

The complaint

Mr W complains about the quality of a car he acquired under a hire purchase agreement with Marsh Finance Limited (Marsh).

When I refer to what Mr W has said and what Marsh have said, it should also be taken to include things said on their behalf.

What happened

In April 2024, Mr W entered into a hire purchase agreement with Marsh to acquire a used car. The car was first registered/manufactured in March 2017. At the time of acquisition, the car had travelled approximately 69,565 miles. The total cash price of the car was approximately £6,899 when Mr W acquired it. The total amount payable under the finance agreement was approximately £10,472. Mr W made an advance payment of £207. The agreement consisted of 59 consecutive monthly payments each of around £171 followed by a final instalment (including Option to Purchase Fee) which was around £181.

Mr W said when he was buying the car, it seemed all fine and in working order. He said the body of the car looked all fine too. But when he drove it home two warning lights came on the dashboard which he said was not a major issue, as it was to do with an indicator and a brake light. Mr W also noticed that the rear wiper blade was broken, but the supplying dealership agreed to cover the cost of these repairs. The other thing Mr W noticed was a chip on the windscreen which he was told would fail on an MOT due to its location. So, the supplying dealership paid for the windscreen issue to be rectified and they also paid for three new tyres.

Later, Mr W said his wife noticed some of the car panels were not in great order, with one showing it was resprayed badly, but the supplying dealership did not agree to carry out any further work as they said the car had an HPI check, and it was all fine. So, Mr W contacted Marsh who first arranged for a car's manufacturer garage to do an inspection and then also arranged for a further independent inspection to be carried out. Mr W said the first inspection found various concerning aspects, among others, panels not repaired to manufacturer's specification, and a bolt missing on the front lower bumper bracket. And, Mr W said, the independent inspection report also noted a lot of similar issues such as the passenger side front bumper, rear bumper, and rear panel had been damaged and poorly repaired.

In June 2024, Marsh wrote to Mr W and said the supplying dealership has confirmed they would not look to cover the necessary repairs or accept return of the car, as they believe the car was of satisfactory quality, and Mr W had an opportunity to inspect it at the time of sale. To determine whether the supplying dealership's view was correct, Marsh arranged for an independent engineer's inspection to be carried out. This inspection was completed on 29 May 2024 and Marsh said the inspection did not identify any issues with the brakes, engine, transmission, and deemed the steering performed as expected for a car of this type of mileage. But they have quoted from the report, where it was indicated the car had undergone previous bodywork repairs, that these have not been done in line with manufacturer or BSI 0125 standards. So, Marsh said the report deemed the car to be fit for purpose and of a satisfactory condition at the point of sale, so on balance of evidence

available to them, they said they are unable to conclude the car was not of satisfactory quality at the point of sale.

Mr W was unhappy with this response, so he referred his complaint to our service.

An investigator at this service issued an opinion on this complaint. The investigator was of the opinion the car was not of satisfactory quality when supplied. The investigator thought Mr W should be able to reject the car and Marsh should refund him all payments for the period from 3 June 2024 to the date of settlement. He thought Mr W should have been able to reject the car once the independent report had been completed, identifying issues the dealer was liable for. The investigator was also of the opinion that Marsh should refund Mr W's deposit/part exchange contribution of £207 and pay Mr W £100 for the distress and inconvenience caused.

Mr W accepted this outcome.

Marsh disagreed with the investigator.

So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 16 October 2024. In the provisional decision I said:

"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 unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr W acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Marsh is the supplier of the goods under this type of an agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says goods will be considered of satisfactory quality where they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr W's case the car was used, with a cash price of around £6,899. It had covered around 69,565 miles and was around seven years old when he acquired it. So, the car had travelled a reasonable distance and it is reasonable to expect there to be some wear to it because of this use. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these

to be replaced. And with second-hand cars, it is more likely parts will need to be replaced sooner or be worn faster than with a brand-new car. But, Marsh would not be responsible for anything that was due to normal wear and tear whilst in Mr W's possession.

First, I considered if there was a fault with the car. I've considered the independent inspection, completed on 3 June 2024. I am aware Marsh believes the car does not have any faults because the independent inspection said they "did not identify any issues with the brakes, engine, transmission and steering performed as expected for the vehicle's mileage." But I do not agree with Marsh as the independent inspection also found all of the below issues with the car:

- "1 Front & rear number plates loose.
- 2 Bolt missing from front bumper lower support.
- 3 Tyre repair canister out of date.
- 4 Paint work defect to N/S of front bumper.
- 5 Molted paint finish to N/S/F wing, masking edge to wing inner edge, plus perpetration rubbing marks beneath paint.
- 6 The aperture gap between the bonnet to upper grill panel is unbalanced.
- 7 Paint over spray noted to N/S headlamp.
- 8 Molted paint finish to N/S/R wing plus perpetration rubbing marks beneath paint .
- 9 Paint run noted to N/S of rear bumper, plus micro blistering.
- 10 Paint over spray in fuel filler housing and on O/S/R lamp.
- 11 Lacquer peeling from O/S/F door panel adjacent to window rubber."

So, I think there are present faults with the car in question. But, just because there are or there were faults found with the car, does not automatically mean the car was not of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr W.

I know Marsh said Mr W should not be allowed to reject a seven-year-old used car that has travelled over 70,000 miles due to its appearance. They said Mr W test drove and accepted the car in the condition it was in. They believe the car is fault free and the issues are all cosmetic. They also said the car passed an MOT, at the point of purchase, so based on the car's age and mileage and the independent report stating the car is road-legal, they do not think it would be reasonable for Mr W to be able to reject the car.

It is true the independent report states the cosmetic repairs have "been completed to standard that has returned the vehicle to a road legal condition". But I've also considered that the independent report indicated that the previous bodywork repairs "have not been done close to manufacture standards or BSI 0125 standards", and given the minimal mileage the car has covered while in Mr W's possession, this lead the engineer of the report to the conclusion that the sales agent should be responsible for any remedial repairs as they believe these were pre-existing conditions at point of sale". Finally, the report also listed the 11 issues, as mentioned above.

I agree with Marsh that, at the point of sale, Mr W would have been able to see some of the 11 issues listed in the report. But I think, most likely as a non-car expert, he would not have been able to spot all the issues listed. He for example, most likely, would not be able to spot a bolt missing from front bumper lower support, plus several of the other 11 issues, especially as Mr W told us he was inspecting the car in a dealership's warehouse, and not under natural light. And yes, considering the car was about seven years old and had travelled a reasonable number of miles, most likely some of the issues alone would not make the car of unsatisfactory quality, but the sheer number of issues do. These include the 11 issues mentioned above plus the broken wiper blade, and the windscreen that would not have passed an MOT due to the chip's location. I say the sheer number of issues does make

the car of unsatisfactory quality because I do not think the price paid reflected the fact that about half of the car had poor cosmetic quality because of the repairs done to it. And considering the age and mileage of the car when supplied, combined with when the faults first became apparent, I think most likely a reasonable person would not consider the car of satisfactory quality when supplied. So overall, I think the sheer number of faults make the car of unsatisfactory quality, and I have carefully thought about what the appropriate remedy in this case should be.

The CRA sets out that, where the supplied goods are not of satisfactory quality, the consumer has 30 days to reject them. The 30 days runs from the day after the date of delivery, but if the consumer agrees to or asks for a repair or replacement the clock stops running during the period of any repair or replacement. And on return of the car, the consumer has the remainder of the 30-day period or 7 days (whichever is the longer) to use the short-term right to reject, if the car is still faulty.

I know Mr W initially wanted the car to be repaired. And the supplying dealership did pay for some initial repairs, such as the windscreen, wiper blade, bulbs, and some tyres. So, I have considered whether it would be fair for Mr W to be able to reject the car at this stage or would a repair be a fair option. But I think considering the specific circumstances of this case, I do not think a repair would be fair and reasonable especially because of the amount of time that has passed, and the amount of work and time that would be needed to fix the 11 issues listed above. So, I think Mr W should be allowed to reject the car. As such, the hire purchase agreement should be cancelled with nothing further to pay and Marsh should collect the car at no further cost to Mr W. Marsh should refund Mr W the advance payment of £207. They should remove any adverse information from Mr W's credit file. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

Marsh, after the investigator's view, said the independent inspection indicated the car had no active mechanical or electrical faults. So, they did not feel they should collect the car at no further cost to Mr W. But as the car was not of satisfactory quality when supplied, it is in line with the CRA that Mr W does not incur any further costs at this stage.

I have also considered Mr W has been able to use the car, so I think it is reasonable he pays for this use. He told our service he stopped using it on 19 June 2024, once he had alternative transport. He told us he felt unsafe in the car. He said he was worried about what else is hiding under the repairs, as he considered about half of the car was affected. So, he said he did not have a piece of mind that the car was fine. I have considered all of this, and I know the car had no active mechanical or electrical faults but, as the car was not of satisfactory quality, I do not think it was unreasonable for Mr W to stop driving the car when he did. So, Marsh should refund any payments he made from 19 June 2024 onwards.

I also considered that this matter has caused Mr W significant distress and inconvenience while trying to resolve it. Mr W had to take the car back for repairs as well as make time for the independent inspection that was carried out on the car. I think, he would not have to do so, had Marsh supplied him with a car that was of a satisfactory quality. Overall, I think Marsh should pay him £200 in compensation to reflect the distress and inconvenience caused.

My provisional decision

For the reasons given above, I intend to uphold this complaint and direct Marsh Finance Limited to:

- 1. End the hire purchase agreement with nothing further to pay;*

2. *Collect the car at no cost to Mr W;*
3. *Refund to Mr W the advance payment of £207;*
4. *Refund any payments Mr W made from 19 June 2024 onwards;*
5. *Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;*
6. *Pay Mr W £200 for the distress and inconvenience caused;*
7. *Remove any adverse information recorded on Mr W's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.*

If Marsh Finance Limited considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."

I asked both parties to provide me with any additional comments or information they would like me to consider by 30 October 2024.

Marsh did not respond.

Mr W responded and said he accepted 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.

I've also considered again my provisional findings. Having done so, and considering neither Mr W nor Marsh had any further comments to make, I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

For the reasons given above, and in my provisional decision, I direct Marsh Finance Limited to:

1. End the hire purchase agreement with nothing further to pay;
2. Collect the car at no cost to Mr W;
3. Refund to Mr W the advance payment of £207;
4. Refund any payments Mr W made from 19 June 2024 onwards;
5. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
6. Pay Mr W £200 for the distress and inconvenience caused;
7. Remove any adverse information recorded on Mr W's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If Marsh Finance Limited considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 November 2024.

Mike Kozbial

Ombudsman