

## **The complaint**

Ms O complains about a charge applied by Marsh Finance & Commercial Limited after she voluntarily terminated a hire purchase agreement.

## **What happened**

In August 2022, Ms O was supplied with a used car through a hire purchase agreement with Marsh. The cash price of the car was £3,145 and the agreement was for the full amount. This was to be paid over 46 months; with 45 monthly payments of £89.89 followed by a final payment of £99.89. At the time of supply, the car was around 10 years old and had covered around 86,734 miles.

In October 2024 Ms O exercised her right to voluntarily terminate the agreement as she could no longer afford it. As she'd already paid more than half the total liability under the agreement there was nothing further for her to pay at that point. Marsh arranged for the car to be collected and inspected. Following the inspection, Marsh applied a charge of £1,516.17. This was for damage to the left-hand rear quarter panel, which the inspector had noted as dented across more than 30% of the panel area and in need of replacement.

Ms O made a complaint. She said she wasn't made aware of the damage or the charge at the time of the inspection. She said the charge was only slightly less than she would have paid to continue the agreement until its end – and was likely more than the value of the car itself. She said if she was aware that Marsh intended to apply such a significant charge she wouldn't have gone ahead with the termination. She said the charge caused additional financial strain during an already difficult period. Marsh said Ms O had signed the inspector's report to confirm she understood and accepted their findings. It was satisfied the damage went beyond fair wear and tear as set out in the British Vehicle Rental and Leasing Association (BVRLA) guidelines so remained chargeable.

The complaint was referred to this service. One of our Investigator's considered the complaint and upheld it. In summary, they didn't think Marsh had provided enough evidence to demonstrate the damage or that the charge was applied fairly. They weren't persuaded by the inspection report, as the photo appeared to have been taken some time after the car was collected, and didn't clearly show the extent of the damage or that any damage occurred during the course of the agreement. They recommend that Marsh remove the charge – or refund it with interest if already paid – and remove any adverse information from Ms O's credit file.

Marsh didn't accept the Investigator's conclusions. It was satisfied the inspector's report was clear, and said if the damage was present at the point of supply Ms O would have highlighted it at the time. It asked for the complaint to be referred to an Ombudsman for a final decision. So, it's been passed to me 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 overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my decision on the balance of probabilities – what I think is more likely than not to have happened given the available evidence and wider circumstances.

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. Ms O was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means I can consider a complaint about it.

The terms of the agreement outline that Ms O is responsible for keeping the car in good condition, and that she's responsible for any damage. Section 100 of the Consumer Credit Act 1974 (CCA) sets out that when a hire purchase agreement is terminated early by the customer, the lender can apply a charge for costs incurred if the customer hasn't taken reasonable care of the goods. So, I'm satisfied Marsh was entitled to apply a charge if it could demonstrate that Ms O failed to take reasonable care of the car. I've considered whether it's done so in the circumstances of the complaint.

As a starting point, I've considered the British Vehicle Rental and Leasing Association (BVRLA) guidelines on what is considered fair wear and tear. This guidance is generally intended for newer cars that have been returned at the end of their first finance arrangement – so is mainly used to assess cars that are a few years old. In this case, the car was over 12 years old and had travelled over 95,000 miles at the point of collection. I'd expect a car of this age and mileage to have significantly more wear and tear than a newer or less travelled one would. So, I'd expect any consideration of the BVRLA guidelines to take this into account when deciding whether damage goes beyond fair wear and tear.

I've reviewed the inspector's report and photos. The report states that the left-hand rear quarter panel needs to be replaced, as it's dented across more than 30% of the panel area. The BVRLA guidelines say dents of more than 15mm aren't acceptable.

Having reviewed the photos, I'm not satisfied they're clear enough to allow me to determine the extent and nature of the damage. I would usually expect to see close-up photos of the damage with a ruler or measuring tool to demonstrate the size. I'd also usually expect photos to have been taken at the time of the inspection. Marsh has provided two photos. One was taken from a distance and appears to be in a showroom or similar environment sometime after the car was collected. From this photo there are some visible markings on the quarter panel just above the wheel which appear to be denting – but the damage isn't measured and the extent of it isn't clear. The other photo appears to have been taken in the dark with very low visibility – and doesn't show any damage to the panel.

Marsh has asserted that the denting meant the entire panel needed to be replaced at considerable cost - nearly half the cash price of the car when it was supplied to Ms O. So, I'd expect it to provide persuasive evidence to show the extent of the damage, that Ms O was responsible for it, and that it couldn't reasonably have been repaired. The evidence suggests some denting but is otherwise unclear. Even if the photos showed the damage more clearly, I don't think they demonstrate that the panel was so significantly dented that it needed to be replaced.

As noted by our Investigator, the time elapsed between the collection and photo being taken

– and the age of the car at the point of supply – means I can't conclusively say when the damage occurred or that Ms O is responsible for it. I note Marsh's point that it would expect Ms O to have highlighted any damage present when the car was supplied. But this was a 10-year-old car with a high mileage supplied at a relatively low cash price – so I don't think it's unreasonable to suggest the damage could have been present from the start or that Ms O accepted the car in this condition. Ultimately there's no way to know for sure when the damage occurred. But even if the car was damaged during the term of the agreement, I don't think Marsh has done enough to demonstrate that the charge was applied fairly for the reasons I've explained.

### **Putting things right**

As I'm not satisfied Marsh has shown the charge was applied fairly, it should:

- Remove the LHR quarter panel damage charge (£1,516.17).
- If the charge has already been paid by Ms O, refund the payment.
- Apply 8% simple interest per annum to any refunded amount, calculated from the date the payment was made to the date of settlement<sup>†</sup>.
- Remove any adverse information associated with the charge from Ms O's credit file.

<sup>†</sup>If Marsh considers that tax should be deducted from the interest element of my award, it should provide Ms O with a certificate showing how much it has taken off so she can reclaim that amount, if she is eligible to do so.

### **My final decision**

My final decision is that I uphold Ms O's complaint. I require Marsh Finance & Commercial Limited to carry out the directions outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 4 March 2026.

Stephen Billings  
**Ombudsman**