

The complaint

Mr G complains that a used car he acquired through a hire purchase agreement financed by Marsh Finance Limited ('MFL') is of unsatisfactory quality.

What happened

In November 2022 Mr G took out a hire purchase agreement to cover the cost of a used car. The car cost £8,495. It was almost ten and a half years old and had around 53,000 miles on the odometer.

Mr G said the car broke down the day he collected the car. He got a mechanic to come out and inspect it. New coils were fitted, and while this seemed to resolve the issue, it recurred the next day. Mr G's mechanic ran further tests and said the injectors might be faulty. He recommended Mr G take the car to a garage for further investigation.

Mr G returned the car to the supplying dealer, who swapped the injectors free of charge. Mr G said the repair seemed to resolve the misfire issue, although the car struggled with its biting point and stalled often because of this. And Mr G said the car would take longer to start around every tenth drive.

On 31 October 2023 the car broke down while Mr G was travelling on a dual carriageway. The car was recovered to a garage. The first garage said the problem was related to the injectors and they noted some problematic wiring. As the first garage couldn't help, Mr G took the car to another garage, who confirmed all four injectors were faulty, along with two spark plugs.

Mr G instructed an independent expert to inspect the car. The report concluded that the engineering evidence wouldn't support the fault being pre-existing at the point of supply given that Mr G had been able to cover around 10,000 miles in the car. But it acknowledged that Mr G had told the expert that the first fault appeared within the first five miles, and so, upon further investigation, it might be determined that the initial fault was present when the car was supplied.

Mr G complained. MFL investigated and issued their complaint response on 20 December 2023. They said that based on the expert report the faults weren't deemed to have been present at the point of supply, and so they didn't uphold Mr G's complaint. Mr G contacted our service for help.

In early January 2024, Mr G took the car to another garage, who carried out further testing the expert report had recommended. Ultimately, the garage recommended that all injectors, ignition coils and spark plugs as well as the timing chain and VANOS be replaced. Mr G decided to go ahead with some of the repairs, excluding the timing chain and VANOS.

Our investigator issued her view of the complaint in early March 2024. She thought the repair undertaken by the supplying dealer in November 2022 had failed, causing the misfire and ultimately stretching the timing chain prematurely. For that reason, our investigator said the car wasn't of satisfactory quality at the time of supply and she recommended the

complaint should be upheld. She ultimately recommended that MFL should allow Mr G to reject the car and reimburse him for the cost of the expert report and the repairs. She also set out how MFL should compensate Mr G for impaired use/loss of use of the car and the trouble and upset caused.

Mr G agreed with the investigator's findings, but MFL did not. They said Mr G hadn't contacted them about the problems with the car until December 2023, over a year after the agreement commenced. MFL added that the independent report concluded the car wouldn't have been able to cover the mileage it did if the fault was present or developing at the point of supply. They pointed out the car had passed an MOT six months after supply, which they thought was further proof the car was of satisfactory quality at the time of supply. And it was reasonable to expect mechanical faults given the age of the car.

MFL asked for an ombudsman to consider the complaint – and it came to me. I issued a provisional decision on 9 December 2024. In that I said:

"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'm inclined to reach a different outcome to that of our investigator. I'll explain why. In doing so I'm going to focus on what I think is the key issue and the crux of Mr G's complaint. This reflects the informal nature of our service.

The Consumer Rights Act 2015 (CRA) is relevant here. It says, amongst other things, that the trader, (in this case MFL), needs to make sure that goods are of satisfactory quality at the point of supply. When considering what amounts to satisfactory quality, the standard applied is that of a 'reasonable person'. In other words, what a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant factors. In cases involving a car, I think it's likely that the relevant factors a court would take into account might include things like the age and mileage at the time of supply.

Mr G acquired a used car that cost £8,495. It was just over ten years old and had around 53,000 miles on the odometer. I think a reasonable person would expect a car of that age and mileage to have more wear and tear than a new car. And that it may need repair or maintenance sooner than a newer car would.

So, what I need to consider here is whether the car was of satisfactory quality at the time it was supplied. There are two main points at which Mr G says the car developed a fault, so I've considered these in turn.

November 2022

Mr G said the car broke down in a roundabout on the day he acquired the car. The car was returned to the supplying dealer, who carried out some repairs, including swapping the injectors free of charge. Repair was one of the rights available to Mr G under the CRA if the car was of unsatisfactory quality so his rights under the CRA were broadly met at the time.

I've considered what MFL said about Mr G not getting in touch with them until the car broke down for the second time. I think it's more likely than not that MFL would have advised Mr G to contact the supplying dealer to arrange for an inspection and repair, had Mr G contacted MFL when the car first broke down. That's what Mr G did following advice from his mechanic, and so it doesn't appear that MFL were caused detriment by Mr G not calling them directly.

October 2023

Following the previous repairs Mr G was able to use the car until October 2023 before it broke down again. According to the expert report Mr G commissioned, the car had covered 63,917 miles at this point. This means Mr G had the car for almost a year and driven just short of 11,000 miles.

The car was recovered to a garage and Mr G paid for an independent expert to inspect it. He's provided us with a copy of the report dated 9 November 2023, which I've considered carefully. It said that:

- The engine started with some difficulty and exhibited a misfire*
- Further investigation into the cause of the misfires would be required, so the expert's findings are preliminary*
- The expert recommended that the engine condition be checked before any further diagnostics are carried out, including compression testing and cylinder leakage testing.*
- The ignition system and fuel system should also be checked.*
- Misfires shouldn't be ignored as the loading to other components is abnormal and often causes unexpected results and expensive consequential damage can develop if not attended to promptly.*

The expert concluded that:

"Based on the elapsed time and mileage covered since sale, the engineering evidence will not support the condition was pre-existing after 10,000 miles of further use. However, we note that it has been suggested that this condition was noted within the first 5 miles of sale, if this can be confirmed then clearly whatever the condition has been caused by, which will not be known until further investigation takes place, will have been developing at the point of sale."

MFL said, in summary, that the independent expert confirmed that the car wouldn't have been able to do the mileage it did had the fault been present or developing at the point of supply. But MFL don't appear to have considered the latter part of the expert's conclusion – that it's possible the problem would have been developing at the point of supply if further investigation confirms what Mr G said about the car breaking down the day he picked it up.

Mr G sent us screen shots of messages he sent to the supplying dealer and the finance broker in November 2022. Our investigator has shared them with MFL, but for completeness, Mr G said the car needed to be recovered as it was misfiring, wouldn't rev and it was cutting out. He added that his mechanic ran diagnostics again and said all four cylinders and all coils were failing. The supplying dealer agreed to take the car in to fix it.

There's little information on what happened next. Mr G sent us with an invoice from the supplying dealer, which shows that injectors were swapped over free of charge. It's not clear if the supplying dealer carried out any of its own investigation or diagnostics to establish the reason for the misfire. But I think the evidence is enough for me to conclude that the car had an existing fault at the time of supply. And as set out above, the independent expert said that if a fault was present at the time of supply, then the root cause of this will have been developing when Mr G acquired the car.

Following the expert's recommendation Mr G took the car to a specialist garage for further testing. In summary, the garage's diagnostics showed:

- On rough running they found multiple cylinder misfires*
- On smooth running all injectors were well outside the spec of +200 to -200*
- Injector 1 looked burned and injector 4 had the highest out of spec reading at +965, so they were swapped first, but the car was still running rough*
- Once injectors 2 and 3 were swapped and adaptations were reset the car ran better, but it was underpowered, and it misfired when revving.*
- Readings of the cam and crank coloration at idle speed suggested that the timing chain was stretched, although the engine would need to be stripped to allow further mechanical checks to confirm this.*

Based on what I've seen it appears that the injectors the supplying dealer used to repair the car in November 2022 failed prematurely. The specialist garage found the injectors to be significantly out of spec, meaning they weren't delivering fuel correctly. Mr G's mechanic and the independent expert noted the car was misfiring. Misfires are simply the fuel being ignited either too early or too late. This places additional strain on the engine internals.

Injectors typically last between 50,000 and 100,000 miles. Mr G had covered less than 11,000 miles before the injectors were faulty again. Based on the evidence I've seen thus far I'm inclined to say that the repair completed in November 2022 wasn't successful and didn't resolve the underlying issue that was causing the car to be of unsatisfactory quality when supplied. It follows that I intend to uphold Mr G's complaint.

Remedy

Mr G said he wants to reject the car and our investigator agreed that he should be allowed to do so now. When considering how to put things right I've kept in mind the overall circumstances of the complaint, including the various reports and diagnostics I've been provided with.

Section 24(5) of the CRA says "a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." The CRA allows the trader – in this case MFL – one chance at repair. Importantly, this is a single chance – in other words, it's not one chance per fault, or one chance per party. I've set out above that I consider it more likely than not that MFL would have referred Mr G back to the supplying dealer had he contacted them in November 2022.

The supplying dealer repaired the car, and so I'm satisfied MFL have had their one chance at repair. I've already explained why I'm inclined to say the repair failed. So, under the relevant legislation, I think MFL ought to have allowed Mr G to reject the car when he complained in December 2023. That said, I don't think I can fairly direct MFL to allow Mr G to return the car now. I realise this'll be disappointing news for Mr G, so I'll explain why.

The expert's report in November 2023 set out the dangers of continuing to drive a car in spite of engine misfires, including that engine component material failure would inevitably develop. I can see Mr G only covered four miles from November 2023 to January 2024, when he took the vehicle to the specialist garage for further testing. So, it appears Mr G understood the severity of the car's condition and the importance of not using it until further testing had been conducted.

Mr G sent us the specialist garage's diagnostic findings, their quote and the invoice for the work Mr G instructed them to undertake in January 2024. The garage recorded the car's mileage as 63,921. I note the invoice includes the following advisory:

"High pressure fuel pump regulator disconnected to make run smooth. Will require either high pressure fuel pump or timing chain to rectify this fault. So further investigation is required. Customer has requested we fit injectors and spark plugs to get car to run so they can use the car. Car is being taken with a known fault and engine light still on."

Mr G told us that he considered the repair a temporary fix so that he could drive the car. He said the garage explained that the increased fuel consumption was because the engine had to work harder, as it needed more extensive work. Mr G stopped using the car recently after the brakes failed. The mileage as of mid-November 2024 was 70,228.

I've thought about this carefully. Based on what I've seen it appears that Mr G was able to cover over 6,300 miles in the car in ten months. He did so knowing the car needed additional work and that not undertaking that work could lead to extensive damage – which is what appears to have happened now. I don't think it would be fair for me to require MFL to take back the car now with the additional damage that was caused since the January 2024 repair.

I can't be sure what MFL would've done with the car had they allowed Mr G to reject it in December 2023. Mr G provided us with a quote for the repairs the specialist garage said were needed in January 2024. This came to £3,949.44. I accept that it's possible that MFL might have been able to repair the car at a lesser cost. It's equally possible though that – once repairs had commenced – further problems would have come to light. Overall, I'm inclined to say that MFL should refund Mr G for the repairs he's paid for and make an additional payment to cover the additional work the specialist garage said should be done in January 2024.

Given what Mr G has said about the current condition of the car, I understand that the repairs now required to get the car to run again will likely cost Mr G more than the original quote. But, as set out above, both the expert report and the specialist garage's advice put Mr G on notice that continued use of the car would result in further damage. As he chose to use the car with a known fault, I won't ask MFL to contribute to any additional repairs now required.

From the evidence I've seen Mr G has been getting regular use from the car for most of the time he's had it – so I think it is fair for MFL to retain the majority of his monthly rentals. However, Mr G's driving experience has been impaired by the issues he has experienced. So, I think he should be refunded 20% of the monthly rental payments he's made to MFL, except for three of the months.

Mr G didn't use the car between 31 October 2023 (when it broke down and was recovered to a garage) and 26 January 2024 (the date he paid for the repairs the specialist garage undertook). This amounts to almost three months loss of use and I think it's unreasonable for Mr G to pay for use that he hasn't had from the car. MFL should therefore refund the equivalent of three months repayments to the hire purchase agreement, in addition to the 20% for the remaining months.

I intend to direct MFL to pay interest on the refunded amounts from the date of each payment until the date of settlement. For the three full months that need to be

refunded MFL should assume these were November 2023, December 2023 and January 2024 – the period the car was in the garage. Interest should be calculated at 8% simple per year.

Being supplied with a car that wasn't of satisfactory quality resulted in multiple trips to the garage, and this will have caused Mr G some distress and inconvenience. All things considered, I think MFL should pay Mr G £200 to compensate him for the upset caused."

Mr G responded and said, in summary:

- If it was agreed the car wasn't of satisfactory quality when it was supplied, he shouldn't be required to keep the car.
- He was desperate to have a working car, so he paid for the repairs he could afford at the time. He's now being punished for not being able to afford all the repairs that were needed.
- It was unreasonable to expect Mr G to have the money to fund the repairs required without a guarantee that this could be recovered, as well as an alternative vehicle for the time the car was not usable.

MFL also responded. They said:

- They don't understand why they should reimburse Mr G for repairs he completed without their consent.
- There's insufficient evidence to confirm that the faults would have been present or developing at the point of supply.
- It's not correct to say that MFL had its right to repair as the complaint was only raised in December 2023.

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 acknowledge that MFL first became aware of problems with the car when Mr G complained in December 2023. And arguably Mr G ought to have contacted MFL as owners of the car when it first broke down. He chose to contact the credit intermediary and the supplying dealer instead. The dealership took the car in for repairs, and this appeared to resolve the issue – so there was no need for Mr G to then contact MFL.

I explained in my provisional decision that I don't think Mr G's course of action caused any detriment to MFL. That's because I consider it more likely than not that – given how soon the car broke down after it was supplied – MFL would have referred Mr G to the dealership to have the car inspected and to deal with any repairs. In other words, they'd have delegated the repair (and thus their right to repair).

I don't agree with MFL that there's no evidence the fault was present or developing at the point of supply. The independent expert report noted that the condition was first reported within five miles of Mr G picking up the car – and said that, if that could be proved, then *"clearly whatever the condition has been caused by, which will not be known until further investigation takes place, will have been developing at the point of sale."*

The evidence I've seen – and which we've shared with MFL – shows the car exhibited misfires shortly after it was supplied to Mr G. The supplying dealer carried out a repair, but this only temporarily fixed the problem. Given how quickly the fuel injectors failed again (after

around 10,000 miles) I think it's likely that there was an underlying problem that hadn't been addressed by the supplying dealer. And I think this makes it more likely than not that the problem was present at the time of supply.

As the trader MFL is responsible for the satisfactory quality of the car. Based on the available evidence I find the car wasn't of satisfactory quality at the point of supply, and thus MFL need to put things right for Mr G. In cases where the trader already had its right to repair, I'd usually say the consumer should be able to reject the car. And I understand Mr G feels strongly that he should be allowed to do so now. He's explained he urgently needed a working car, and he couldn't afford the full repair in January 2024.

I can understand that Mr G felt he was left in a difficult position in December 2023 when MFL didn't uphold his complaint. He was paying monthly rentals on a car he couldn't use. And he was faced with a significant bill for the required repairs, which he might not be able to recoup later. But I don't think that Mr G's only option here was to complete enough repairs to get the car running again, even though it would still have a known fault.

I say this because Mr G couldn't use the car for around three months after it broke down in October 2023. It appears that he made alternative arrangements to stay mobile during that time. I'm aware Mr G has a young family and making alternative arrangements such as using taxis and public transport would likely have been less convenient than having access to a car. But driving a car with a known fault would eventually cause further damage to the car, which would render it unusable again. I'm persuaded that Mr G understood this risk and decided to go ahead regardless. For that reason, I can't fairly say he should now be able to reject the car.

Having considered the arguments by both parties, my decision remains unchanged for the reasons set out above.

Putting things right

I uphold this complaint. MFL should now:

- refund Mr G £2,552.67 he spent on repairs in January 2024*;
- pay Mr G £1,396.77 for the remainder of the repairs required in January 2024;
- refund the monthly rental payments Mr G made in November 2023, December 2023 and January 2024;*
- refund 20% of all other rental payments up until 13 November 2024 (which I understand to be around the date Mr G stopped using the car altogether);*
- pay a further amount of £200 for any distress and inconvenience that's been caused due to the faulty goods;

*MFL should pay 8% simple yearly interest on these amounts from the date of payment until the date of settlement. If MFL considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr G how much they've taken off. They should also give Mr G 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 reason given, I uphold Mr G's complaint and direct Marsh Finance Limited to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or

reject my decision before 7 February 2025.

Anja Gill
Ombudsman