

The complaint

Mr D complains about a car he acquired through a Hire Purchase agreement with Marsh Finance Limited ("Marsh"). Mr D had problems with the car and says it isn't fit for purpose.

What happened

Mr D acquired the vehicle in December 2023. When it was supplied it was roughly seven years and eight months old, had covered 94,204 miles and cost £8,194. In March 2024, the car broke down on the motorway. A recovery vehicle collected the car, carried out a diagnostic test and dropped it off at the dealership, costing Mr D £80.

Mr D complained to Marsh that the issues highlighted by the diagnostic meant the car he was provided with was not of satisfactory quality. The diagnostic found a number of issues related to fuel pressure and a number of more minor issues connected to electrical components or software.

When Marsh responded to the complaint, it said the dealership had appointed a garage to inspect the car. The garage said they initially replaced the starter motor and fuel pumps, but this led them to inspect the fuel tank where they said it was evident it was contaminated with petrol. As this indicated the car had been used with the incorrect fuel, they couldn't find any issues that would've been there at the point of supply. They concluded the car was of satisfactory quality and said Mr D had to now collect the car.

Mr D referred the complaint to our service. The investigator that initially reviewed the complaint concluded that Marsh needed to prove the car was of satisfactory quality because the fault happened within the first six months.

They said the test carried out to establish that petrol had been used in the diesel car wasn't reliable enough. And so there wasn't enough evidence to say Mr D caused the fault himself. Marsh was therefore liable for the repair of the car. But with one attempt at repair having already taken place, it would now be fair for Mr D to be able to reject the car.

They didn't think Marsh was responsible for Mr D's loss of earnings as a result of the car not working. But they did recommend the agreement end, along with the refund of payments, some compensation for being without a car for so long and refunding what Mr D had to pay to have the car towed.

Mr D accepted the investigator's view, but Marsh did not.

Marsh said the car having completed 8,000 miles since purchase indicated the issue at hand would not have been present or developing at the point of supply. The fact the inspector could smell petrol in the diesel tank tallies with the fact the car experienced a sudden fault unconnected to any issues at the point of supply.

Marsh asked for the case to be reviewed by an ombudsman and I issued a provisional decision not upholding the complaint. My provisional decision was as follows:

'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 the complaint.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my provisional decision.

Mr D acquired the car through a Hire Purchase agreement with Marsh. Under this type of arrangement, Marsh became the supplier of the car and is responsible for any issues with the quality of goods provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

In this instance Mr D acquired the car in December 2023 and it cost £8,194. At this point the car was seven years and eight months old and had travelled 94,204 miles. It's reasonable to expect that this level of age and use would mean the car may well have signs of wear and tear that would not be expected on a new, or near-new, car. This previous use will have been reflected in the price of the vehicle which would've been substantially lower than the original cost when brand new. So this level of wear and tear, and previous use, must be taken into account as part of the overall consideration of satisfactory quality.

The issue that brought about this complaint came to light when the car broke down on the motorway in March 2024. It's said that errors came up and white smoke came from the bonnet. This happened roughly three months after Mr D acquired the car. By this time the car had covered 103,032 miles.

The CRA does explain that it can be presumed that goods that are not of satisfactory quality within the first six months of ownership are taken not to have been of satisfactory quality at the point of sale. However that doesn't automatically mean if any issue arises within that time, then the issue was present at the point of sale and the supplier is therefore responsible for them.

It's clear in this case that Mr D got a significant amount of use from the vehicle during those first few months, having driven 8,828 miles since purchase. This level of use needs to be factored into the assessment of satisfactory quality.

In addition the assessment of satisfactory quality has to incorporate the fact the car had already covered 94,204 miles at the point of supply. In these circumstances it would be reasonable to expect the car would not be as durable or reliable as a new - or even moderately used - car. And issues with the car would reasonably be expected to happen much sooner than with a car that hadn't been used as considerably.

With that being the case, I also need to consider the substantial mileage the car accrued since it was supplied. While this issue happened after only a few months, in this time it had been driven 8,828 miles.

This level of use is significantly greater than average, and would therefore cause a significantly greater degree of wear and tear. And, given the age and previous use of the car, this wear and tear would have had an even greater impact. But that's not the same thing as not being of satisfactory quality.

I understand Mr D didn't have the car for all that long. However it was a car that was several years old, had a substantial mileage at the point of sale and its mileage since was significantly above average.

I would not expect a car with this level of use prior to sale to be able to cover almost 9,000 miles if it wasn't in reasonable condition at the point of sale. As such I would not conclude the issues complained of here happened prematurely given the nature of the goods provided.

The focus of the complaint has been a potential misfuelling issue. However I don't think it's unreasonable to conclude in any event the car was of satisfactory quality, given this issue only arose after the car had covered 103,032 miles, 8,828 of which Mr D covered since the car was supplied.

Even if I was persuaded that the vehicle had prematurely failed, I would have to take into account the following points. Some of these have not been explored by our investigator and I would invite the parties to comment upon these before I issue my final decision.

We've been provided with an inspection report carried out by a garage on behalf of the dealership. This report says after trying to replace the starter motor and fuel pumps, there was still an issue with the car and this led to them inspecting the fuel tank. They said they could 'clearly smell petrol inside the tank...' and they could 'confirm the fuel is contaminated'.

Mr D has said he has evidence from the garage to say no work was carried out on the vehicle whatsoever. This may be because Mr D spoke to someone who wasn't in the know, or because the work was carried out after his enquiry. However I can only conclude this report is from the garage in question and I have no reason to doubt that.

Part of our investigator's initial reasoning was that it would've been unlikely for the car to have been able to cover over 8,000 miles if it had been misfuelled during that time. Mr D provided receipts to evidence diesel fuel he'd previously bought. Marsh disagreed and said they thought this indicated Mr D was able to use the car without issue for over 8,000 miles – and it was only then the issue arose after it had been misfuelled. Our investigator thought it would've been unlikely that after all that use, Mr D would've then made the mistake of filling up with the wrong fuel.

Looking at the initial roadside report, Mr D is not noted as the driver of the car and he did not sign the roadside report. Mr D's testimony does not explicitly say he was present and none of the evidence I've seen shows Mr D was present when the car broke down. It's possible the other person was the RAC member, but I think it's likely Mr D would have signed the

report if he was the driver or as the keeper of the vehicle if he was present. If he wasn't the driver, then this would undermine the argument that misfuelling the car was unlikely given his consistent experience of fuelling the car correctly.

The impact of misfuelling a diesel car with petrol would be felt fairly quickly. If Mr D's car was misfuelled it would likely have happened very shortly before the car broke down.

Mr D had provided receipts showing previous diesel purchases. The most recent one was from 17 March 2024 where 25.99L was purchased. This was only three days before the car failed, but this was a relatively small transaction. While the receipt of 17 March shows the car was correctly fuelled on that date, it doesn't confirm what happened after that date. And from what I can see Mr D was not driving the car at the time of failure.

Additionally, based on the average daily mileage since acquiring the car, and the fact the breakdown occurred on the motorway, I cannot rule out the fact, the car may well have required refuelling subsequently at some point between 17 March 2024 and the car breaking down. The issues highlighted in the diagnostic are almost all fuel-related and seem to be consistent with what might happen following the misfuelling of a diesel car.

However, putting that issue aside, and based on the information I have, I think the car ultimately wouldn't have been able to cover the mileage it had if it wasn't of satisfactory quality at the outset.

If I wasn't persuaded of that and I was required to consider the specific issue that led to the car breaking down, I think there's significant doubt around the misfuelling issue. The evidence I've seen is consistent with the car having been misfuelled.

While noting what Mr D has said and provided about fuelling the car correctly with diesel, the evidence from the engineer does indicate the car had been misfuelled. On balance, I cannot rule out that the car was misfuelled.

In any event, as I have already set out above, Mr D had been able to use the car for 8,828 miles without issue since acquiring the car. Had the car not been of satisfactory quality when supplied, I consider it more likely than not that any underlying issues would have been apparent sooner and Mr D would not have been able to travel the 8,828 miles. And because of this, I am not persuaded Marsh is now responsible for issues Mr D has experienced with the car.

I can see Mr D was frustrated by the complaints process and having to chase up on progress. I appreciate that given the circumstances he found himself in, he would've been anxious to find out what was happening with his complaint. I understand this will be disappointing for Mr D, but given my provisional findings, it follows that I wouldn't hold Marsh responsible for the impact this has had.'

Responses to the provisional decision

Marsh didn't put forward any further arguments. Mr D disagreed with the provisional decision.

He said I had wrongly assumed he wasn't present or driving when the car broke down. He shares a breakdown policy with his partner. He said if he'd misfuelled the car, he wouldn't have been able to complete a 200 mile journey the day before. And the fact a small fuel transaction took place a few days before doesn't matter as he's evidenced that a full tank had been purchased.

He said he raised concerns about the car being on the road for two months since it was returned to the garage. He said he'd passed the garage many times since and the car has always been parked there. He said when the car was fixed, and he was told to collect it, it had a flat battery which indicates that no work had been done.

He raised doubts about the mechanic determining petrol contamination by its smell, as this would've been noticed when replacing the fuel pumps. He said as the only driver of the car he knows the difference between the petrol and diesel nozzles and would not have mixed them up.

It now comes to me to issue 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 reviewed all the information and the responses to the provisional decision, I've reached the same outcome and for much the same reasons.

I've outlined in the provisional decision what I'm required to take into account, how I'll come to a decision and the key legislation in this case. I'll lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

In the provisional decision, I said the CRA says that goods that aren't of satisfactory quality in the first six months are taken to not have been of satisfactory quality when they were supplied. But that doesn't mean that if there's a fault, that automatically makes the car not of satisfactory quality.

That can mean a fault can arise with the car and it still be of satisfactory quality in appropriate circumstances. In this instance the surrounding circumstances are that the car was supplied when it was seven years and eight months old and had already travelled 94,204 miles. And while you may not necessarily expect a significant fault to immediately arise, in this case the fault arose after nearly 9,000 miles had been travelled.

Had this been a brand new car, you most likely wouldn't expect an issue to arise after the car had been used for 9,000 miles in total. However in this case the nearly 9,000 miles of use was on top of over 94,000 miles which had been covered prior to supply.

I don't think it's reasonable to expect older goods, which have been used a significant amount, to wear in the same way and at the same rate as newer, less-used goods.

In my provisional decision I concluded, *"I would not expect a car with this level of use prior to sale to be able to cover almost 9,000 miles if it wasn't in reasonable condition at the point of sale. As such I would not conclude the issues complained of here happened prematurely given the nature of the goods provided."*

The focus of the complaint has been a potential misfuelling issue. However I don't think it's unreasonable to conclude in any event the car was of satisfactory quality, given this issue only arose after the car had covered 103,032 miles, 8,828 of which Mr D covered since the car was supplied."

I haven't been provided with any further arguments or evidence to counter this point and this remains my decision. I said that this was the key finding in my decision because it ultimately meant the car wasn't of unsatisfactory quality, even though it now had a fault.

I also explained in my provisional decision that even if I didn't think that was the case, there were doubts around the reasons the investigator thought the complaint should be upheld. I invited both sides to comment on the points I'd made in relation to that.

Mr D said he was present when the car broke down and was driving the car. He said his partner had the breakdown policy, but he's also covered by it. I acknowledged this possibility in the provisional decision. I thank Mr D for the further submissions he's made. No further documentary evidence was provided to support that Mr D was present, though what he says is plausible. But even if I was persuaded he was driving the car when it broke down and he had not misfuelled the car, for the reasons set out, this would not however change the outcome as I've found the car was of satisfactory quality in any event.

Mr D questioned the relevance of the small fuel purchase three days before the car failed. This is the latest fuel purchase we've been provided evidence of. As it was small transaction I thought it likely the car would have been filled again after that. Mr D said he travelled 200 miles the day before the car broke down, so it's even more likely that the car would have required subsequent refuelling.

However, as outlined in the provisional decision, we don't have evidence to show what happened after the small fuel transaction took place. I remain of the opinion that the engineer would have been able to diagnose misfuelling in the way they did. And we have no other compelling evidence to exclude the possibility of misfuelling.

Mr D raised concerns about the car being parked on the road and no work having been carried out on it. In his original complaint he said the garage had denied having done anything to the car whatsoever.

While I acknowledge what Mr D has said, and I have no reason to disbelieve that he's seen the car on the road, I have persuasive evidence to show the car was inspected by the garage. I have no reason to doubt the report provided and think the engineer would have been able to determine the fuel contamination in the way they did.

That's not to say the car has been fully repaired and is ready to be driven. I don't have an up-to-date account of the condition of the car. I haven't seen anything to indicate it's been repaired, however given the dispute I don't think Marsh would have paid for or authorised repairs. Nor do I think the garage would have completed repairs before they knew who would pay for them. If Mr D has organised or paid for repairs then this is something he would have to take up directly with the garage.

Ultimately this car failed after having covered over 100,000 miles. Aside from normal wear and tear, the car's components would have been well into their expected lifespan at the point Mr D acquired it. The significant use Mr D subsequently got from the car meant significant extra wear on these components. The fact a fault has arisen after that is not in itself unreasonable and might reasonably be expected when purchasing a car of this age and use.

In the provisional decision I said I would not expect a car with this level of use prior to it being supplied to be able to cover almost 9,000 miles if it wasn't of satisfactory quality at the point of supply. Where Mr D covered over 8,800 miles – it would be hard to conclude that the goods weren't of satisfactory quality or sufficiently durable in those circumstances.

As such I would not conclude the issues complained of here happened prematurely given the nature of the goods provided. I haven't been provided with evidence to persuade me otherwise. As I've found the car was of satisfactory quality when it was supplied, because of the considerable use Mr D was able to get from the car in the circumstances, and the

significant mileage the car had when Mr D acquired the car, any repairs now needed aren't Marsh's responsibility.

My final decision

My final decision is that I don't uphold Mr D's complaint against Marsh Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 February 2025.

Scott Walker
Ombudsman