

The complaint

X complains that a car that was supplied to him under a hire purchase agreement with Marsh FM LLP ("Marsh") wasn't of satisfactory quality.

What happened

The parties are familiar with the background to this complaint – so I will only summarise it briefly here.

X entered into a hire purchase agreement with Marsh in September 2023 to purchase a car. The cash price of the car was £20,698. This was funded by a part-exchange payment and deposit totalling £6,000 - and £14,698 in finance. The total amount due under the agreement, including interest and charges, is £28,321.60 to be repaid through 59 monthly instalments of £371.86, followed by a final monthly instalment of £381.86.

In May 2024, X noticed the engine management light was illuminated. He contacted his warranty provider who advised him to take it to a garage for repair. The garage was unable to effect repairs, so it advised X to take the car to the selling dealership (Business H).

Having carried out repairs, Business H advised X that the engine would need to be replaced in the near future as the problem will reoccur.

In or around early July 2024 X contacted Marsh about the problems he was having with the car. It issued a final response letter on 3 July 2024 in which it did not uphold the complaint. In short, Marsh said it was *unable to evidence that the faults reported would have existed at the point of sale*. It went on to invite X to provide an independent engineers report to support his claim.

X paid for an independent inspection to be carried out by a firm I'll call 'Business A'. The inspection took place on 16 July 2024 and the report was generated on 30 July 2024. X shared the report with Marsh who, upon reviewing its contents, determined that its position remained unchanged from that stated in its final response.

Unhappy with this, X referred his complaint to our service on 6 August 2024.

One of our investigators looked into X's complaint and, on 23 October 2024, issued his findings. In short, our investigator said that taking into consideration the contents of Business A's report, the overall mileage and age of the vehicle, the *problems appear to be due to a reasonable level of wear and tear*. As a result, the investigator concluded that the *car was of satisfactory quality when it was supplied*.

Unhappy with this, X asked for his complaint to be passed to an ombudsman 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 reached the same conclusion as our investigator and for broadly the same reasons. I know this will come as a disappointment to X, but I'll explain why I think this is fair outcome in the circumstances.

However, before I do, I would like to make it clear that whilst I've carefully thought about everything that has been said and provided by both parties, I won't comment on everything in my decision. This is not intended as a discourtesy to either party, but it reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Marsh was also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says, amongst other things, that every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

The Consumer Rights Act 2015 says the quality of goods is satisfactory if they 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 vehicle's history.

The Consumer Rights Act 2015 says the 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.

Marsh did not supply X with a new car here. The car was over seven years old and had travelled around 77,500 miles at the point of supply. And while it was certainly not an inexpensive car – the price was a good deal less than it would have been new.

So, I think it is fair to say that a reasonable person would expect that it would not necessarily perform as well as a new car. And there would be a risk – if not an inevitability - of wear and repairs arising from previous use and maintenance by former users. In other words, there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn. I've kept this in mind when considering this matter.

I don't think there's any dispute that X has experienced problems with the car - that has been well evidenced by both his testimony and the information he's sent us, including Business A's inspection report and invoices he received from Business H.

Specifically, Business A's report identified:

- An abnormal knocking noise from the bottom end of the engine consistent with big end bearing failure;
- A rotational noise from the top of the engine consistent with a timing chain deterioration;
- Various fault codes for NOX exceedance, selective catalyst reduction, catalyst below threshold and camshaft position sensor circuit range performance;

- The diesel particulate filter remaining volume was 0%, indicating that it was blocked.

But the simple existence of faults in itself isn't enough to hold Marsh responsible for repairing the car or accepting its rejection. The legislation says that this will only be the case if the fault was present or developing at the point of supply.

Bearing in mind the overall age and mileage of the vehicle - including the additional mileage X has covered in the car in nine months (in excess of 18,700 miles which is roughly equivalent to more than the double an average annual mileage) - my starting point is that it is not immediately obvious that the issues raised are inherent defects as opposed to reasonably expected wear and tear in a car of this age and mileage.

I accept that certain things like issues with the engine are more significant matters to come across and more costly to repair. However, I note they did not occur immediately or before the vehicle had covered a reasonable amount of miles.

What's more, I note Business A's report which states *faults of this nature would be due to wear and deterioration and would not be unexpected on a vehicle of this age and mileage*. In short, the report does not conclude the issue is an inherent fault (which appears supported by the fact X was able to use the car reasonably extensively after supply).

Business A's report appears credible to me and is sufficiently detailed. Further, it includes a statement of truth to the court – so I have given it appropriate weight here. With this in mind, it is difficult for me to make a finding that the problems X experienced with the car were present or developing at the point of sale – such that the car is not of satisfactory quality – in light of said report which finds otherwise. I think this report is persuasive in showing the vehicle was not of unsatisfactory quality at the point of supply.

Considering this, and the factors I have outlined around the age and mileage of the car, it is difficult for me to conclude that the car was not of satisfactory quality at the point of sale.

Durability

Although the evidence points to the issues with the vehicle not being present at the point of sale I have also thought about durability – which is a factor when considering satisfactory quality under the Consumer Rights Act 2015.

Indeed, I note Business A's report leaves open the possibility that the goods *may not have reached a satisfactory standard with regards to durability*.

I have, in coming to my findings, considered this. However, the inspector acknowledges that this is not a conclusion drawn from his expertise as a mechanic – rather an observation based on his experience of dealings with both the courts and our service. And I think this is a relevant consideration when determining how much weight to place on this.

As our investigator noted, each case turns on its own facts. And, in the circumstances of this particular case, I don't think there is sufficient persuasive evidence that the goods are not reasonably durable. I say this because the issues look to be down to overall wear and tear from extensive use of a second-hand car.

And unless the dealer specifically sold the car as having certain components replaced for new ones – which the available evidence doesn't point towards - I don't think there is a breach of contract in this regard.

Looking at all of this in the round, I'm not persuaded that X's car was of unsatisfactory quality when supplied. So, I can't hold Marsh responsible for the problems X has experienced with it.

I know my decision is likely to disappoint X. However, he does not have to accept it and may wish to seek appropriate legal advice and pursue matters through a more formal court route.

Finally, I note X has told our investigator that he is struggling to keep up with the monthly repayments. I'm sorry to hear about this. I can see our investigator has signposted X to various organisations who may be able to provide some assistance. X may also wish to speak to Marsh who, as our investigator noted, are obligated to treat X with forbearance and due consideration if he is experiencing financial difficulty.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 17 July 2025.

Ross Phillips
Ombudsman