't think Marsh have done enough to put things right, so they will need to do the below, which to be fair to them, they have already accepted they will need to do.

Putting things right

I instruct Marsh Finance Limited to carry out the following:

Refund Mr D a total of £708.20 as described above for car hire while the car subject to this agreement was off the road and being repaired.

Refund Mr D £200 for the invoice for the recovery and diagnosis of the problems with his car.

Pay 8% simple interest on these refunded amounts from the date of payment until the date of settlement.

Pay a further amount of £150 for the distress and inconvenience caused due to the faulty car.

Remove any adverse information from Mr D's credit file in relation to this agreement up to and including 28 May 2024.

My final decision

I am upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 June 2025.

Paul Cronin
Ombudsman