

The complaint

Mr L complains about the quality of a car provided on finance by Marsh Finance Ltd ('MF').

What happened

The background facts are well known to the parties here so I will only deal with them briefly and focus on giving reasons for my decision.

MF supplied Mr L with a car on a hire purchase agreement in March 2022. He says that in August 2022 the engine started making rattling noises. He wants the car repaired or he wants to unwind the deal.

MF has refused to do what Mr L wants and he complained. In summary, in response MF says any current issues are down to usual wear and tear.

Mr L referred his complaint to this service and it wasn't upheld. Mr L does not agree. In summary, he says:

- his mechanic has identified an excessively worn camshaft as causing the noise – and this would have been developing prior to him getting the car;
- the car developed a fault less than 6 months into him taking delivery of the car and it was serviced beforehand;
- he is still using the car as he has no other transport but the noise is still evidence and not normal.

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 have considered the evidence submitted by the parties but I won't comment on everything. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MF is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems

likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

MF did not supply Mr L with a new car here. The car had travelled in excess of 50,000 miles and was about four years old at point of supply. And while it was not an inexpensive car – the price was less than it would have been new. I also note the service history of the car appears to be incomplete and records Mr L has provided indicate that servicing was not carried out in accordance with the recommended mileage intervals. So I think it is fair to say that a reasonable person would expect that it would not necessarily perform as well as a new car or even a second-hand car with a complete service history. And there would be a higher risk of wear and repairs arising from previous use and maintenance by former users.

In this case Mr L's complaint concerns a noise which he says is caused by an underlying fault that was present when he was supplied the car.

Mr L says he noticed the noise about 6 months in. As a result it appears the dealer carried out some work and adjustments to improve the noise. It appears that during this time it carried out some timing adjustments and replaced some components including injectors too. Mr L indicated the work improved the noise but when very cold or hot the car still has a rattle from the engine. He says MF is liable for this.

I note that after the initial work was carried out an independent expert inspection ('Inspection A') was commissioned. At this point the car had covered almost 62,000 miles. The inspector carried out a detailed report and road test and concluded that the overall condition of the car was considered to be acceptable for a car of the age and mileage at the time. Furthermore, while the expert accepted there was increased noise after a period of '*hot idling*' this was considered to be '*commensurate with the age and mileage of the car*'. The report concludes in saying the car is '*of satisfactory quality for a vehicle that has covered over 60,000 miles*'.

Mr L did not identify the noise straight away - it appears to have developed some months after the point of supply rather than been present at the time. However, durability is a factor in the quality of goods – so I have considered whether evidence persuasively shows that components of the car are not reasonably durable in the circumstances here.

I am not an expert in cars so it is difficult for me to conclude that the noise is abnormal and the condition of the car is due to something other than expected wear and tear when Inspection A has clearly concluded otherwise. This report is persuasive in indicating that components are reasonably durable in the circumstances. So on the face of it I am unable to fairly conclude the car was not of satisfactory quality at the point of supply.

I have had regard to the fact that Mr L has recently produced a diagnostic from his own mechanic which says that there is an engine noise and this is caused by an excessively worn camshaft. He has also produced a printout of codes from the vehicle computer.

However, I think it is difficult to say the car is not of satisfactory quality based on the recent evidence Mr L has provided particularly for the following reasons:

- The diagnostic from Mr L's mechanic is far less detailed and persuasive compared to Inspection A which concluded that the condition of the car and the noise were commensurate with the age and mileage of the car. Furthermore, it does not contain

details of the mechanics credentials or a statement to the court like Inspection A.

- While the recent diagnostic points to 'excessive wear' on the camshaft it does not explain if this is due to an inherent fault with parts or expected wear and tear due to previous use (including factors such as prior maintenance). I do note Mr L says he should not be responsible for use by previous owners but the nature of service records are relevant to the expectations a reasonable person would have around satisfactory quality and how well parts will have been maintained. And in this case the service records appear to be incomplete and indicate servicing was not carried out in accordance with the manufacturers guidelines (for example the first service appears to have been carried out at double the recommended mileage).
- It appears the car has covered considerable mileage since supply (around 15,000 miles as of March 2023) and is still being used – so while the camshaft might have accelerated wear (and the engine might be louder than that of a newer car) it isn't clear the extent to which this impacts Mr L's ability to use the car and whether repairs at this stage are essential or something that would simply make the engine quieter. There is currently no persuasive evidence to indicate major components have failed or are close to failing – only that newer parts would improve the noise.

For completeness, while I appreciate there were some dealer repairs (including replacing injectors and pulley for new) when Mr L first reported the noise it isn't entirely clear from the information I have that these were because the car was of unsatisfactory quality at the point of supply and if these were directly linked to the noise issue Mr L complained to MF about. So I don't think the fact these actions were carried out changes my findings here.

Overall, based on the information I have I am not persuaded MF has to carry out further repairs or take the car back. However, my role here is to resolve disputes informally. My decision does not prevent Mr L from seeking appropriate legal advice and taking the matter to court should he wish to do so.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 December 2023.

Mark Lancod
Ombudsman