

The complaint

Mr P complains about a car acquired through a Hire Purchase agreement with Marsh Finance & Commercial Limited ('Marsh'). Mr P has had problems with the car and said all these problems occurred within the first six months and he now wanted to reject the car.

What happened

Mr P acquired the car in September 2023. When it was sold, it was seven years and two months old, had covered 99,331 miles and cost £8,222.00.

Internal correspondence from the broker confirms they were contacted by Mr P in September 2023, where he'd explained difficulties he'd had with the dealership. He said his key wasn't always working and the start-stop function had stopped working. He says the car had key system and start-stop warning lights as soon as he picked it up.

A diagnostic was carried out in October 2023 showing current fault codes relating to the preheating unit and 'EGR B flow'. The mileage at this time was 100,258. Mr P provided this diagnostic to the broker and asked to reject the car.

The broker contacted the dealership who wanted to repair the car rather than allow Mr P to reject it. Marsh was also made aware of the complaint and it arranged an inspection.

An inspection was carried out in October 2023, where the mileage was noted as 101,458. They found the ECU warning light was illuminated. They found fault codes relating to the glow plug and another non-specific fault code. They also noted a key system fault, Key ID fault, and a stop-start fault. They said the car drove as expected. However they thought the faults code and warnings lights likely indicate a faulty glow plug module.

They said this issue wouldn't impact the drivability of the car, it being road legal or it being fit for purpose. Nevertheless, given how recently the car had been acquired they concluded the supplier would be responsible for it as it was likely there or developing at the point of supply.

The broker's notes indicate the dealership said it wanted to repair the car. If Mr P obtained an estimate from a local garage then they would pay for it. An estimate was forwarded to the dealership and repairs were booked for 23 November 2023.

Marsh then sent a response to Mr P's complaint saying the dealership had accepted responsibility for the repairs and that this was fair in the circumstances.

The next thing I've seen is the manufacturer carrying out a health check in January 2024. Mr P says this cost £144. This found the timing chain cover was leaking oil and the low oil level was critical. The timing chain cover needed replacing and the oil level was causing timing chain noise. So the oil needed topping up and the noise level reassessed afterwards. It also found the 'reverse and neutral' switch was faulty, which was causing an engine management light, and needed replacement. The broker said this outlined repairs costing roughly £1,000.

Mr P contacted Marsh soon after. Marsh was also contacted by the broker who said Mr P had been in touch about these further problems with the car.

They said the dealership would accept rejection at 50p per mile or would repair the car. But a couple of weeks later the dealership said Mr P had agreed to a rejection of the car charging £1 per mile of use. But shortly afterwards the dealer said they had nothing to show Mr P had agreed to the rejection on this basis. The broker said the dealership agreed to the rejection, with a 75p per mile charge, but the broker seems to have said this wouldn't be acceptable. The dealer also confirmed they were still willing to repair the car.

A further health check, carried out by the manufacturer in February 2024, suggested urgent work was required to replace the engine. Mr P says this cost £144. It found cylinder 4 wasn't compressing properly, possibly due to a bent valve, and that the EGR was stuck open. They said it would be worth the DPF being replaced because of the potential blockage caused by the engine failure. The broker said this further diagnostic indicated the necessary repairs would cost approximately £13,500.

Marsh spoke with the broker in February 2024. It was discussed that the current faults weren't connected to the earlier fault with the glow plugs. And that if Mr P has continued to drive with the timing chain fault then he would be liable for those repairs. Marsh said Mr P subsequently confirmed he had continued to drive the car after the initial faults and this had worsened the condition of the car and increased the cost of repair.

A second complaint was lodged and while this was being investigated Marsh received confirmation that the dealer was still willing to repair the vehicle. Responding to the complaint in April 2024, Marsh said the costs increased significantly between the first and second health checks as a result of Mr P continuing to drive the car when it was damaged. This happened while discussions were being had about the potential repair, but the dealership was still willing to carry out the necessary repairs on the car.

Marsh says Mr P seemed broadly happy with this offer, but he then referred the complaint to our service. Mr P told us that he'd continued making his payments, but hasn't been able to use the car since February 2024. He said at no point was he told not to drive the car, but it should be okay if it was topped up with oil.

The investigator who first considered the complaint asked Marsh to confirm that the dealership were still willing to repair the car and received confirmation that they were.

The investigator felt the car wasn't of satisfactory quality given the faults that arose, and while it's possible that Mr P contributed to the damage by continuing to drive the car, the dealership's offer to repair the car would be a fair remedy. They thought Mr P should have one of the diagnostic charges refunded and £150 for the impact all this had on him.

Marsh disagreed with this and provided comments from the broker. They felt the time between the glow plugs being replaced and the timing chain issue was two months, and by late January 2024 Mr P had driven approximately 6,000 miles in four months.

The dealer was willing to repair the car when the cost was £1,000, but the increase to £13,000 was significant. And Mr P driving the car caused this increased damage and they wanted to know the mileage at the time of the health checks. They felt without evidence of the garage recommending Mr P could continue to drive the car, he should be responsible for these increased costs.

They didn't think Marsh, the broker or the dealer should be responsible for any of the costs of the car now going wrong. But if Mr P was advised by the manufacturer that he could continue to drive the car, then the manufacturer should be liable for the repairs.

The investigator reconsidered the information based on the dealership no longer being willing to repair the car. They thought the fact Mr P continued to use the car caused significant additional damage. And without him being able to evidence he'd been advised to do so, it was unfair to hold Marsh responsible for the increased cost of repairs. But they still recommend his diagnostics fee be refunded.

Mr P didn't dispute that he continued to drive the car. He said despite raising the problems with the car it never got booked in for repairs and nothing was ever done to fix it. If further damage was caused it was because it wasn't fixed when it should have been. Mr P says he was in a bind and had no other option but to drive the car – so long as he topped up the oil as advised. Mr P said the dealer wasn't willing to fix the car and nothing got done about it.

The investigator said if Mr P could get evidence from the manufacturer to say him continuing to drive the car would be okay then this would be considered further.

Mr P asked for the case to be reviewed by an ombudsman and so it was passed to me to issue a decision. I issued a provisional decision upholding the complaint, which 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.

Having done so I intend to reach a different outcome to the investigator who first considered 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 decision.

Mr P acquired the car through a Hire Purchase with Marsh. Under this type of arrangement, Marsh became the supplier of the car and is responsible if the goods aren't of satisfactory quality when 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 given, 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.

As outlined above, Mr P acquired the car in September 2023. At this point it was seven years and two months old and had covered 99,331 miles. In these circumstances the car would have accumulated some wear and tear over its lifetime. As a result it may require more regular servicing, maintenance or repairs than a newer, less used car. However that doesn't mean the car will nevertheless be of satisfactory quality even if faults arise.

In this instance the car was faulty within the first 30 days. Under the CRA, Mr P would have been entitled to exercise his short term right to reject the goods. But according to the broker's notes, Mr P provided this diagnostic to the broker and asked to reject the car. But it was the dealership who wanted to repair the car rather than allow Mr P to reject it.

A repair was carried out at the end of November 2023. Under the CRA if a fault is repaired then a consumer can reject the goods if they still don't 'conform to contract'. Given a fault had already arisen and been repaired, if the goods then didn't conform to contract then Mr P would've been entitled to reject the goods under CRA s.24(5)(a).

Roughly eight weeks later, a health check found the timing chain cover was leaking oil and the oil level was critically low. The significant oil leak which ultimately led to the failure of the car seems to have first been noted in January 2024. We don't have an accurate mileage reading from this time, however the broker indicated Mr P had covered 6,663 miles in the car in total. In October 2023 the mileage was noted as 101,458, so Mr P had covered potentially 4,500 miles over the three or four months after October 2023. That's not an inconsiderable amount, however these faults arose within only four months of the car being supplied and that mileage isn't significantly out of kilter given the period concerned.

Putting aside any damage that might have been caused after the oil leak was identified in January 2024, which I will go on to consider later, while this was a used car at the point of supply it's not clear that a significant oil leak of this type would be expected to arise and have required such an expensive repair so soon. On balance I think this was likely developing at the point of supply and that made the car not of satisfactory quality. I think it also gave rise to Mr P being entitled to reject the goods under CRA s.24(5)(a).

It now requires more significant repairs, but this doesn't change my view on whether the car was of satisfactory quality at the point of supply – or whether the initial repairs made the goods conform to contract. The dispute has focused on Mr P continuing to drive the car after this fault was discovered, so I will spend some time outlining my thoughts in relation to this.

Mr P says he was advised he could continue to drive the car so long as the oil level was maintained at the first health check. Whereas Marsh argues that any driving after this point was unreasonable and Mr P should remain liable for any further damage caused as a result.

In a general sense, I don't think it's unreasonable to assume the average person might know a minor fault could be made worse if something faulty continues to be used. And while there isn't explicit evidence of Mr P being advised that he could continue to drive the car, I think in order to fairly assess the point it's necessary to analyse the evidence and relevant context.

This first health check outlined the timing chain cover was leaking oil, the oil level was below the minimum and "with the oil level being low it is causing timing chain to be noisy, top up oil and reassess the noise coming from the timing chain". The video that went with the report said the timing chain requires lubrication and a lack of oil can cause noise issues and could eventually cause damage "in the long run". Before replacing the timing chain cover, they said it was necessary to fill the oil to the maximum and see if the noise issue subsided. If it did then all that would be required was the timing chain cover replacement.

While one reasonable interpretation of the report might lead to stopping all use of the car, another reasonable interpretation could be to continue topping up the oil and seeing if the timing chain noise got better over time. The report said that this lack of lubrication could cause damage, however it was not expressed in such a way that would have put Mr P on urgent notice that he should not drive the car any further.

I haven't seen any other evidence to indicate that Mr P was told not to drive the car any further. Looking at the report, I'm not certain in this instance what would've clearly put Mr P on notice that continued use of the car would have the effect it did or that he unreasonably contributed to the current condition of the car.

In the absence of being advised against it, Mr P would need to have sufficient knowledge of the mechanical issue at hand in order to appropriately diagnose it and assess the risk of continued use. I can't see how he would be reasonably expected to have that knowledge, in the way an expert mechanic no doubt would, or that it would be reasonably foreseeable that driving the car in this instance would have the effect it did.

Given the description of the issue and the evidence I've seen, it's not clear that Mr P continued to use the car an unreasonable amount up to the second health report roughly three weeks later. I think this is especially the case given the notes Marsh shared from the broker. Their description of events shows that the dealership was aware of the need for repair straightaway and indicated they would repair the car or allow the car to be rejected with a 50p per mile charge. However it seems the matter was still not progressing.

Mr P expressed the lack of support from the dealership and an inability to get anything resolved. Marsh's notes seem to support this picture. The notes from the broker say, "the dealer finally answered the phone" on 30 January 2024 - and while the dealership was now engaged with the matter, they nevertheless doubled the cost of rejecting the car and gave inaccurate information about Mr P having signed something already agreeing to that. I haven't seen any evidence of the rejection being conveyed to Mr P at this time.

A week later, the matter still wasn't progressing and the broker's notes indicate the dealership wasn't being cooperative, "the dealer admitted they don't have any signed documents by the customer, They would now accept £0.75p per mile that I have explained again is unacceptable."[sic]. It was in this context that after another week Mr P sent the further diagnostic indicating the repair costs had now substantially increased.

I'm persuaded based on the information provided that Mr P wasn't advised to stop driving the car. He would have been on notice that the issue could cause problems in the long run but there wasn't anything that made him aware he urgently needed to stop using the car.

If the dealership were aware at this point that the car could not be used any further, then they could have made Mr P aware of this. I haven't seen any evidence to indicate that they made any arrangements to mitigate the potential damage that could be caused or that they gave Mr P relevant information such that he could take appropriate action himself.

Mr P's continued use of the car likely worsened its condition. However I don't think Mr P did so unreasonably in a way that ultimately lessens Marsh's liability under the CRA.

Usually a supplier would get the opportunity to repair the goods where the fault occurred outside of a consumer's short-term right to reject the goods. However in this case there had already been an opportunity to make the goods conform to contract in October 2023, and so Mr P has the right to reject the goods.

The car hasn't been operational since February 2024 and Mr P had to make other arrangements to stay mobile. Even if Marsh in theory had the right to repair the car, I don't see that repairs now could be carried out in a reasonable amount of time or without significant inconvenience to Mr P. The cost of repairs also exceed the cost of the car and so repairing it would likely be disproportionate in the circumstances in any event. And it's not certain that the repairs identified will ensure the car conforms to contract. For these reasons Mr P should now be able to reject the car. I intend to make the following award.

The agreement should end with nothing further to pay, and the car be collected at no cost to Mr P. He should be refunded his deposit and any payments since February 2024 in full.

The cost of the diagnostics and reports should be refunded – which to my mind is two reports costing £144 each. I haven't been provided with persuasive evidence of any other costs incurred though I will consider any further evidence provided.

As the investigator outlined, this matter has caused a significant strain on Mr P. He's been stretched financially as a result of having to pay for a replacement car while continuing his payments under this agreement. The multiple faults and the need to have the car repeatedly inspected, would have caused considerable distress. Marsh should pay him £150 to reflect the impact all this has had. If any negative information has been reported to credit reference agencies then this should be removed.'

Responses to the provisional decision

Mr P informed us after the provisional decision was issued that he had taken the decision to have significant repairs carried out to the car. He said he couldn't pay for alternative means of transport while also continuing to pay towards a car that wasn't working. He was able to borrow funds to have repairs carried out to get the car mobile once more. However these repairs don't seem to have fully resolved the issues outlined.

After some consideration, I thought it would be fair for these costs to be refunded along with what I'd outlined in my provisional decision and I let both sides know that.

After giving both sides further opportunity to comment on this, Mr P accepted this and Marsh did not respond.

As the complaint remains unresolved, it 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.

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.

Having weighed up the responses to the provisional decision, I've come to broadly the same outcome, for the same reasons. However I'm satisfied that it would be fair and reasonable for Marsh to settle the complaint in the way I set out below given the new information I have.

I shan't repeat the findings in the provisional decision, which still stand, along with the redress outlined there. No arguments or evidence has been provided to alter my decision on this. However I will expand on how to put things right given the new circumstances I've been made aware of.

Mr P outlined that he borrowed money to have repairs carried out on the car to at least get it mobile as he had no other way of getting about. I'm mindful of the history of this complaint and that it's taken some time to get to this point. I accept this would have been a difficult situation and I don't think Mr P's decision to take the steps he did to improve the position he found himself in was unreasonable in the circumstances.

He has provided our service with invoices for repair work carried out costing £6,591.98. I'm satisfied this stems from the issues with the car which had made it not of satisfactory quality in the first place and are costs that he would not have incurred otherwise, particularly if he had been able to reject the car sooner.

Although these repairs seem not to have fully resolved all the outstanding issues with the car, they will have inevitably improved its condition at least to some extent and presumably reduced the outstanding repair costs that were previously estimated to be around £13,000. And so on balance I think it's fair and reasonable for Marsh to cover these costs.

This is especially the case given the records I've seen of the negotiations between Marsh, the broker and the dealer relating to the rejection of the car. These show the rejection of the car being held up at a time when Mr P should have been able to reject it and was nevertheless being continually impacted by this rejection not materialising. I haven't been provided with any further arguments or evidence to alter the conclusions I drew in my provisional decision. I'm therefore still satisfied Mr P should be able to reject the car.

Putting things right

Given what I found in my provisional decision, and the new circumstances I've been made aware of since, I am now making the following award.

Marsh should now:

- End the agreement with nothing further to pay
- Collect the car at no cost to Mr P
- Refund his deposit and all payments since February 2024
- Refund the cost of the two diagnostics carried out, which were £144 each
- Refund the repair costs Mr P incurred of £6,591.98
- Pay 8% simple interest on these refunds from the date of any payment to the date of settlement*
- Pay Mr P £150 to reflect the distress and inconvenience caused**
- Remove any adverse information reported to credit reference agencies

* If Marsh considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

** If Marsh does not pay this £150 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

My final decision

My final decision is that I uphold Mr P's complaint against Marsh Finance & Commercial Limited. It must now settle the complaint in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 May 2025.

Scott Walker
Ombudsman