DRN-5412056

The complaint

Miss M is unhappy that a car supplied to her under a hire purchase agreement with Marsh Finance Limited was of an unsatisfactory quality.

What happened

On 28 August 2023, Miss M was supplied with a used car through a hire purchase agreement with Marsh. She paid a £1,500 deposit and the agreement was for £3,390 over 42 months, with 41 monthly payments of £107.50 and a final payment of £117.50. At the time of supply the car was around ten years old and had done around 61,600 miles.

On 20 February 2024 a warning light came on. Miss M contacted a local garage to inspect the car, but they couldn't do this inspection until 5 March 2024. The inspection identified 92 faults, which the garage believed were likely to have been present at the point of supply.

Miss M complained to Marsh, but they didn't uphold her complaint. They said that, because the faults with the car had occurred more than six months after the date of supply, it was for Miss M to prove the car wasn't of a satisfactory quality when it was supplied. And they said Miss M should arrange to have the car inspected by an independent engineer.

Unhappy with this response, Miss M brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the fault with the car occurred within the first six-months, so it was for Marsh to show the car was of a satisfactory quality at the point of supply, and not for Miss M to prove the opposite. The investigator asked Marsh to arrange for the independent inspection, which they initially refused. However, Marsh eventually agreed to do this, but delayed in doing so. As such, the investigator issued their opinion based on the evidence that was available.

The investigator said the report from the garage who inspected the car for Miss M had confirmed there were a number of faults with the car, and they believed these faults were present when the car was supplied. As Marsh hadn't provided any evidence to dispute this inspection report, and given the delays in Marsh taking any action, the investigator said that Miss M should now be allowed to reject the car. They recommended that Marsh refund the deposit Miss M paid; refund all the payments made since 20 February 2024 (the date Miss M says she stopped using the car); cover any costs Miss M has incurred due to the car being stored at the garage who inspected it; and pay her an additional £250 for the distress and inconvenience she'd been caused.

Marsh didn't agree with the investigator's opinion, and they provided an independent report on the car. This report was dated 17 July 2024. The independent engineer said that the fault codes had been cleared by the garage, and an EGR valve had been replaced, but an engine warning light came on during the test drive, and this required further investigation.

The engineer also said that the clutch was almost worn out, and the brakes required *"imminent investigation and rectification."* However, these were the result of age-related wear and tear, so weren't Marsh's responsibility.

Based on this report, the investigator changed their opinion, and said that Marsh didn't need to do anything more. Miss M didn't agree with this change of opinion.

I issued a provisional decision on 26 February 2024, where I explained my intention to uphold the complaint. In that decision I said:
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. Miss M 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 confirm 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. So, if I thought the car was faulty when Miss M 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.

In this instance, it's not disputed that there are current faults with the car. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll need to consider what remains in dispute – whether the faults with the car were present when the car was supplied to Miss M.

I've seen a copy of the report following the inspection at the local garage. This is dated 5 March 2024, and records the car had travelled 66,926 miles – around 5,326 miles after it was supplied to Miss M. This report details multiple fault codes and the garage concluded that "due to the nature of some of the faults they would not appear straight away, and only after a period of driving. So in my opinion the car had problems before [Miss M] bought it. The [supplying dealership] may have had the lights cleared and sold the car knowing that by the time the faults show again it wouldn't be there [sic] problem, and the customer would then go down the warranty route."

This report an opinion has been provided by a qualified mechanic working at a VAT registered garage that maintains fleet cars. As such, I see no reason not to accept this report and opinion as a fair and accurate reflection of the car supplied to Miss M at the time.

In an email dated 27 March 2024, the garage also confirmed that they would clear all the fault codes so the car could be tested for an MOT – "the m.o.t wont be affected by the faults … as long as no lights on and that it will be ok." I've seen that an MOT took place on 16 April 2024 when the car had done 67,668 miles – 742 miles since the initial inspection – and that the car passed with advisories for the brakes and tyres being worn close to the limit.

In May 2024, Miss M confirmed that she had the car "fixed" as she needed to use it, given she'd recently had a baby.

Turning to the independent report dated 17 July 2024. This records the car had done 70,191 miles – 3,265 miles since the car was initially found to be faulty. The engineer found that there was a warning light illuminated, but didn't consider this any further, instead saying that it would require investigation. The engineer did find that the clutch and brakes were worn but considered these to be general wear and tear. Finally, the engineer concluded that "as the vehicle has covered some 8565 [miles] in the approximately 11 months since purchase, then the current issues would not have been developing at the time of the vehicle purchase/sale … furthermore the vehicle passed [an MOT test on 16 April 2024] and was therefore deemed to meet the minimum standard for MOT testing, and to be roadworthy at that time."

I have some concerns about this inspection report. Firstly, it refers to Miss M having travelled over 8,500 miles before there was any issue with the car, when the evidence shows the faults first occurred after around 5,300 miles. The engineer also refers to the fault codes having been cleared and repairs taking place to the car – which is in line with the other evidence I've seen. However, the engineer made no attempt to identify the cause of the engine warning light that came on during the test drive. Finally, the comments about general wear and tear only seem to refer to the clutch and brakes, and not the other issues with the car i.e. the warning light – without identifying the cause of the warning light, the engineer wouldn't be able to conclude whether this underlying fault was present or developing at the point of supply.

Given this, I'm not satisfied the independent engineer's report can be wholly relied upon. Instead, I'm satisfied that there were faults with the car, as indicated by warning lights, that were present in March 2024. And there were still warning lights indicating an ongoing fault with the car when it was inspected again in July 2024. The CRA implies it's for Marsh to show the car was of a satisfactory quality when it was supplied to Miss M and, for the reasons stated above, I'm not satisfied they've done this. As such, I intend to direct Marsh to do something to put things right.

While section 24(5) of the CRA gives Marsh the single chance of repair, section 23(2) states:

> *If the consumer requires the trader to repair or replace the goods, the trader must –*
> *(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given the circumstances above, including the delays in Marsh arranging for the car to be independently inspected, it's arguable they failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Miss M should be able to reject the car.

In their first opinion, the investigator said that Miss M should receive a full refund of the payments she made since February 2024, as she didn't have use of the car. However, the mileage record I've seen shows that Miss M continued to use the car. So, it's only fair that she pay for this usage. As such, I won't be asking Marsh to refund any of the payments made. However, as Miss M needed to have the car repaired (replacement EGR valve) so she could continue to use the car, I think Marsh should refund the costs of this repair, as well as the cost of the diagnostic report in February 2024.

Finally, I think Miss M should be compensated for the distress and inconvenience she was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator initially recommended Marsh pay Miss M an additional £250, to recognise the distress and inconvenience she'd been caused by the complaint. And having

considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Miss M would've felt by having to drive a car with underlying faults. And I think it also fairly reflects the fact that Miss M was further inconvenienced by having to fund the inspection repair costs to the car at a time of financial pressure due to having a new baby. So, this is a payment I'm intending on directing Marsh to make.

Therefore, I intend to ask Marsh to:

- *end the agreement with nothing more to pay;*
- *collect the car at no cost to Miss M;*
- *remove any adverse entries relating to this agreement from Miss M's credit file;*
- *refund the deposit Miss M paid (if any part of this deposit is made up of funds paid through a dealer contribution, Marsh is entitled to retain that proportion of the deposit);*
- *upon receipt of proof of payments, refund the February 2024 diagnostic cost and the cost of the EGR valve replacement;*
- *apply 8% simple yearly interest on the refunds, calculated from the dates Miss M made the payments to the date of the refund[†]; and*
- *pay Miss M an additional £250 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Marsh must pay this compensation within 28 days of the date on which we tell them Miss M accepts my final decision. If they pay later than this date, Marsh must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).*

[†]If HM Revenue & Customs requires Marsh to take off tax from this interest, Marsh must give Miss M a certificate showing how much tax they've taken off if she asks for one.

Responses

Marsh didn't respond to my provisional decision. I'm taking their lack of comments to mean that they don't object to this.

Miss M said that if she agreed with the rejection, this would only leave her with the refund of her deposit and no car. So, she felt she would've paid the monthly payments to Marsh for no benefit. As such, she thought it would be fair if she also received a full refund of the monthly payments she'd made. This would allow her to source a replacement car without losing out on what she'd already paid.

Miss M also said that, while the mileage indicated the car was being used, this wasn't necessarily the case and the car has spent periods of time unused – her partner was driving her around, and so losing out on work and overtime. Miss M has also said that she's recently replaced all four tyres on the car, as well as having a warning light fixed, and so she would like the cost of these to be refunded to her.

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 noted the comments Miss M has raised in response to my provisional decision. In regard to the payments she's made to Marsh, when goods are returned the CRA allows a financial business to charge for fair usage. Our usual approach to this is that the business are able to retain the payments made to account for this fair usage.

The car was supplied to Miss M when it had done around 61,600 miles. It had done 67,688 miles when it passed an MOT on 16 April 2024, and the independent engineer's report detailed the car had done 70,195 miles by 17 July 2024. Miss M has also provided receipts of work done that shows the car had done 75,722 miles on 16 January 2025. So, in the 17-months between the car being supplied to Miss M and January 2025, it had travelled around 14,122 miles – an average of 830 miles a month. And the increasing mileage record shows the car to be continuing to be used.

The car is being driven for about 830 miles a month which is around 10,000 miles a year. And I think any reasonable person would consider this to be average mileage - in other words Miss M was using the car how she would reasonably be expected to use it.

Given this, I see no compelling reason not to adopt our usual approach of saying the monthly payments made by Miss M cover the fair usage she's had of the car. So, and while I appreciate this will come as a disappointment to Miss M, I won't be asking Marsh to refund any of the monthly payments she's made.

Miss M had an obligation under the agreement she signed with Marsh to keep the car in a good condition. And this would include replacing items to keep it roadworthy i.e. the tyres. Given that, as I've said above, the car was being driven around 10,000 miles a year, it's to be expected that wear and tear items such as tyres would need to be replaced, especially as excessively worn tyres would likely make the car unroadworthy and this would cause an MOT failure. So, I won't be asking Marsh to refund the cost of the replacement tyres.

With regards to the other repairs Miss M had done in January 2025, the evidence she's supplied shows this related to water ingress into the fuse box. This was causing the fuses to blow. There's nothing on this report that says this issue has been present since the car was supplied to Miss M, and I think that would be unlikely – water in the fuse box is most likely to cause an immediate fault, and not one that doesn't manifest itself for 17-months. As such, I also won't be asking Marsh to reimburse Miss M for the cost of this repair.

Based on the above, Miss M's comments don't change my provisional decision, and I'm still satisfied that Marsh need to do something to put things right.

Putting things right

For the reasons stated in my provisional decision and above, if they haven't already, Marsh should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Miss M;
- remove any adverse entries relating to this agreement from Miss M's credit file;
- refund the deposit Miss M paid (if any part of this deposit is made up of funds paid through a dealer contribution, Marsh is entitled to retain that proportion of the deposit);
- upon receipt of proof of payments, refund the February 2024 diagnostic cost and the cost of the EGR valve replacement;
- apply 8% simple yearly interest on the refunds, calculated from the dates Miss M made the payments to the date of the refund[†]; and

- pay Miss M an additional £250 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Marsh must pay this compensation within 28 days of the date on which we tell them Miss M accepts my final decision. If they pay later than this date, Marsh must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Marsh to take off tax from this interest, Marsh must give Miss M a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss M's complaint about Marsh Finance Limited. And they are to follow my directions above.

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

Andrew Burford
Ombudsman